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103

The Prerogative Court.

OF THE STATE OF NEW JERSEY.

In the Matter of the Probate in solemn form of the last Will and Testament of GEORGE P. GORDON, Dec'd.

Pursuant to adjournment the parties met at the Chancery Chambers, September 10, 1891, at 10 a. m., and the following evidence was taken before Hon. Alexander T. McGill, Ordinary of the State of New Jersey, in presence of solicitors and counsel of the respective parties.

DANIEL S. MORELL, a witness produced on behalf of the proponents, being duly sworn according to law, on his oath says:

EXANINED BY MR. COLLINS:

Q. Mr. Morrell, where do you live?
A. I reside at Canajoharie, Montgomery County, New York.
Q. May I ask your age?
A. I am sixty-seven years old.
Q. What is your profession?
A. Lawyer.
Q. When were you admitted to the bar?
A. In 1851.

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Q. Where did you practice your profession?

A. At Albany, Wellsville, Alleghany County, New York and Canajoharie.

Q. That is where you now live?

A. Yes.

Q. When did you go to Canajoharie?

A. In 1856.

Q. How far is that from the village of Fort Plain?

A. Three miles.

Q. Were you acquainted with Henry C. Adams, of the Montgomery County bar, now present in Court?

A. I was.

Q. When did you form his acquaintance?

A. About five years before he left.

Q. Were you fellow practitioners at the bar?

A. Yes, sir.

Q. Up to the time that he left the County and State?

A. Yes, sir.

Q. How well did you know Mr. Adams?

A. I knew him intimately; I was in the habit of of seeing him more or less every week.

Q. Do you know his reputation for truth and veracity in Montgomery County?

A. I do.

Q. And elsewhere?

A. Yes.

Q. Was it good or bad?

MR. MILLER—If the Court please, I object to any further evidence on this line. They have called five times as many witnesses as we have.

MR. COLLINS—They say the lawyers are the ones who know him; they said "Are you a lawyer?" is the question that should be asked of the witness.

Question allowed.

A. It was good.

Q. During the time that you knew him and practiced there with him?

A. Yes, sir.

Q. It was good?

A. Yes, sir.

Q. What official positions have you held, if any?

A. I have been District Attorney of the County for three years, from 1866 to 1869.

Q. Between what years?

A. 1866 and 1869. I held other positions. I have been President of the Board of Education at Palatine Bridge for a period of nine years.

Q. Trustee of the village?

A. Yes.

CROSS-EXAMINED BY MR. MILLER:

Q. In what year were you admitted to the bar?

A. 1851; January, 1851.

Q. Did you commence practicing immediately after you were admitted to the bar?

A. I did.

Q. And where did you practice from 1851 up to the time you made a change in your residence?

A. I was in Albany about six weeks; from there I went to Wellsville, Alleghany County.

Q. And remained during what time?

A. I went there in 1851; I think in the summer, and remained there till 1856. I was born in Montgomery County. I studied my profession at Canajoharie and returned there after spending five years at Wellsville.

Q. You returned to Canajoharie in 1856 then?

A. Yes.

Q. Did you continue to practice at Canajoharie up to 1869?

A. I have, ever since.

Q. And you say you are sixty-seven years old?

A. I am.

Q. How near do you say Canajoharie is to Fort Plain?

A. Three miles.

Q. Mr. H. C. Adams discontinued practicing in Fort Plain in 1868, did he not?

A. About that time; I think he did.

Q. And did he continue to live there after 1868, or did he move away from there?

A. I think that about that time he came to this State, and took up his residence, I believe, at Rahway.

Q. Between 1866 and 1669 you were District Attorney of Montgomery County?

A. Yes.

Q. Were you engaged in civil practice also at that time?

A. Yes, sir.

Q. Had you any cases against Henry C. Adams during that time?

A. I had cases with his father, but not with him.

Q. You never had any cases with Henry C. Adams?

A. No, sir.

Q. You have said that Mr. Adams' reputation was good; what do you mean by saying that?

A. I mean he is a witness to be believed on oath.

Q. Have you never heard of his reputation for truth and veracity?

A. Never.

Q. Never in your life?

A. Only since this proceeding commenced.

Q. No; before this proceeding commenced?

A. Never.

Q. Did you not know he was impeached in a trial in Montgomery County?

A. No.

Q. Did you know Judge Yost?

A. I did.

Q. Is he dead?

A. Yes.

Q. Did you know Mr. Genter?

A. Yes.

Q. Have you ever heard before the commencement of this trial that Judge Yost and Mr. Genter

had sworn they would not believe Mr. Adams under oath?

A. No.

Q. You didn't know that?

A. I didn't know that.

Q. You circulate a great deal in Montgomery County—you claim to be familiar with affairs there, do you not?

A. Oh, yes; I am in active practice there.

Q. Do you mean to say you never heard Judge Yost or Mr. Genter speak against Mr. Adams or ever heard that they had testified against his character?

A. I never did until to-day. I was present at the trial where the testimony was given, but I only heard witnesses upon the part of Mr. Adams.

Q. Were you interested with Mr. Adams in that case in any way?

A. I was not.

Q. Were you sympathetic with him?

A. No, sir; I was rather against him. I thought he ought to be beaten on the merits.

Q. And why did you think that?

A. Well, from a statement I heard of the case I thought it was an old matter that ought to have been investigated long before.

Q. You didn't believe he was a partner of his father?

A. I didn't believe anything about it.

Q. You didn't believe he was a partner of his father?

A. I can't say I had any belief one way or the other.

Q. You know Mr. Adams swore he was his father's partner?

A. I don't believe he was a competent witness. In our State he wouldn't be a competent witness to testify to that fact.

Q. You have heard of the character of Henry C. Adams discussed before the commencement of this trial up in that neighborhood?

A. I never heard his character brought into question by anyone.

Q. Under any circumstances?

A. Any circumstances.

Q. At any plaee?

A. At any place.

Q. Never in court or out of court?

A. Never in court or out of court; upon the contrary, I have heard him favorably spoken of.

Q. By whom?

A. Judge Gridley.

A. Who was Judge Gridley?

Q. A Judge of the State of New York.

Q. What Court?

A. Supreme Court Judge.

Q. During what years?

A. About the year 1860.

Q. He died a long time ago, did he not?

A. Yes.

Q. How came Judge Gridley to speak favorably of Mr. Adams?

A. Mr. Adams was a witness in a matter that came up beforn the Surrogate in which Mr. Gridley was concerned.

By Mr. Collins:

Q. That was the occasion?

A. Yes.

Q. About Mr. Adams' testimony?

A. About Mr. Adams' testimony and about him as a man.

Q. Mr. Morrell, what Judge presided at this trial you speak of?

A. Judge Fish.

Q. Frothingham Fish?

A. Frothingham Fish.

Q. And he had the decision of the case; there was no jury?

A. Yes.

Q, You said that you had heard Mr. Adams favorably spoken of; and Mr. Miller then asked you

by whom? And you said by Mr. Gridley; and then he took up another question.

A. Judge Belden; he has also.

Q. And others?

A. Well, I don't remember anybody else.

RE-CROSS BY MR. MILLER:

Q. Was Mr. Adams' character under discussion when Judge Gridley spoke favorably of him?

A. Mr. Adams had been sworn as a witness with regard to a charge that was made against the estate of Archibald Fox for services.

Q. Before Judge Gridley?

A. In behalf of Judge Gridley; and I remember of having a couversation with Judge Gridley at the adjournment of the matter, in which he spoke very kindly of Mr. Adams.

Q. Was Mr. Adams' character brought in question at that time?

A. It was; as a witness on behalf of Judge Gridley.

Q. Was Mr. Adams' character brought in question at that time?

A. Not otherwise than simply being a witness.

Q. As a witness was it question?

A. No.

Q. How was it discussed by Judge Gridley, if it had not been questioned?

A. After we had adjourned for dinner we walked over to the hotel to dinner, and on the way he spoke of Mr. Adams, and said he was an exemplary young man; a man of a great deal of promise, and he thougnt he would make a very fine lawyer, etc.

Q. That was the occasion of his speaking?

A. That was the occasion of his speaking.

Q. When did Judge Belden die, if you remember?

A. I should say some time about 1875; some time about 1875.

Q. Was he on the bench then?

A. He was not.

Q. When did he retire from the bench?

A. I should think about 1870.

Q. Where did you hear him speak of Mr. Adams favorably.

A. At the Court House in Fonda.

Q. What was the occasion of his speaking favorably of Mr. Adams?

A. He spoke about his briefs; he thought he made a very nice brief, and he said he was very much interested in them and liked to read them. He said he was a young man of a great deal of promise.

Q. And that is what you refer to when you say he spoke of him favorably?

A. Yes.

By Mr. Collins:

Q. This case in which you say Judge Gridley was concerned was not one in which he was a party; he was an attorney?

A. Simply a witness.

Q. Mr. Gridley was not the party, but the attorney.

A. Mr. Gridley was not the attorney. An account had been presented by the executor to the Surrogate for an allowance; it contained two or three charges for services rendered by Judge Gridley, and those charges were contested to a certain extent.

Q. Who was the attorney on the other side in that litigation?

A. I was.

Q. Opposed?

A. I was opposed to Mr. Gridley's claim.

By Mr. Miller:

Q. I don't understand that, Mr. Morrell.

A. I represented on that occasion the widow of Archibald Fox.

Q. What was Judge Gridley's relation to the case?

A. He had conducted some litigation on behalf of the executor.

Q. And he had made some charges?
A. And he had made some charges.
Q. And was Mr. Henry C. Adams supporting those charges or opposing them?
A. He was supporting them.

BY THE ORDINARY:

Q. I understand you, Mr. Adams was testifying to the propriety of those charges?
A. Yes.
Q. And they were Mr. Gridley's charges?
A. Yes.

HARVEY DUNKEL, a witness produced in behalf of proponents, being duly sworn, on his oath saith:

EXAMINED BY MR. COLLINS:

Q. What is your age?
A. Fifty-four.
Q. And where do you live?
A. Canajoharie, Montgomery County.
Q. And what is your profession?
A, Attorney and counsellor at law.
Q. In active practice now?
A. I am.
Q. When were you admitted to the Bar?
A. In 1859.
Q. You also have been District Attorney of Montgomery County?
A. Yes.
Q. For how long?
A. Two terms.
Q. What years?
A. The years 1875 to 1880, including 1880 as well.
Q. Have you known Henry C. Adams when he was practicing in that County?
A. Yes.
Q. When did you become acquainted with him?
A. About 1859; in the year 1859. I believe I had seen him before that time; but from that time including that year down to the time when he left.

Q. Did you see him often?

A. Yes.

Q. Did you have any business intercourse with him?

A. I never had any business intercourse with him that I was opposed to him at all. But I would see him several times a week during those years until the time that he left.

Q. In the legal business, general legal business of the County, you met him?

A. Yes; and socially, at Fort Plain.

Q. Do you know his reputation for truth and veracity in the community in which he dwelt at that time?

A. Yes.

Q. Was it good or bad?

A. It was good.

CROSS-EXAMINED BY MR. MILLER;

Q. When do you say you came to the bar?

A. In 1859.

Q. Where did you practice then?

A. Canajoharie.

Q. Have you always practiced in Canajoharie?

A. Yes.

Q. Your office has always been there?

A. Yes.

Q. Prior to 1868, how much did you have to do with Mr. Henry C. Adams, individually, in the matter of practicing law?

A. I never had any litigation with him at all, in which I was interested as the attorney for one side or the other, to my knowledge; but, I would meet him socially, frequently, every week, and would see him, of course, at Court and other places.

Q. Why do you say his character at that time was good?

A. Because I never heard it questioned.

Q. Were you in active practice there before 1868?

A. Certainly; from 1859.

Q. Did you never hear he was impeached?

A. No.

Q. You never heard it?

A. I never heard it.

Q. You never heard anyone speak disparagingly of Mr. Adams?

A. No, sir; not to my recollection. I have not.

Q. You are positive about that?

A. Yes.

Q. You have been in that County a great deal?

A. I have always been there in active practice since 1859, including that year.

Q. And your ground for saying his character was good is that you never heard anyone question it?

A. On the contrary I have heard people speak well of it.

Q. What people?

A. By everybody in general. I have heard him well spoken of.

Q. Why do you appear here as a witness?

A. I was requested to do so.

Q. By whom?

A. By the attorneys representing the other side, Booraem, Hamilton and Beckett.

Q. Did Mr. Adams request you to come?

A. No, sir.

Q. You came here at their request?

A. Yes.

Q. You have had a friendly feeling towards Mr. Adams?

A. I always have had.

Q. Growing out of your intimacy since 1868?

A. Yes. And I have seen him there in the County and Mohawk Valley and always thought well of him.

Q. Do you claim your statements in respect to Mr. Adams are entitled to as full credit as those of any other person?

A. As far as my knowledge extends I regard him very highly.

Q. I am speaking about yourself.

MR. COLLINS—I submit that is not a proper question.

No ruling.

A. I make no claim.

Q. Do you claim that your own professional record is above reproach?

A. I trust it is.

Q. Do you claim so?

A. I believe it to be so.

Q. You believe it to be so? and you claim so?

A. Yes.

Q. Has a judgment ever been entered against you for moneys collected for a client?

MR. COLLINS—That is objected to as not proper cross-examination.

THE ORDINARY—I will overrule the question.

Q. Has not a judgment for upwards of two hundred dollars been recorded against you by Oliver E. Fox, for moneys retained by you in your capacity as attorney for him?

MR. COLLINS:—I object to the question.

THE ORDINARY—Question overruled.

MR. COLLINS:

Q: Did you know George Smith of the Montgomery County Bar?

A. I did.

Q. He is now dead.

A. Yes.

Q. Do you know what his relations with Mr. Adams were?

MR. MILLER: How is that material?

MR. COLLINS: They have attempted to prove that Mr. Smith spoke disparagingly of

Mr. Adams. I desire to prove that their relations were of the most intimate and friendly character. I also propose to ask the same question as to Peter J. Webster.

MR. MILLER—He does not know.

WITNESS—No.

CHARLES W. WHEELER, a witness produced in behalf of the proponents, being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?
A. I live at Canajoharie.
Q. And your age?
A. Over sixty.
Q. What is your profession?
A. A lawyer.
Q. You were admitted when?
A. In 1887.
Q. You have only recently been admitted to the bar?
A. Yes.
Q. Before that you were connected with the legal profession in some way?
A. I had been a magistrate since 1865 and am still.
Q. What we would call here justice of the peace?
A. Yes.
Q. And how long have you been a magistrate in Canajoharie?
A. Since 1865 and up to now.
Q. How long before that did you live in Canajoharie?
A. Since 1850 in the village. I have always lived in the town.
Q. Did you become acquainted with Henry C. Adams, now present in Court?
A. Yes.
Q. When?

A. About 1865.
Q. What was his vocation?
A. He was a lawyer.
Q. Did he practice before you?
A. I think so; at least I met him frequently.
Q. Do you know his reputation for truth and veracity in the community in which he dwelt and in Montgomery County, during the period that you knew him there?

MR. MILLER—You mean, down to 1868?

MR. COLLINS—Down to the time he went away.

A. I never heard it questioned, then or since. I know it in that way.

CROSS-EXAMINED by Mr. Miller, (waived).

JOHN FINEHOUT, a witness produced in behalf of the proponents, being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. What is your present residence?
A. Canajoharie, New York.
Q. How old are you?
A. Sixty-one year old?
Q. How long have you lived in Canajoharie?
A. Since 1860?
Q. Before that?
A. At Fort Plain.
Q. For how long?
A. Thirteen years; 1847.
Q. And you have lived in that County from 1847 to the present time?
A. Yes, sir.
Q. Do you know Henry C. Adams, here present?
A. I do.
Q. How long have you known him?
A. I have known him ever since I lived at Fort

Plain, 1847. We were all well acquainted and pretty intimate.

Q. What was his business?

A. He was with his father in his law office?

Q. And what were you engaged in?

A. Clerking it?

Q. And now what are you?

A. A merchant of Canajoharie.

Q. How well did you know Henry C. Adams?

A. I knew him as well as anybody; we used to go together; we used to go to parties, etc.

Q. Do you know and did you know his reputation for truth and veracity in the community in which he dwelt, and in Montgomery County, during the time he lived there?

A. I did.

Q. What was it—good or bad?

A. It was good.

CROSS-EXAMINED BY MR. MILLER:

Q. What were these occasions of your seeing Mr. Adams prior to 1866?

A. He was in the store frequently; we were attending parties; I was clerking in the store.

Q. What kind of store was it?

A. It was dry goods and groceries.

Q. It was a country store?

A. Yes.

Q. And he stopped in there and chatted with you?

A. Yes.

Q. Was that the extent of your acquaintance with him at that time?

A. That was all that I knew of him—living there together.

Q. You never had any business relations with him?

A. We had no business relations together.

Q. And you never heard anything about any proceedings in which he was impeached as a witness?

A. No; I never heard of them.

Q. Do you say that his reputation was good be-

cause you never hear it questioned about there?

A. I never heard it questioned.

Q. And that is the reason you state it was good?

A. Yes.

WILLIAM T. RUDD, a witness produced in behalf of the proponent, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live, Mr. Rudd?

A. Albany.

Q. What is your age?

A. I will be 75 in a few days.

Q. Were you formerly a conductor on the New York Central road?

A. Yes, sir.

Q. And were you acquainted with Henry B. Cushney, a lawyer of Montgomery County, New York State?

A. Yes, sir.

Q. How long is it since you have seen him?

A. Over ten years, to speak to him.

Q. Did you send any communication to him within the last ten years?

A. No, sir.

Q. Did you send any letter to Mr. Van Steenberg?

A. No, sir.

Q. Ever, that you know of?

A. Never.

Q. I think you had an accident some little time ago, did you not?

A. Yes; to my eyes; my eyes failed me two years ago.

Q. You say your eyesight failed you?

A. Yes, sir; two years ago the first of October.

Q. And since that time you have not written anything?

A, I have not written a line.

Q. Did you receive any communication during

that time asking you to be a witness in this case, or a witness as to the reputation of Mr. Henry C. Adams, until Messrs. Booraem, Hamilton & Beckett asked you to come here?

A. No, sir.

Q. Did you ever live in Fort Plain?

A. Yes, sir.

Q. When?

A. I moved to Fort Plain in 1838.

Q. And how long did you live there?

A. I lived there till 1844.

Q. And then where did you go?

A. I went to work for the American Express Company.

Q. And where did you live at that time?

A. In Albany.

Q. So that you have lived in Montgomery County since 1844?

A. I have lived in Montgomery County since 1844.

Q. Did your duties carry you through there on the railroad?

A. Yes; I went through to Buffalo.

Q. For how many years?

A. Thirty-eight years.

Q. Do you know Henry C. Adams, who is now in Court, and was formerly a lawyer at Fort Plain?

A. Yes, sir.

Q. Did you know his reputation for truth and veracity in the community in which he dwelt during the time you lived there?

A. I knew it pretty well; yes sir.

Q. Was it good or bad?

MR. MILLER—Objected to.

THE ORDINARY—I will allow it.

A. I never heard anything against him.

CROSS-EXAMINED BY MR. MILLER:

Q. Do you know any employes of the office of the State Comptroller of New York?

A. No; I don't know that I do. I have been away from Albany part of the time for the past four years.

Q. You are there part of the time?

A. I am part of the time in Albany.

Q. During any particular weeks or parts of the year?

A. No, sir. Whenever I see fit to go to Albany I go there.

Q. Do you know Mr. Edward C. Wemple?

A. I know his name, but I don't know him. I couldn't tell him if he was in the room close to me, but I have heard his name.

Q. Are you sure you are not acquainted with an employee in his office?

A. I don't know that I am. I know a great many people without knowing their business or name. I say there are a great many men that I know, but I don't know their business; and thousands know me that I don't know.

Q. Try to recollect. Has any one spoken to you about Mr. Henry C. Adams before Mr. Beckett did within the past year?

A. I don't remember that they did.

Q. Will you swear no one has spoken to you of him?

A. I don't know that they have.

Q. You mean, that they have not spoken to you, or you have not any memory about it—which is it?

A. They might, maybe, have spoken to me. There are a great many men ask me about certain men that I can't remember.

Q. Didn't some one ask you what you thought of Henry C. Adams within the last three or four months?

A. No, sir.

Q. Are you positive of that?

A. I am very positive.

Q. Are you absolutely positive?

A. I don't remember anybody.

CHARLES C. DALLEY, a witness produced in behalf of the proponents, being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Mr. Dalley, where do you live?
A. I live at Harrison, New Jersey,
Q. This county?
A. Yes, sir.
Q. Did you formerly live in the Township of Woodbridge, County of Middlesex?
A. Yes.
Q. When?
A. All my life until four years ago.
Q. Did you in the 70's hold some official position there; and, if so when and what?
A. I was collector of taxes from 1877 to 1884.
Q. Including the collection of taxes of 1877?
A. Yes.
Q. (Handing book to witness). I show you a book and ask you what it is?
A. It is a pocket memorandum that I carried while I was collector in which I put down while away from my office when I received taxes; I put them on this memorandum.
Q. Was it the original memorandum of the receipts?
A. It was in certain cases.
Q. That is, cases of receipts away from the office.
A. Yes.

THE ORDINARY:

Q. Was it used for any other purpose than your business as collector of taxes?
A. Yes; it was used also for my private memorandum.

MR. COLLINS:

Q. When you received a tax it was entered by you in that book at the time?
A. I did, certain ones.
Q. Yes, when from home?

A. Yes.

Q. Refreshen your memory by the entries in this book, tell us whether the taxes assessed for the year 1877 in the name of George P. Gordon in that township were paid?

MR. MILLER I object to the question. He has not asked the witness whether the book refreshes his recollection as to this particular transaction.

MR. COLLINS—I submit the question does in effect do that.

THE ORDINARY—You may use that book to refresh your recollection, and then you may say what the fact is.

A. I recognize that as a memorandum.

THE ORDINARX:

Q. You testify from memory, refreshed by this book?

A. In what regard?

MR. COLLINS:

Q. Whether the taxes were paid to you?

A. Yes; certainly. $282.65.

Q. What was the date of payment?

A. From the book I should say it was from the 1st of December to the 6th.

Q. 18—

A. '77.

CROSS-EXAMINED BY MR. MILLER;

Q. Have you any recollection whatever of this transaction, except as you read it in the book?

A. No, sir; I have not.

Q. No recollection whatever?

A. No, sir; only a general recollection of the tax being paid to me and I making a memorandum then of it.

Q. You don't know how it was paid?

A. No, sir. It was generally paid by check. I think it was always paid by check, if I remember correctly.

Q. You have said that you have no recollection of this transaction?

A. No particular recollection.

Q. Does this memorandum indicate to you the time when it was paid or the time for which it was paid?

A. You will notice there it is a tax for 1887. I was receiving other taxes right along, and if it was a back tax I would specify it.

Q. I asked whether this shows the date of payment or the date for which it was paid?

A. No.

Q. And you can't state the date on which it was paid?

A. No; only from these figures here. In some cases I neglected to mark the date.

Q. And in this case you neglected to mark the date?

A. Yes, sir.

Q. You guess it was between the first and sixth, because it is an entry before the sixth and after the first.

A. Yes.

Q. Does it indicate it was by check?

A. Yes.

Q. And from that book did you mark the duplicate "paid?"

A. Yes, sir.

ROBERT C. BREWSTER—A witness produced in behalf of the proponents being duly sworn according to law on his oath saith:—

EXAMINED BY MR. COLLINS:

Q. Mr. Brewster, what is your age?

A. 56.

Q. Where were you born?

A. In Rahway; New Jersey.

Q. How long did you live there?

A. I have lived there the greater part of my life.

Q. Until when, about?

A. Until about 1880.

Q. And where did you then move to?

A. My family remained there and I went out in New York to practice.

Q. Where did you finally settle?

A. Philadelphia.

Q. Do you live in Philadelphia now?

A. Yes.

Q. And you are engaged in what business?

A. I am Treasurer of the 5th and 6th Street Passenger Railway Co.

Q. That is a horse railroad, I suppose?

A. Yes.

Q. And do you live in Philadelphia?

A. Yes, sir.

Q. Did you ever hold a position in the Union National Bank of Rahway?

A. Yes, sir.

Q. What was your position?

A. I was cashier of that bank.

Q. When did you go there?

A. In March 4, 1870.

Q. And how long did you continue there?

A. Until the bank was closed up, that was in 1878. It went into voluntary liquidation, I think, in the fall of 1878.

Q. And during that time you were cashier?

A. Yes.

Q. Who was president?

A. Jonathan Woodruff.

Q. It was a small bank, I take it?

A. Yes.

Q. And who had the general run of the business?

A. Mr. Woodruff and myself.

Q. Who chiefly, as between you and him?

A. Well, I had it mostly.

Q. Did you become acquainted with George P. Gordon, who carried on the manufacture of printing presses in Rahway?

A. Yes.

Q. When?

A. Soon after I entered the bank.
Q. Was he a depositor in the bank?
A. He was, when I went into the bank.
Q. And continued so how long?
A. Until the bank closed.
Q. How active an account did he have?
A. Well, it was not a very active account.
Q. Did you have occasion to pay his checks?
A. Yes, sir.
Q. While you were cashier?
A. Yes, sir.
Q. Did you become acquainted with his handwriting?
A. I did.
Q. How well?
A. Well, I became familiar with his handwriting as I did with all depositors in the bank.
Q. Did you ever see him write?
A. Yes.
Q. Frequently?
A. Not very often—no, sir.
Q. You say his account was not very active; give us some idea about it?
A. He always kept a good balance in the bank, but his factory account—that was not kept there. This was his own personal account.
Q. About how often did he draw checks on it, as near as you can remember?
A. I should think half a dozen a month; sometimes more and sometimes less.
Q. Have you before this day examined the artotype, Exhibit P 99, or a duplicate of it, and studied the signatures "Geo. P. Gordon" thereto.
A. Yes, sir.
Q. And have you to-day examined the original will, P 1?
A. Yes, sir.
Q. And studied the original signatures, "Geo. P. Gordon," thereto?
A. Yes, sir.

Q. In your opinion, in whose handwriting is the signatures "Geo. P. Gordon," on Exhibit P 1?

A. I believe that to be in the handwriting of Geo. P. Gordon.

Q. The gentleman to whom you refer, who kept the press works, and a depositor in your bank?

A. Yes, sir.

Q. Was Mr. Gordon in the bank frequently?

A. Yes, sir.

Q. Near where was it?

A. The bank was near the station, and when he would drive down in the morning or noon to go to New York he very frequently would stop in; and also in the evening, waiting for his carriage.

Q. What do you know, if anything, of the residence of George P. Gordon?

MR. MILLER: I object to that, as involving no issue here. The fact ought to be brought out in another way.

THE ORDINARY: I will allow you to ask it as an introductory question.

A. I know Mr. Gordon resided just beyond the Six Roads, near Rahway.

Q. Just outside Rahway?

A. Yes, sir.

Q. Was it the place they called "Neathoak"?

A. I never heard it called by that name.

Q. The place now occupied by Mr. Savage?

A. I didn't know it by that name.

Q. It was just outside of Rahway?

A. Yes; I know it as well as my own residence.

THE ORDINARY:

Q. You know it, and during what period?

A. I knew it during the time he was a depositor in the bank.

Q. What time was that?

A. From 1870 to 1876, included.

MR. COLLINS:

Q. How did you know it?

A. I know it; I had often been to his place there, and he used to come there every few days, in his carriage, and stop at the bank and said he was going home in his carriage.

THE ORDINARY:

Q. How did you know he came from that place?

A. I didn't see the carriage start from there, but I know his team.

Q. All you would see would be his stopping at the bank with his team?

A. Yes.

MR. COLLINS:

Q. What time of the day would that be?

A. Generally in the morning, between nine and ten o'clock; sometimes later.

Q. And he came from some place in the country to take a train?

A. To take a train to New York.

Q. Was there any change in his habit in that regard down to the time he went to Norfolk and died?

A. Not that I know of.

Q. Did you ever know of his giving up his residence in Rahway?

A. I never heard of it—no, sir.

Q. Have you been out to his place?

A. Yes.

Q. How recently, before the bank closed?

A. I couldn't say, it is so long ago; but it might have been six months or it might have been a year; I couldn't tell about that.

Q. And did you find him there?

A. No, sir; I don't think I did. I didn't go out there to see him; I often used to drive round there myself.

Q. You didn't stop in the house?

A. No, sir.

Q. Do you know whether his wife was out there up to the time that Mr. Gordon went to Norfolk, on the journey from which he never returned?

A. I only know that I have seen Mrs. Gordon in the carriage with Mr. Gordon when he came into town.

Q. And was it so in the winter as well as in the summer?

A. Yes, sir.

CROSS-EXAMINED BY MR. MILLER:

Q. You say you saw him drive in some mornings and sometimes at noon; is that so?

A. Yes.

Q. And there were some mornings, sometimes about noon, you did not see him drive in?

A. A Great many times.

Q. A great many days you did not see him drive in?

A. Yes.

Q. You were not noticing how many times he came and went, were you?

A. No, sir.

Q. When did you first see the signature to the will—the original will?

A. To-day.

Q. When did you first see the artotype copies—Exhibit P 99?

A. I think it was in June. I am not quite sure about that.

Q. When, prior to that time, had you seen a signature of George P. Gordon's?

A. I think probably not since 1878.

Q. You hadn't seen it for about 13 years?

A. No.

Q. And you say Mr. Gordon didn't keep a very active account with your bank?

A. Not what you would call an active account.

Q. Can you describe George P. Gordon's signa-

ture, as it appeared in the bank book; the signature book?

A. It was very similar to this—P 99?

And to the signature in Exhibit P 1?

A. Yes.

Q. Can you describe it no better than that?

A. No.

Q. Didn't he write a flowing, easy hand?

A. I don't remember about that. I remember the general character of his signature.

Q. And that comports with the general character of the signature that he used on checks drawn on your bank?

A. Yes.

Q. That is your best recollection?

A. Yes.

Q. Is this signature I now show you—Exhibit D 95—George P. Gordon's signature?

A. Yes, sir; I should say it was.

Q. And did the checks that he drew upon the bank correspond in character and style with the one I show you now—Exhibit D 95?

A. Yes, sir.

Q. And you say this signature and the checks are similar to the will?

A. I think so; yes, sir.

Q. Who requested you to come here?

A. Messrs. Booraem, Hamilton & Beckett.

Q. And you will be compensated for your trouble in time?

A. I hope so; yes, sir.

RE-DIRECT BY MR. COLLINS:

Q. Did you, on the occasion you examined this artotype, P 99, also examine the various letters and checks?

MR. MILLER—I object to that question, so far, as leading and indefinite.

Question not answered.

Q. Did you also examine the artotypes which are marked P 101 to P 113 inclusive?

A. Yes, sir.

Q. And these show checks, do they not?

A. Yes, sir.

Q. Some of them are checks, as apparent by the picture?

A. Yes, sir.

Q. You have spoken of Mr. Gordon driving down to the station and stopping in the bank in the morning. How was it in the afternoon?

A. Frequently he would come out from New York and his carriage would not be there at the depot, and he would drop in and take a seat for half an hour or an hour, waiting for his carriage, making a friendly call.

Q. And then what would happen. After he had been waiting for awhile, what came.

A. His carriage came for him.

Q. And would he go in it?

A. Yes, sir.

Q. In which direction would he drive off?

A. Sometimes Cherry street, and sometimes down Main street.

THE ORDINARY:

Q. Is this recollection, or simply guessing?

A. I have often seen him go both ways.

MR. COLLINS:

Q. Was it the way—either one of them—that he would naturally go to this residence you speak of?

A. Not necessarily.

Q. What hour in the day would this be?

A. In the afternoon—afternoon, do you mean?

Q. Yes.

A. About three o'clock, or half-past three.

Q. How near was his factory to the bank?

A. His factory was I suppose, half a mile from the bank, perhaps a little more; perhaps three quarters.

Q. And in which direction?

A. You might say North.

Q. The same direction as his house, or the other?

A. No, sir; the other direction.

Q. Mr. Brewster, he would come in on the train, his carriage would meet him and he would drive by, and would that be the last you would see of him till the next morning?

A. Yes.

Q. Down to what time did that continue—to his going to Norfolk and his never coming back?

A. He was in the habit of doing that as long as I was acquainted with him.

Q. Daily?

A. No, sir; not daily, but perhaps once or twice a week when he was at home.

Q. Stepping into the bank?

A. Yes.

Q. I mean, the coming in on the train.

A. I don't remember; his carriage might pass perhaps twenty times a day.

Q. You would not observe unless he stepped in the bank?

A. Yes.

RE-CROSS BY MR. MILLER:

Q. The fact is, you have not any recollection from which you can testify how often per week that was?

A. No, sir.

Q. You say when you were shown the artotype P 99, you were shown also the Exhibits P 101 to 113 inclusive; were you shown any other signatures at that time?

A. Yes.

Q. What?

A. A quantity of letters.

Q. Can you tell us what letters they were?

A. I knew nothing about the letters; I only saw the signatures.

Q. A bunch of letters were handed to you and there were signatures to them?

A. Yes, sir.

Q. And do you remember whether the signatures of any of the letters you saw are reproduced in these Exhibits P 1 to 113?

A. I don't remember.

Q. What else was shown you?

A. Some Photographs.

Q. Of what?

A. Of signatures.

Q. What signatures?

A. Mr. Gordon's signatures.

Q. I know; but, to what—can you identify the papers?

A. No; I don't know as I can.

Q. And when you saw them, you had no question that the artotype P 99 was the signature of Gordon?

A. No, sir.

MR. COLLINS:

Q. Do you recollect that these letters were to the firm of Nicholas & Langworthy?

A. No, sir.

Q. Whose signatures were there to the letters you saw?

A. George P. Gordon.

ALEXANDER VANDERBURGH — A witness produced on behalf of the proponents, being duly sworn according to law on his oath saith:—

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. Dobbs Ferry, New York.

Q. And what is your occupation?

A. I'm at the present time a bank teller.

Q. In the Dobbs Ferry bank?

A. In the Dobbs Ferry bank.

Q. Before you went there you were in business where?

A. New York.

Q. Have you given your age?

A. No, sir.

Q. What is it?

A. 62.

Q. Were you acquainted with the late George P. Gordon, in his life time?

A. Yes.

Q. From what time did you know him?

A. From May, 1860, to the time of his death, more or less.

Q. What was your business in those years?

A. Printers' materials.

Q. Did he trade with you?

A. Yes; we traded with him, rather.

Q. Where was your place of business?

A. Corner of Fulton and Dutch, for a good many years.

Q. And who was your partner?

A. Eber Wells.

Q. And you would buy goods from George P. Gordon?

A. Yes, sir.

Q. Have you seen him write frequently?

A. Yes, sir.

Q. Was there any fact about his handwriting that caused you to observe it particularly?

A. A good, free, liberal hand; probably a dashing style, that would attract my attention.

Q. With regard to similarity of any person, was there any?

A. Yes.

Q. Whose?

A. My employer and predecessor, E. R. Webb.

Q. Have you examined this will, P 1.

A. I saw it this morning.

Q. Had you seen the artotypes?

A. Yes.

Q. You had previously seen the artotype P 99 and the artotypes 101 to 113 inclusive?

A. I have seen some artotypes; I think so. (Looking at exhibit) yes, similar to these.

Q. In your opinion, in whose handwriting is the signature exhibit P 1.

A. It is his own, without doubt, in my opinion.

Q. His own; you mean George P. Gordon's?

A. That is it.

Q. And without doubt?

A. And without doubt in my mind.

CROSS-EXAMINED BY MR. MILLDR:

Q. When was P 99 first shown you?

A. I wouldn't pretend to say as regards that.

Q. This year, within a month or two?

A. Within a month or so, or a few weeks; I couldn't tell you exactly.

Q. But it was within a few months?

A. Yes.

Q. And prior to that time when had you seen George P. Gordon's handwriting?

A. Several times previous to his death.

Q. You hadn't seen it prior to that time, a month ago, and after his death in 1878?

A. No, sir.

Q. And when you saw it you at once recognized the style of exhibit P 1 as George P. Gordon's handwriting?

A. Yes.

Q. You made no question about it.

A. No, sir.

JOHN DAY, a witness produced in behalf of the proponents being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. 19 Henry Street, Brooklyn.

Q. New York?

A. New York.

Q. You have lived there how long?
A. 30 years.
Q. What is your age?
A. 53.
Q. Your business is what?
A. I am a plumber.
Q. Do you know the house 105 Columbia Heights?
A. I do.
Q. Who lived there between 1874 and 1878? 10

MR. MILLER—I object to the question. The witness ought to state what he observed.

A. My connection with that house commences I believe in 1876.
Q. What was the nature of that connection?
A. It was doing work there in my trade as a plumber.
Q. On whose employment?
A. My dealings in my connection with the house 20 were always with Miss Gordon.
Q. Mary Agnes Gordon?
A. Miss Mary A. Gordon.
Q. To whom were your bills made out?

MR. MILLER—That is objected to as immaterial.

THE ORDINARY—I will allow that as an introductory question, to be followed up by proving the authority. 30

A. I think to Mr. Gordon.
Q. Who employed you?
A. The order was sent down to the house, usually by a girl; I have had Miss Gordon call herself and leave the order.
Q. Who paid you?
A. I think as a rule Mr. Doane.
Q. When you went there whom did you find?
A. With the exception of one occasion I never found anybody but Miss Gordon, who gave me any 40 orders. I saw Mr. Gordon there once.

Q. How long did you work there from 1876?

A. I worked up to the time they left the house, and after I done some work.

Q. How much work did you do there?

A. Altogether I suppose I had been there fifteen or twenty times, sometimes—I think the longest job I had there was about two days; at least I think so.

Q. And during that time you only saw George P. Gordon there once?

A. Yes, sir.

Q. Did you ever see Mrs. Gordon there?

A. No, sir.

Q. You did Miss Agnes?

A. I always saw her.

Q. Who told you how to make out your bills?

A. Well, the way I got that way of making out the bills was that I worked at the office in New York.

THE ORDINARY:

Q. What office—at Mr. George P. Gordon's?

A. In 17 Beekman street. That was in 1874; and I done work in his office in Beekman street and also in Nassau street; and through making out bills to Mr. Gordon, I used to send my bills there; I don't recollect anybody paying—Miss Gordon paid one bill, I know, herself, but prior to that, I believe, Mr. Doane always stopped and paid the bills.

Q. In cash?

A. Sometimes cash and sometimes checks. He stopped at my store.

MR. COLLINS:

Q. Did Doane live in Brooklyn?

A. Doane lived iu Brooklyn.

Q. And he stopped and paid the bill?

A. Yes.

Q. Do you know who was the grocery man who served the house with groceries during the same period?

A. I do not. I know he was reputed to be Mr. Creger, and he is dead.

CROSS-EXAMINATION BY MR. MILLER:

Q. During how many years do you say this plumbing proceeded in the house?

A. I have dates from 1876 to 1878; about two years.

Q. Do you remember what work you did in the house—you had a two-days' job. What else did you do?

A. I have done frequent jobs. I have repaired gas fixtures and put on brackets and had them replated. I put a new sink in the kitchen. 1C

Q. What else?

A. In the usual line of jobbing.

Q. What else did you do besides what you have told us?

A. I know I had one job in Miss Gordon's own room. I think I retrapped there; put a safe on the floor, reset the basin and put on two faucets; that was the largest job. 2C

Q. That was the two-days' job?

A. Yes, sir.

Q. Outside of that it was petty plumbing?

A. Yes; putting on a faucet, etc.

Q. Will you swear that you were there ten times during that period?

A. I will swear I was there twelve times.

Q. Twelve times?

A. Yes, sir.

Q. Can you give us the dates? 3C

A. I can, by my books.

Q. Do you know them now? You have refreshed your recollection about these facts, haven't you?.

A. Yes; I am going by the records now; that is the only thing I will trust. [Witness refers to memorandum book.]

There was Nov. 10, 7 days. Nov. 10, as far as I can recollect, was the first. Feb. 1, 1877; May 22, 1877; May 24, 1877; Oct. 2, 1877; these are all in 1877. Oct. 30, Nov. 2, Nov. 8; that is 1877. Those years were 1878. May 4C

17, May 28, July 27. I have no more records after that.

Q. And you were not present on all these times; you sent your men?

A. I think I was in—present.

Q. Always?

A. Yes; because Miss Gordon was very particular.

Q. What time did you go there—morning or afternoon?

A. All times.

Q. Well, generally?

A. I think, as a rule, it would be mornings.

Q. What time in the morning?

A. Perhaps I would have to wait and go away; couldn't get into the room, or something of that sort, which we often do in our line of business.

Q. What time did you go when you went in the morning?

A. Seven or eight o'clock.

Q. Sometimes later than that?

A. Yes.

Q. Sometimes in the afternoon?

A. Yes; I wouldn't attempt to place the time.

Q. You know Mr. A. Sidney Doane was Mr. Gordon's confidential man?

A. Yes?

Q. And the checks you got were signed "George P. Gordon, by A. Sidney Doane; Attorney," were they not?

A. The only recollection I have of the checks is in connection with the office, and I believe Mr. Doane's name was on those checks.

Q. And you can't tell now as to work done in the house, whether the money was paid in bills or cash, or whether checks were given, signed by Doane as attorney?

A. I will testify as to having received them both ways.

Q. For the work in the house, I mean?

A. Work in the house.

Q. And those checks signed in Doane's name were signed in Doane's name by him, as attorney for George P. Gordon?

A. I don't recollect the signature at all.

Q. You have no recollection on that point?

A. No, sir; I only recollect the amounts.

Q. You can't recollect whether they were or not?

A. No, sir.

JOHN CHITTY—A witness produced in behalf of the proponents, being duly sworn according to law on his oath saith:—

EXAMINED BY MR. COLLINS:

Q. You live in Brooklyn, Mr. Chitty?

A. Yes, sir.

Q. Where?

A. 89 High street.

Q. How old a man are you?

A. 43.

Q. What do you do?

A. Deliver newspapers.

Q. Did you serve newspapers from 1874 to 1879 at the house No. 155 Columbia Heights?

A. I can't tell whether I served all that time, but I presume I did. I commenced business 20 years ago, and I think they were on the books then.

Q. That is, that house was on the book then?

A. Yes.

Q. And you kept on serving irrespective of who moved into it?

A. Yes.

THE ORDINARY:

Q. What book do you mean?

A. The route I bought.

Q. You bought a route at that time, and found on your book what?

A. Mr. Gordon, I believe.

MR. COLLINS:

Q. You found that house on your books?
A. Yes.
Q. Can you remember what name then lived in it?
A. I could not, sir, when I commenced.
Q. Do you remember that at some time during your service the name was Gordon?
A. Gordon; yes, sir.
Q. That you do remember?
A. Yes, sir.
Q. What Gordon did you know there?
A. Mary Agnes.
Q. And a young woman, I take it?
A. Yes, sir.
Q. Did you ever see an old man there?
A. No, sir.
Q. What time did you serve your papers?
A. From six to half six, and then in the evening.
Q. Both morning and evening papers?
A. Yes.
Q. Did you serve up to the time that Mary Agnes left the house?
A. Yes, sir.
Q. Who paid you?
A. Mary Agnes, or the money was left with the girl.
Q. Paid in cash?
A. Yes.
Q. Once a month or so?
A. Yes.

THE ORDINARY:

Q. Did you know Mary Agnes personally?
A. Yes, sir.
Q. Did you ever see her, personally?
A. Yes, sir; several times.

MR. COLLINS:

Q. Who generally paid the bill?
A. Mary Agnes.

Q. Did you ever see George P. Gordon?
A. No, sir.
Q. Did you know him at all?
A. No, sir.
Q. You didn't know any such man?
A. No, sir.
Q. Did you ever see a middle aged man, tall and spare, with grey hair and beard there, at all?
A. No, sir.
Q. Did some one from the other side of this case seek you to know what you know?
A. There was a young man called one evening.
Q. And you couldn't help him any?
A. No, sir.

CROSS-EXAMINED BY MR. MILLER:

Q. That is a very long block, isn't it?
A. Yes; it is quite a block.
Q. One side of it is four blocks long?
A. No.
Q. Is there a street crossing Columbia Heights from Pierrepont street to Middagh?
A. Yes.
Q. Crossing there and running down into the river?
A. There is a valley there.
Q. Do you mean to say that the whole of Columbia Heights from Pierrepont to Middagh is not a continuous block?
A. Yes, sir.
Q. You served a great many houses on that street didn't you?
A. Yes, sir.
Q. And did you personally deliver the papers?
A. Yes.
Q. Did you throw them in the basement or front door?
A. Generally on the stoop. I served in the morning and my man in the afternoon.
Q. And this was done by throwing the papers in?
A. Yes.

Q. What did Mary Agnes Gordon look like?

A. I couldn't tell that.

Q. You couldn't describe her at all?

A. No, sir.

Q. Where did you get her name?

A. I heard her name for a long time; ever since I served them.

Q. Are you sure you got that name; or, was it Miss Gordon?

A. We call her Miss Gordon.

Q. Where did you get the name Mary Agnes from—the counsel told you that?

A. I heard that here.

Q. And all you remember before you came here was the house where Miss Gordon was, where you served the papers?

A. I knew somebody lived there, and also Miss Gordon. I knew the Gordons lived there.

Q. How did you know the Gordons lived there?

A. Taking the bill to get the money.

Q. How did you know they lived there?

A. Because they were paid.

Q. Those bills don't amount to more than a dollar or two a month?

A. About two dollars.

Q. And the servant gave the money to you?

A. No; Miss Gordon used to generally give me the money.

Q. You used to go there how?

A. Up to the front door.

Q. You went when to collect your bills?

A. About seven o'clock to night.

RE-DIRECT EXAMINATION BY MR. COLLINS.

Q. You say you knew the Gordons lived there—whom did you understand lived there, what Gordons?

A. Well, I know when there was any extra papers ordered, Miss Gordon used to order it.

Q. Did you ever know of any other Gordon who lived there except Miss Mary?

A. No, sir.

Q. No body else?

A. I can't remember now about the servants, whether there was one or more; but Miss Gordon used to give me orders for different papers.

Q. Did you ever know of any one living there named Gordon, except Miss Mary?

A. No, sir.

Q. What did you mean when you said the Gordons lived there, as if there was more than one?

A. That is the name we generally called them by.

RE-CROSS EXAMINATION BY MR. MILLER:

Q. You delivered the New York papers there in the morning?

A. Yes; and the Evening Post in the afternoon.

Q. And you never went there in the house except to get your money?

A. That is all.

JULIA D. MOORE, a witness produced on behalf of the proponents being duly sworn according to law on her oath, saith:

EXAMINED BY MR. BECKETT:

Q. You are a married woman, Mrs. Moore?

A. I am.

Q. What is your husband's name?

A. Cornelius L. Moore.

Q. And where does he live?

A. 508 East 176 Street.

Q. New York City?

A. Yes.

Q. When were you married?

A. October 24, 1867.

Q. Did you know the Gordon family?

A. Very well indeed.

Q. George P. Gordon, Mrs. Gordon and Mary Agnes Gordon?

A. I knew them all.

Q. When did you first become acquainted with them?

A. I became acquainted with Miss Gordon in the latter part of the year 1860?

Q. Where?

A. In my family.

Q. And where was that?

A. I think it was 44 East 5th Street. The numbers where changed afterwards.

Q. That was previous to your marriage?

A. That was previous to my marriage.

Q. What was your maiden name?

A. Julia B. Case.

Q. Did you go to school with Mary Agnes Gordon?

A. No, sir.

Q. Go on and state generally about the intimacy and acquaintance which you had with Mary Agnes Gordon.

A. It was a rather gradual thing. I think that two months after meeting her I went to her house in Brooklyn; afterwards I saw her mother and father, in the spring of 1875.

Q. Where?

A. At their house in Adams street; after which the acquaintance was one of great intimacy up to 1876, and then it ceased.

Q. Did it terminate by your action?

A. Yes.

Q. After visiting the Gordon house in Brooklyn where did you visit the Gordons?

A. At Rahway.

Q. Do you recollect when that was?

A. As near as I can recollect, I think it was in the year 1865 or 1866; I can't quite remember that.

Q. What part of the year?

A. In the spring.

Q. Who was there with you at that time?

A, You mean who went with me?

Q. Yes; or whom did you find in the house?

A. The family, simply, were there; the gentleman

now my husband went with me, and a gentleman friend of the Gordons.

Q. Andhisname was what?

A. Charles P. Beebe.

Q. Who is now dead?

A. Who is now dead.

Q. Was he at one time engaged to Miss Agnes Gordon?

MR. MILLER—Objected to. 1C

Q. (Unanswered.)

Q, Tell us all you know about the engagement.

MR. MILLER—I object to that question.

THE ORDINARY:

Q. You say an engagement; how do you know there was an engagement?

A. Mr. Beebe was my husband's most intimate friend, and the most of the love mak,ng was done in my father's house. At the time of my marriage they were engaged to be married; she was my bridesmaid and he was the groomsman. 2C

Q. How do you know they were engaged?

A. How does any one know that?

MR. BECKETT:

Q. Was the engagement announced in any way?

A. Not publicly. 3C

THE ORDINARY:

Q. Was it privately?

A. Yes.

MR. BECKETT:

Q. You have stated about your first visit, that you went there in company with your husband now, and with Mr. Beebe; that was in the summer of 1865 or 1866. Did you, on any other occasion after this first visit, visit the Gordons at Rahway when Mr. Beebe was there? 4C

A. Numbers of times.

Q. So that you saw him constantly in attendance upon Agnes Gordon during that period, did you?

A. I did.

Q. And always apparently in this relation of a man engaged to Mary Agnes Gordon?

A. Always.

Q. That lasted till when?

A. The engagement was broken, or the practical engagement was broken in 1870.

Q. How do you know?

A. From his lips and hers.

Q. Who else did you see or did you find in the Gordon household upon this first visit besides Mr. Moore, your husband, and Mr. Charles E. Beebe?

A. I have not the slightest recollection.

Q. You saw Mr. Gordon?

A. Mr. Gordon and the family.

Q. How long did you stay?

A. I think we stayed simply over night.

Q. When did you stay next after that visit?

A. Christmas of the same year.

Q, That would be Christmas of 1866. Who went with you, if any one?

A. The same parties who went before; Mr. Moore and Mr. Beebe.

Q. Whom did you find in the Rahway house?

A. Mr. and Mrs. Gordon.

Q. And Mary Agnes?

A. And Mary Agnes.

Q. And how long did you stay on that occasion?

A. I stayed several days, perhaps a week.

Q. And have you stated all the people you saw there of the family or as guests?

A. I visited there many times during our acquaintance, while it lasted, and during the time Miss Gordon lived at Rahway, and there were numbers of people visited there; I remember seeing her uncle, Mr. Collingwood Gordon.

Q. Did you see Mr. Henry DuBois Van Wyck there?

A. I have a recollection of seeing him once; I don't remember of any other time?

Q. Do you remember which visit it was you saw him?

A. No.

Q. Was there a room in the house called Mr. Van Wyck's room?

A. I don't know that personally; I was told that there was. I don't know it personally.

THE ORDINARY:

Q. Who told you?

A. Miss Gordon.

Q. When?

A. It was so many years ago that I can't remember.

MR. BECKETT:

Q. What was the situation of Mrs. George P. Gordon's room in that house?

MR. MILLER: I object to this line of examination; it does not bear on residence or domicile.

MR. BECKETT: I am going to show, if your Honor please, that there was a room on the second floor of that house called the "tower room;" that the only entrance in that tower room was from a closet. That in front of that closet there was a room called Mrs. George P. Gordon's room, with a door leading from Mrs. George P. Gordon's room into that closet. That behind that closet there was a room called Mr. Van Wyck's room, with a door leading from Van Wyck's room into that closet, and that the tower room, so called, which could be entered from either or both the other rooms, was kept locked, and Mary Agnes Gordon was never allowed to go

into it. That Mary Gordon and this witness, when there on a visit, went and looked into the tower room, and her mother said she should not allow her to go into that part of the house. In view of the testimony given on the other side that Mary Agnes and her mother were intimate, it seems to me, that this testimony is proper and material.

THE ORDINARY—I will regulate the proofs by requiring that Mr. Gordon's knowledge of the relations between Van Wyck and his wife shall be first shown.

MR. BECKETT—We shall then ask to withdraw this witness at this time.

MR. COLLINS—Your Honor then excludes this offer at this time.

THE ORDINARY—At this time. But, in accordance with my power of regulating the order of proof I shall require you first to show Mr. Gordon's knowledge of the relations between his wife and Mr. Van Wyck. I adopt this course to prevent the introduction of impertinent scandal into the case.

THOMAS MULVANEY—A witness on behalf of the proponents being duly sworn according to law on his oath saith:—

(EXAMINED BY MR. BECKETT):

Q. Where do you live?
A. 165 East 88th street.
Q. In New York City?
A. New York City.
Q. What is your business?
A. Hay, grain and feed.
Q. Did you know George P. Gordon in his lifetime?

A. I knew him for a year or a little over.

Q. What were you?

A. Coachman.

Q. What year?

A. 1866; the first year Mr. Gordon went to live at Rahway. He went to live a mile and a quarter out at a place called Houghtenville, but the name is changed.

Q. Whom do you recollect as living at the house as part of the family?

A. I see Mr. George P. Gordon's brother and his wife?

Q. That was Cuthbert C. Gordon?

A. I don't remember his name.

Q. He is a minister?

A. Yes, sir.

Q. Anybody else?

A. And his wife, and his little boy then about 12 years old.

Q. Did you see Henry du Bois Van Wyck there?

A. Yes, sir.

Q. Do you recollect an occasion when you went down to the train and a letter was received from Mr. Van Wyck?

A. Yes.

Q. Mr. George P. Gordon was present at the carriage or in the carriage when the letter was received?

A. In the carriage. I don't remember whether I delivered the letter or whether George P. Gordon delivered it.

Q. Delivered to whom?

A. Delivered to Mrs. Gordon.

Q. Now go on and tell the whole story, if you please.

MR. MILLER—Tell what story?

MR. BECKETT—The facts.

MR. MILLER—In respect to what?

MR. BECKETT—In respect to the letter coming to Mr. George P. Gordon's knowledge.

Q. (Continued.) State all that took place, and what was said and done in regard to that letter when Mr. George P. Gordon was present?

A. We were on the way home down by the Brick Church, as we call it, a little outside of the village she opened the letter ——

Q. (Interrupting.) Who did?

A. Mrs. Gordon did. My back was turned so that I couldn't see who opened the letter, but as she spoke she must have had the letter. She said it is from Mr. Van Wyck.

MR. MILLER:

Q. Was Mrs. Gordon there in the carriage?

A. Yes; she was talking to Mr. Gordon. And she said, "He is coming to see us; won't that be nice"?

MR. BECKETT:

Q. She said that?

A. Mrs. Gordon said that to George P. Gordon, and she said, "He is going to give you a drive or a ride;" "Well," he says——

MR. MILLER:

Q. Who is "he says"?

A. George P. Gordon. He says, "He can't give me a ride." She says, "Why?" "He will never have the privilege of dumping me out." And then she says to him, "You are awfully funny or timid," or something like that; I don't recollect the exact words, but she went on explaining about the letter ——

MR. MILLER: I move that that be stricken out.

No ruling.

MR. BEBKETT:

Q. Go on and tell exactly what was said?
A. She went on speaking about the letter.

THE ORDINARY:

Q. What did she say?
A. She said he was coming to see them, and he says——

MR. BECKETT:

Q. Who is "she"?
A. She said that "he was coming to see them," and George P. Gordon says: "He is not coming to see me." She says, "He is coming to see you as much as he is me." "Well, he is not," and then——
Q. (interrupted). Go on and state all that Mr. Gordon said about it, if you can?
A. Gorge P. Gordon said: "We came out here to live alone," and he says: "I am going to live alone; and if you don't put him off"—I forget the words.
Q. That was the idea, was it?
A. Yes, sir; he says, "I will." Then she says: "You wouldn't do nothing of that kind;" she says: "I would be horrified."
Q. Is that all that you can recollect about that particular interview?
A. Well, there's more about the letter, but I can't bring it to my mind.
Q. Well, tell us all that you can recollect about that interview, and then we will pass on to another. I want to get out all you can recollect about it; how did Mr. Gordon act when he talked this way about Mr. Van Wyck?
A. Mr. Gordon was cross and angry.

MR. MILLER: I object to that, if the Court please.

THE ORDINARY:

Q. How did you judge of that?

A. By his voice and his action.

Q. Did you see his action?

A. Well, no, sir; but I knew the man very well. I knew generally when he spoke whether he was angry or in good humor.

MR. BECKETT:

Q. How long did they talk about Mr. Van Wyck's coming there on this occasion in the carriage?

A. Well, I guess it was about ten minutes, until we got down near the Six Roads, and then she petted him up a bit and fixed the thing up.

Q. What was her process of fixing the thing up?

A. "Dear George." She said "Dear George" to him.

Q. She said "Dear George" to him?

A. She said "Dear George."

Q. Mr. Mulvaney, you also recollect, do you not. Mr. Gordon in the carriage when you heard some statement about Mr. Van Wyck coming there?

A. Yes.

THE ORDINARY:

Q. When was it?

A. 1866, to the best of my opinion.

MR. BECKETT:

Q. Tell the story in your own way?

MR. MILLER:

Q. What story? To "tell the story" is not a proper question.

THE ORDINARY:

Q. What transpired?

A. I went to the train after Mr. Gordon, and on the way home he asked me if any one was in the house, and I told him "No," I believe. I told him I met Mrs. Gordon and Mr. Van Wyck driving a tandem team; he asked me where I met them; I told

him. He asked me which way they were going and I told him, and he got very angry; and he always carried a big heavy cane, and he commenced to rap the bottom of the carriage and says: "Damn the man what does he mean, anyhow?"

Q. Do you recollect any more about what he said?

A. There was more personal in it.

MR. BECKETT:

Q. Do you remember what it was?

A. "What does the damned man mean? What does he mean? What does the damned man mean?" And I told him to look out or he would knock the bottom out of the carriage, and he says: "Damn the carriage."

Q You mean that George P. Gordon would knock the bottom out of the carriage?

A. Yes. "Damn the carriage," he said.

Q. Is that all that you can recollect about that interview?

A. That is all.

Q. Did you ever hear Mr. and Mrs. Gordon talking about which one of the two Mr. Van Wyck came there to see?

A. He said he came there to see Mrs. Gordon.

Q. What did Mr. Gordon say about that?

A. Well, Mr. Gordon never said much to me about it.

Q. I mean, did you ever hear them talking together about it?

A. Only the time about the letter; and on another occasion, the time that he brought a brass band there once, not night.

THE ORDINARY.

Q. Who brought a brass band?

A. Mr. Van Wyck, and serenaded him.

MR. BECKETT.

Q. What did Mr. Gordon say about that?

A. The next day, riding in the carriage or coach with him I says to Mr. Gordon, "Who seranaded you last night?" He said "I don't know." I said "It was Mr. Van Wyck." He says "How do you know that?" I says "Mrs. Gordon told me so."

Q. Then what did Mr. Gordon say?

A. He says "Damn him! I don't want him or his music," or something to that effect.

Q. Was he angry apparently?

A. Yes.

Q. Mr. Van Wyck was there at times during a part of the time you were there in 1866, I suppose?

A. Yes.

Q. Do you recollect how much?

A. I couldn't tell the number of times; at least five or six times, anyhow.

Q. And how long would he stay when he was there?

A. He generally used to come when Mr. Gordon wasn't there. He would hire a horse and wagon in Rahway.

Q. In the day time?

A. In the day, when Mr. Gordon wouldn't be there.

MR. MILLER—I move that that be stricken out.

THE ORDINARY—It may stand.

Q. Would Mr. Gordon ask when he came home who had been there?

A. Mr. Gordon had a habit of asking who had been there.

Q. Did he ask you that down at the station?

A. He asked me that down at the station.

Q. Explain that more clearly—just what he would say?

A. He done no more but asked me that question, and I would say "no."

Q. What would he say?

A. "Has anybody been at the house to-day?"

Q. Do you recollect his asking if Mr. Van Wyck had been there?

A. Yes.

Q. What did he say then?

A. He never said anything to me, but he used to get angry when he heard Van Wyck's name.

THE ORDINARY:

Q. Give us an instance, if you can, any more than you have given?

A. Well, there was another occasion.

MR. BECKETT:

Q. Tell us about it?

A. I drove Mr. Van Wyck to the train one day in the summer time, and it was raining on the way; a little shower come up. We met a young lady on the street, and in those days they wore hoop skirts, and Mr. Van Wyck made fun of the lady to me.

MR. MILLER:

Q. Was Mr. Gordon present?

A. Not then. Se he said "she ought to have hoop skirts on her head in place of on her lower limbs."

Q. Van Wyck said that?

A. Van Wyck said that to me. Mr. Gordon—in the evening I told him I had brought Mr. Van Wyck to the train, and he said "Yes, I seen him at the office. What train did you bring him to?" I disremember now what he said about that, but he said "What did he have to say to you?" "Nothing particular" I says.

Q. Didn't he say anything to you?"

A. "Yes." And I told him about this young lady; and he said "He's a damned loafer to talk like that to you."

Q. Were you not present on a certain occasion in the house when Mary Agnes and Mrs. George P. Gordon had trouble and Mr. George P. Gordon was present?

A. Yes. Mr. Gordon was present.

Q. It was in the year you were working there in 1866.

A. Yes.

Q. Tell us about it, from beginning to end?

A. The beginning of the quarrel I didn't hear. I was in bed and I heard Mr. Gordon's voice talking very loudly, and I got up. I went to the door that leads out in the hall on the second floor, and Mary Agnes Gordon was on one side of the hall and Mrs. Gordon on the other, and Mr. Gordon standing alongside of Mrs. Gordon; and the quarrel, I believe, was about the making of the beds; she didn't allow the servant to make her bed.

Q. Who didn't allow?

A. Mrs. Gordon.

Q. To make whose bed?

A. Mary Agnes Gordon's bed.

MR. MILLER:

Q. Did Mrs. Gordon say that?

A. Miss Mary Agnes told me that was what brought the quarrel on.

THE ORDINARY:

Q. State what was said?

A. Well, they were quarrelling, and Mrs. Gordon says: "You can't talk that way to me; I am a lady." She says, "I don't believe you ever were a lady; if you were a lady you wouldn't go out with Mr. Van Wyck as much as you do."

Q. Who said that?

A. Miss Gordon.

Q. And she said it to her mother?

A. Yes.

Q. And Mr. George P. Gordon was there?

A. Yes; they were firing out at one another, and he hollering out, "Stop it! stop it!"

Q. Do you recollect anything else while you were there in 1866 that you heard George P. Gordon say about Van Wyck?

A. I don't recollect it just now.

MR. BECKETT:

Q. Did Mrs. George P. Gordon ever say anything to you about Mr. Van Wyck?

MR. MILLER:

Q. In the presence of Mr. Gordon?
A. No, sir; not in the presence of Mr. Gordon.

MR. BECKETT

Q. What did Mrs. Gordon tell you about Mr. Van Wyck's coming there?

MR. MILLER—I object to that.

THE ORDINARY—How is that material?

MR. BECKETT—Mr. Van Wyck so testified on the stand as to lead the Court to believe that he was introduced to the family through George P. Gordon's agency, and I should think, perhaps, a declaration of Mrs. George P. Gordon's tending to show the contrary in any way would be admissible. We will offer testimony to show it was a matter entirely with Mrs. Gordon—Mr. Van Wyck's coming there.

Decision reserved.

RECESS.

THE ORDINARY—I will limit this examination to the proof of those circumstances of the intimacy between Mr. Van Wyck and Mrs. Gordon which may be shown to have been called to Mr. Gordon's attention or to have been known by him, or to proof of the circumstances of which he must have been aware as a man of ordinary intelligence and exercising ordinary observation. But testi-

mony as to those circumstances which he is not shown in either of those ways to have known, I will exclude.

Q. Mr. Milvaney, do you remember while you were working for Mr. Gordon in the year 1886 of his having brought a man to Rahway who once worked for him, who was ill?

A. He brought a young man from New York; he brought him up to his place and kept him there till he died and was buried.

Q. Did you ever have any conversation with Mr. Gordon as to this man's property, or what was to be done with the property?

A. Yes, sir.

Q. State what Mr. Gordon said to you in that respect?

MR. MILLER—What is the materiality of that?

MR. BECKETT—Simply in regard to the making of the will.

Q. (Continued.) Did you have any conversation with Mr. Gordon, or did he say anything to you about this man's making a will, and what did he say to you about it?

MR. MILLER—I object to what he said about another man's will.

MR. COLLINS—That is only the *raison d'etre* for the conversation.

THE ORDINARY—I will allow it.

Q. State what Mr. Gordon said about it?

A. Mr. Gordon told me that he had turned over his effects to his sisters and his sisters wasn't satisfied; they thought this young man ought to have more money, and I asked him if he had much, and he said, "No; he didn't have but very little. And he said, "I used to have a job printing business, and I didn't want that branch of the business anymore.

and I gave it to him. And I said to him, "Didn't he make a will?' and he says, "No; I wish he had. He says, "Any sensible man ought to make a will. If I knew any good, sensible fellow I would straighten up my affairs." And I said, "There's plenty of good men here. "Well," he says, "the Jerseymen he didn't like; they had nothing to talk about but Church. He had more invitations to church here than he had since he was born."

Q. Did you ever hear Mr. Gordon say anything during that year about giving Mrs. Gordon money?

A. Yes.

Q. State what that was?

MR. MILLER—What is the point of that?

MR. BECKETT—I want to show the relation existing between Mr. and Mrs. Gordon in relation to money matters during that time.

THE ORDINARY—What is the object of that?

MR COLLINS—If she was extravagant it will show why he tied her down.

MR. BECKETT—I want to show the amount Mr. Gordon gave to her, and what she had done with it.

THE ORDINARY—I will allow it.

A. She wanted to get $500 from George P. Gordon and he wouldn't give it to her. He wanted to know what she had done with the last $500 he had given her, and she said she had used it.

Q. Was he present?

A. Why, she was talking to Mr. Gordon at the time.

Q. You heard this conversation?

A. Yes, and she said she had used it. He said "what did you buy?" She said "many a little thing a lady wants to use money for." And he said "well

I have seen nothing that you have bought. All I have seen that you have bought with the last money that I gave you was a couple of old novels, and I wish you would turn your attention to something else and leave those old novels alone."

Q. Did Mr. Gordon ever have any conversation during that year about Henry Adams, senior?

A. The old gentleman?

Q. The old gentleman.

A. Yes.

Q. State what it was?

A. This Mr. Adams was going to build out there, and Mr. Adams used to call occassionally and visit Mr. Gordon.

Q. State what Mr. Gordon said in your presence about Mr. Adams?

A. Mr. Gordon told me that Mr. Adams was going to build a cottage and he had knocked that idea out of Mr. Adam's head: that he wanted him to build a good house that would be a credit to the place.

CROSS-EXAMINED BY MR. MILLER.

Q. Are you still a coachman?

A. No, sir.

Q. What is your business now?

A. Now?

Q. Yes.

A. Hay, grain and feed.

Q. How long have you been in that business?

A. I have been in it this last time about three years.

Q. Where?

A. 214 East 35th street, New York.

Q. What was your business before that?

A. I was superintendent of the Central Park carriages.

Q. Between what years?

A. I guess about 1888, 1889 and along there.

Q. I said between what years—Can't you remember?

A. 1886 or 1888.

Q. What were you doing before 1886?

A. I was conductor on a 6th Avenue horse car.

Q. How long?

A. About two years.

Q Where were you before you became a conductor—what were you doing before that?

A. In the flour and feed business.

Q. Where?

A. 84th street and Third Avenue.

Q. How long were you in that business and between what years?

A. Between 1879 to about 1882, I guess. Somewheres around there.

Q. Can't you remember exactly?

A. I can't remember the right date; no, sir.

Q. What were you doing before that, before you were in the feed business?

A. I drove a floor and feed truck.

Q. For whom?

A. George W. Eggers.

Q. How long were you driving a truck for him?

A. I guess for about fifteen years, off and on.

Q. What do you mean by "off and on"?

A. I didn't work steady; sometimes he sacked me and sometimes I left him.

Q. How many times did you cease to be in his employ during that time?

A. About a year altogether.

Q. "How many times" was the question I asked you?

A. I couldn't state the time; three or four.

Q. When did you commence to work for him?

A. Well, I guess it was about 1873—around there?

Q. You worked for him fifteen years?

A. On and off, about that time; yes, sir.

Q. You said you were in the feed business in 1879?

A. Yes, sir.

Q. Where were you the other of 15 years?

A. I worked with him after that. I worked with him in the Central Park carriage service?

Q. How long was that?

A. Well, I am in business about three years—about two years before that.

Q. Where were you working before 1873?

A. Seward & Bowden.

Q. In what business?

A. Flour and grain?

Q. Were you working for them?

A. Yes, sir.

Q. For how many years?

A. I guess about fifteen months or somewhere about there. It was the first place I went to work after leaving New Jersey.

Q. When did you leave New Jersey?

A. 1867.

Q. When did you go to work for Seward & Bowden?

A. About two years after I left Jersey; about that time.

Q. And what were you doing during those two years?

A. I done nothing.

Q. Were you a coachman before you went to Mr. Gordon?

A. Yes, sir.

Q. For whom?

A. For Mr. Bramhall.

Q. Where?

A. Close to Gordon's place; a place we called the Six Roads.

Q. How long were you coachman for him?

A. Only a short while; the coachman had left and they had got to reducing their way of living, and they had to come down.

Q. How old are you now?

A. I will be 43 years old next January.

Q. How old were you in 1866?

A. About 17 or around there. I didn't figure it out to see.

Q. About 19, weren't you at that time?

A. Well, I don't know; I was born in 1849.

Q. Who hired you?
A. Where?
Q. At Mr. Gordon's place?
A. George P. Gordon.
Q. How many horses did you keep?
A. Well, I had two first off, and they didn't suit and he returned them; and then he had one and got another after. When I left he had two horses.
Q. He was rather a timid man about horses, wasn't he?
A. Yes, sir.
Q. When did you first hear about this case?
A. I read it in the New York *Herald.*
Q. This year?
A. This year or last year; I don't remember which.
Q. Who found you as a witness?
A. I came here and made myself known myself. Nobody found me.
Q. When did you make yourself known?
A. Three or four or five months ago.
Q. You volunteered your services?
A. Yes, sir.
Q. Whom did you see first?
A. I saw Mr. King, I believe, is the gentleman's name.
Q. Why did you do that?
A. I knew of Gordon's affairs and I thought it was my place to come.
Q. And were you working at the time?
A. At my own business, yes.
Q. You left your business to come, did you?
A. Yes.
Q. Why did you do that?
A. Because I wanted to do the heirs a good turn if I thought I could do so.
Q. What was the object you had in mind in doing the heirs a good turn?
A. My object was I knew a great deal about the Gordon family.
Q. What was your object in doing a good turn to the heirs?

A. Well, I think they are the parties that are entitled to anything that is left.

Q. And you will be entitled to some of it for coming here?

A. No, sir.

Q. You don't expect any compensation for coming here?

A. No, sir.

Q. Are you of an inquisitive turn of mind?

A. Well, I don't know as I am; I can't say.

Q. You always keep your ears open?

A. Yes, sir.

Q. And you tried to do that in Mr. Gordon's time, did you not?

A. I did; I kept my ears open there, too.

Q. You couldn't see, though, what took place behind you on the box?

A. No. I couldn't see back of me.

Q. Have you a very good memory?

A. Pretty good—yes, sir.

Q. Tell me what you did in 1871?

A In 1871 I think I worked for Seward & Bowden.

Q. I don't want you to think. I want you to tell me what you did?

A, I think, as near as I recollect, I worked for Seward & Bowden in that year?

Q. Driving for them?

A. Yes, sir.

Q. You met them frequently?

A. I met them every day; I worked for them.

Q. Tell me something Mr. Bowden said to you in 1871?

A. I don't know as he ever said anything to me, any more than giving orders what to do.

Q. Give me one order he gave you in 1871.

A. I don't understand you; I don't understand. If I am working for a man in that line of business he tells me to take the orders out.

Q. Have you a recollection, while you are here on the stand, of anything that Mr. Bowden said to you in 1871?

A. I don't know about that year.

Q. What did he say to you in 1872—do you recollect that?

A. No. I remember one Fourth of July he gave me a couple of dollars and told me to go and enjoy myself.

Q. What year was that?

A. About 1872.

Q. Might it not be 1874?

A. No, sir.

Q. Why not?

A. Because I believe I was with George W. Eggers in 1874.

Q. And is that the only reason you say it was not in 1874?

A. That is, as near as my memory goes.

Q. Tell us something that Mr. Eggers said to you in 1874?

A. Mr. Eggers said a great deal to me.

Q. Well, tell me something he said?

A. Anything in the run of the business, the daily business.

Q. Tell me something he said? That is what I asked you.

A. Well, what he said was such as giving orders and telling me what to do.

Q. I want you to tell me one thing he said to you in 1874?

A. I don't remember. I don't understand you sir. I don't understand what you mean—whether it was about the business affairs?

Q. About anything?

A. Well, he told me to go down and get a load of hay.

Q. What date was that?

A. I couldn't tell you.

Q. Well, who told you to go- to what place, and get the load of hay?

A. Why, to Christopher street or wherever the market is.

Q. Is that all you recollect about the conversation?

A. It was my daily work.
Q. Where do you say you were in 1875?
A. Well, I guess I was with George W. Eggers.
Q. With Eggers—are you sure?
A. I am sure.
Q. Where were you in 1876?
A. With George W. Eggers.
Q. When did you leave him?
A. I left him about 1878, I guess.
Q. Are you sure?
A. I am pretty sure: yes sir:
Q. Why do you qualify your words about these things,—not being sure?
A. I know about things that occurred about that time.
Q. But, you don't speak with certainty. Why do you speak with some uncertainty about the date?
A. Well, I didn't make a catalogue about the date.
Q. What do you mean by that?
A. That I didn't date the year that I left there.
Q. You don't remember that?
A. I am almost sure I left them in 1878.
Q. But you don't remember, positively?
A. No, sir.
Q. You went then to the car line and became a conductor?
A. Yes.
Q. What car line did you to go to?
A. I went to the Third avenue R. R. Co.
Q. As a driver?
A. Yes, and as conductor both.
Q. And stayed there two years?
A. No, sir.
Q. How long?
A. About six months.
Q. Did you have any conversation during that time with the Superintendent?
A. Yes; I had conversations when I got appointed.
Q. Did you have any other conversation with him?

A. No, sir; that was the only conversation I had there with him at that time.

Q. Where were you born, Mr. Mulvaney?

A. In Ireland.

Q. When did you come to this country?

A. In 1851.

Q. When you were two years old?

A. Yes, sir.

Q. What did you do between 1851 and 1860? 1C

A. Between 1851 and 1860?

Q. Yes?

A. I don't know as I done anything except to run around.

Q. Did you go to school?

A. I went to school a short time.

Q. Tell us what you did during that time?

A. I didn't do anything between 1851 and 1860.

Q. Didn't you go to school?

A. Yes, I went to school, yes; I went to school 2C one winter in Jersey.

Q. And what did you do the rest of the time—sleep?

A. No, sir.

Q. Well. what did you do?

A. I suppose I played around with the boys the same as boys do.

Q. Don't you remember what you did?

A. No, sir.

Q. What did you do from 1860 to 1865?

A. Well, I will tell you. In 1862 I worked for a 3C man in Leetown by the name of Spier. In 1863 I went with a New York man by the name of Kidd; a gentleman's residence there.

Q. Doing what?

A. In 1863.

Q. Doing what?

A. I worked on the garden, pulling weeds, etc., and odd jobs.

Q. What else did you do during that period between 1860 and 1865? 4C

A. I guess I have got ahead of you; in 1863 I

worked for Jacob R. Shotwell; I remember that on account of the riot in New York.

Q. What did you do for him?

A. I was errand boy and worked round the garden.

Q. What else did you do during that time between 1860 and 1865?

A. In 1865 I worked for Kidd.

Q. Then you went to Bramhall?

A. Yes; and from Bramhall to Gordon.

Q. With whom were you coachman first?

A. With Bramhall for a short period.

Q. Can you give the date during which you were coachman for Bramhall?

A. I was coachman during the time Abraham Lincoln was shot. I was there that time, I remember, and he was raising a flag pole, and there was a man hurt, and a doctor came from New Brunswick to attend to him.

Q. Have you ever talked with anybody about this case except Mr. King?

A. Yes.

Q. Have you talked with some of the heirs in this case?

A. No, sir.

Q. With whom have you talked?

A. Mr. Beckett.

Q. How many times have you talked with Mr. Beckett about it?

A. Three times, I guess.

Q. At his office?

A. At his office.

Q. Did you go there voluntarily?

A. Voluntarily; sometimes.

Q. Every time?

A. No, sir; sometimes he sent me a notice.

Q. Well, you say you were there three times; how many times did he send you a notice?

A. Twice, I think, he sent me a notice.

Q. Did you rehearse the story you have given here to-day?

A. Not the story I am giving you.

Q. No? but what you told on your direct examination?

A. Yes; whatever I told him he copied it down.

Q. How many times did you go over that with him?

A. Never but once, I believe; just as I gave it he took it.

Q. What were you doing there on the other occasions, then?

A. I think that is about the time—three times.

Q. You say you went over your story only once; what were you doing on the other two occasions?

A. I had more to tell him on the other occasions.

Q. You couldn't tell it all on the other occasions?

A. Yes.

Q. Then why was it that it took three days to tell the story?

A. I think something slipped my mind and I gave it to him again.

Q. Then the third time you did go over it all with him?

A. No, sir.

Q. You went over it piece-meal, one part the first time, and one part the next; and the the third part the third time.

A. Yes; he has got it as I gave it to him.

Q. Why didn't you give it all to him the first day?

A. I hadn't got time.

Q. Well, why didn't you give it all to him the second day?

A. I didn't think of it all the second day.

Q. It is not such a long story, is it?

A. I think of things to-day I didn't think of then.

Q. Could you tell us more if you came here a week hence?

A. I think I could.

Q. Then, you have not told all the things that occurred when Mr. Gordon was present, have you?

A. No, sir; I don't think I have.

Q. You have not told them all?

A. No, sir.

Q. Will you please repeat to us now, exactly, as far as you can, what you said on your direct examination about the conversation, about what you heard of the conversation when you were listening, when you said a quarrel took place in the house? You understand me, don't you?

A. Yes, sir.

Q. Just go over what you said on you direct examination, as near as you can?

A. Mrs. Gordon said to Miss Mary that all ladies made their own beds, and she said they did not. "Well," she says, "I am a lady and I make my bed." And she says, "I don't think you ever were a lady; it you were you wouldn't go out as much as you do with Mr. Van Wyck."

Q. That was all of that conversation, was it?

A. No; the conversation was a great deal more.

Q. I want to hear all the conversation you overheard at that time, when Mr. Gordon was present?

A. Mr. Gordon was shouting " Stop it. Stop it."

Q. But, you said you hadn't given us all that conversation, when Mr. Gordon was present?

A. Well I don't remember all the conversation.

Q. You said a minute ago that you remembered there was more; I want you to give it to us?

A. I don't, not that I remember.

Q. Didn't you say a minute ago there was more said at that time?

A. Oh, yes; there was lots more said that I don't remember.

Q. Is that all you remember that was said at that time?

A. That is all that comes into my mind now.

Q. That is all that you can give?

A. I believe I gave more.

Q. You believe that you gave more when?

A. When I made the statement.

Q. I mean, when you made the statement in Court here this morning. Did you then give more than you have repeated?

A. I don't remember.

Q. You don't remember what you gave fully on that subject this morning?

A. Fully, as far as I can repeat it.

Q. Do you recollect anything further than you have testified as to what was said at that time when Mr. and Mrs. Gordon were present?

A. Mrs. Gordon said, that she wouldn't live under the same roof as Miss Mary and they would have to put her out of the house or she would go out. And George Gordon said "If you go out you won't come back. Mind you that."

Q, Whom did you say that to?

A. To Mrs. Gordon.

Q. Why didn't you tell us that this morning?

A. I didn't think of it this morning.

Q. Why didn't you give it to us this morning?

A. Lately I have been in very poor health and it affects my memory.

Q. Your memory is affected by poor health?

A. Yes.

Q. Well, have you given us all that occurred on that occasion—on my cross-examination?

A. I don't think I have given you all the conversation, but, I don't remember just now.

Q. Is that all you remember of that conversation at that time?

A. That is all I remember now; yes, sir.

Q. Is that all you remember?

A. Well, all I remember now, sir.

Q. How are we to know what took place if you can't remember all of it?

A. I have just told you what I remembered,

Q. And things occurred that you do not remember?

A. Yes; lots of things.

Q. You say there were lots of things occurred that you do not now remember?

A. Yes. The riot lasted for some time.

Q. They didn't know that you were present, did they?

A. No.

Q. You were merely listening through the door?

A. Yes.

Q. How long did you stay there?

A. Till the quarrell was over.

Q. I asked you how long you stayed there?

A. 15 or 20 minutes.

Q. And that is all you can remember of 15 or 20 minutes' talk, is it?

A. Well, I wouldn't remember that I suppose, if I didn't hear Mr. Van Wyck's name spoken.

Q. That is all you remember of 15 or 20 minutes, is it?

A. That is all I can remember now sir.

Q. I want to call your attention to the conversation which you say you heard between Mr. and Mrs. Gordon in the carriage, while you were driving them home. Repeat that conversation now as you recollect it?

A. Mr. Gordon asked Mrs. Gordon how long that was going to continue, and he told her if she didn't stop it he would, and she said, "if you say anything to Mr. Van Wyck I would be mortified.

Q. That was all there was said?

A. There was more.

Q. What was it that she said at that time?

A. Mrs. Gordon told Mr. Gordon that Mr. Van Wyck was coming to see them; that he was going to give him a carriage ride, and he said to her "he shan't give me no carriage ride." She says "why, —George?" Well, he will never have the pleasure of dumping me in the ditch." She laughed it off and made a joke of it.

Q. Was there anything further that was said at that time, that you overheard, of the conversation between Mr. and Mrs. Gordon?

A. Then she told him that he was coming to see her, and he told her that they had come out there to live alone and alone they would live. She said "Mr. Van Wyck comes to see you as much as he does me." He said "he don't come to see me and I don't want to see him."

Q. Give us all that conversation?

A. That is about all I can remember of that conversation.

Q. Don't you remember what you said on your direct examination this morning on that subject?

A. No, sir; I don't recollect.

Q. Isn't your memory just as good as it was an hour ago?

A. My memory of late is very poor at times.

Q. Your memory is very poor at times?

A. Yes, sir.

Q. Well, is it good now, and bad half an hour ago; or, vice versa?

A. Yes, sir.

Q. It works that way, does it?

A. Yes, sir.

Q. Is your memory better now than an hour ago; or better an hour ago than it is now?

A. I couldn't say that.

Q. What do you mean by saying your memory is faulty?

A. Because I forget.

Q. When do you forget?

A. Sometimes I lose words and can't place them again.

Q. What do you mean by your memory being faulty at times?

A. I suppose that came from sickness.

Q. I mean, what do you mean by its being faulty. Do you mean that an event at times is a blank in your mind?

A. No, sir; it is no blank, but I can't get it out.

Q. You said that your memory was faulty at times; explain further what you mean by that?

A. I don't understand you, sir.

Q. Didn't you say that your memory was faulty at times?

A. Yes, sir.

Q. Now I want to know what you mean by that?

A. Well, my memory is poor at times.

Q. At what times?

A. Well, this last two or three years my memory is not as good as it used to be.

Q. But sometimes it is good, isn't it?

A. Yes, sir; sometimes it is very bright.

Q. Well, is it bright at this minute?

A. I can't say that.

Q. Was it brighter this morning than it is now?

A. It was no brighter then than it is now.

Q. What sickness have you had?

A. Malaria and what they call mud fever from going in swimming too much.

Q. How long is it that you have suffered from that affliction?

A. Since 1870.

Q. And your memory has been poor since 1870?

A. No, sir.

Q. Well, how long has it been poor?

A. This last two years.

Q. It has been particularly poor during the last two years, has it?

A. Yes; not particularly poor, but not as bright as it used to be.

Q. It is just as good during one part of those two years as another part, is it not?

A. Yes.

Q. But, generally it is more faulty than it was at a time before two years ago?

A. Well, I can remember things that occurred some time ago even better than things that occurred yesterday, or the day before.

Q. Has it been just as good during any part of those two last years as any other part of that same two years?

A. Yes.

Q. What do you mean by saying that you are interested in telling the facts in the interest of the heirs—to whom do you refer as the heirs?

A. I referred to the Gordon family.

Q. Well, the Gordon family, as you understand?

A. Well, I know he had a brother and that brother had a son, and there was another gentleman

that used to visit out there occasionally when I was there; he was quite a young man then.

Q. Are those the people you refer to when you speak of the Gordon family?

A. They are the only ones I know of.

Q. What made you so much interested in them as to come and volunteer your testimony in this case?

A. Because there was no one else in those days that knew what occurred, only me. 1C

Q. I understand; but what is your interest in them, that you volunteer to come and testify in their behalf—you did that, didn't you?

A. Yes.

Q. Why should you be interested in them?

A. Well, I think they have been badly wronged.

Q. You feel that, do you?

A. Yes.

Q. Why do you think that?

A. Well, I don't think; I know it. 2C

Q. You feel they have been badly wronged and you have an interest in them, haven't you?

A. I am no more interested in them than any one else.

Q. You disliked Mrs. Gordon, didn't you?

A. No, sir.

Q. Would you want to see justice done her if she were living?

A. If she were entitled to it; yes, sir.

Q. Then, it is justice according to your ideas,—isn't that the idea? You want to see justice done according to your idea? 3C

A. Yes, according to my idea and according as I learned out there and as I see things.

Q. You think, because you were out there a year, that you know it all?

A. No, sir; I don't feel that way.

Q. You feel as if you know enough of their affairs to constitute yourself a judge of what should be done?

A. No, sir; not to be a judge. 4C

Q. You make yourself a judge of what you think should be done?

A. That is my own idea; yes, sir.

Q. And to gratify your own idea you have come and volunteered here as a witness, have you not?

A. Gratified? I don't understand you.

Q. You don't understand that question?

A. No, sir.

Q. You saw this case in the papers, did you not?

A. Yes, sir.

Q. Did you think it would be a nice thing to have your name published as a witness, telling what you knew about it?

A. No, sir.

Q. You didn't think that?

A. No, sir.

Q. You had no idea of that kind?

A. No, sir.

Q. How much of this case did you read in the papers?

A. Well, I generally read the *Herald.*

Q. I asked you how much of this case you read in the papers?

A. Very little.

Q. And upon seeing that you immediately came and volunteered your services?

A. Yes.

Q. And to carry out what you think are your ideas of justice from what you observed during your one year of service there?

A. From what I learned—yes, sir.

RE-DIRECT BY MR. BECKETT:

Q. Mr. Miller, in his first examination, brought out that you now know some other things that Mr. Gordon said which you have not told me; do you recollect now what they are?

A. Yes, sir. Mr. Van Wyck came out one evening with George P. Gordon and Mrs. Gordon; they came out from New York; Van Wyck stopped there over night, and I took Mr. Gordon to the train in the morning; I left Mr. Van Wyck in the house, and I got orders to bring Mr. Van Wyck to the train; I

went to the house and I stood there for quite a while; I opened the front door and went into the house and asked the servant girls if they wanted anything from Rahway——

MR. MILLER:

Q. (interrupted). Is this going to show what Mr. Gordon said to you?

A. No, sir.

MR. MILLER: Then I object to it.

MR. BECKETT:

Q. Did Mr. Gordon say anything to you with regard to this affair?

A. Not what I was going to speak of.

Q. I understood, on your first examination, that you did recollect something more that George P. Gordon told you, over and above what you have told me; now, if you can recollect anything, I would like to have you state it if there is anything more?

A. Did I repeat this morning about the curbstone band?

Q. Yes; in this difficulty that you have about remembering things, I understand the difficulty that you have is in remembering the words; you have the idea in mind?

A. Yes.

Q. But you can't get the words to express it?

A. Yes, sir.

Q. And this troubles you quite frequently ,does it?

A. Yes.

Q. Was this one reason why you have had to have three interviews instead of one?

A. Yes, sir.

Q. And when I notified you I notified you through the telephone, didn't I?

A. Yes, sir.

Q. Now, as to this carriage or coach in which you drove Mr. and Mrs. Gordon from the station to their home, explain it—what kind of a carriage it was?

A. It was a two-seated carriage.

Q. You were on the same level with them?

A. I was on the same level with them; the only difference was there was a little lazyback between the two seats.

Q. And they were directly behind you?

A. Yes. That was the lazy-back that I sat against.

Q. In your direct testimony, if I recollect right you said you worked on the 6th Avenue railroad?

A. Yes.

Q. And then on your cross-examination you mentioned the fact that you worked for a short time on the 3rd Avenue railroad?

A. Yes, sir.

Q. You worked on both of these roads?

A. Yes, sir.

Q. How long did you work on the 3rd Avenue?

A. Well, I guess about six months on the 3rd Avenue.

Q. And on the 6th Avenue how long did you work?

A. Two summers.

Q. In your cross-examination when you were telling Mr. Miller about working for people in 1866, in your former examination you testified that you worked for Mr. Spier in 1863, and afterwards Mr. Shotwell in 1863; Did you work for both of these people or did you wish to explain in your testimony about Spier?

A. I made a mistake. I worked for Spier in 1862 and Shotwell in 1863.

MICHAEL HANKINS, a witness produced on behalf of the proponents, being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. In Newark.

Q. How old a man are you?

A. I will be thirty-four in a short time.

Q. For whom do you work?
A. The Pennsylvania Railroad Company.
Q. Doing what?
A. Night watchman.
Q. How long have you been working for them?
A. Ever since I left Mr. Gordon.
Q. George P. Gordon?
A. Yes, sir.
Q. The man who owned the press works in Rahway?
A. Yes sir.
Q. When was it you left him?
A. I went to work for him in 1870 and I left there in 1876, as near as I can remember.
Q. What time in the year did you leave?
A. I left in the spring, about march.
Q. And went to work at once for the railroad company.
A. Yes, sir; after I left there.
Q. Did you do the same kind of work—you were with him from 1870 to 1876?
A. Yes, sir; very near.
Q. What kind of work was it?
A. I was coachman.
Q. And where did you sleep?
A. I slept over the carriage house.
Q. In 1870, when you went there, who comprised the family—who made up the family?
A. What do you mean?
Q. The Gordon family. Who was it lived there?
A. Mr. Gordon lived there, and his wife and his daughter.
Q. And this was near Rahway, was it?
A. About a mile outside of it, as near as I can get to it.

THE ORDINARY:

Q. You went there as coachman in 1870?
A. Yes.
Q. And you are now thirty-four?
A. Yes.

Q. And you were thirteen years old when you were coachman?

A. Well, I wasn't over that; no, sir; I was not.

MR. COLLINS:

Q. You were a boy?

A, Yes, sir.

Q. You were a big boy for your age?

A. Yes, sir, I was; and there is no mistake about it.

Q. Where did you get your meals—in the house?

A. Yes; I got three meals there every day.

Q. Did Mr. Gordon ever break up his home there and move off anywhere else?

A. No, sir; not to my knowledge. He went South in the winter.

Q. Where was he when you left, in the spring of 1876?

A. As near as I can remember, he was South.

Q. When had he gone South?

A. He generally went South about Thanksgiving, about cold weather, as near as I can remember.

Q. Where did he live in 1874 and 1875?

A. He lived up there, as near as I can remember.

Q. Did Mary Agnes ever go away from there?

A. Well, she used to go to Brooklyn and New York to see friends.

Q. Did she go away permanently and live somewhere else?

A. She did for the last year or two I was there.

Q. Where did you understand it to be?

A. I guess to her folks in New York or Brooklyn.

Q. Did Mrs. Gordon remain there?

A. Yes, sir.

Q. And Mr. Gordon?

A. Yes, sir.

Q. Was there ever any change made up to the time you went away, in the method of living there?

A. I don't know anything about it.

Q. Do you mean you don't know anything about it, or don't know anything about any change?

A. I didn't see any change, only just as I have told you.

Q. You didn't see any change while you were there, but just as you have stated?

A. Yes.

Q. The furniture remained there?

A. Yes.

Q. And the horses and carriage?

A. Yes.

Q. And did Mr. Gordon come and go?

A. Yes; I took him to the depot morning and night.

Q. And did you do that in 1874 and 1875, as you always had done?

A. Yes, sir.

Q. Did you know the Adams family, that lived near by?

A. Yes, sir; well acquainted with them.

Q. Do you know whether Mr. Gordon ever visited them?

A. Yes; several times I picked him up there; several times.

Q. Picked him up at their house to take him home, several times?

A. Picked him up from there and brought him to his own place. I picked him up there and took him to the station, too.

Q. Did Mr. Gordon ever tell you anything with regard to the Adams people borrowing articles from him?

A. Yes, sir. He has told me dozens of times anything that they wanted to let them have it, and I have done so; and anything we needed from the Adams folks, we got it there.

Q. Do you remember borrowing a mowing machine from them?

A. Yes; and a hay rake.

Q. Whom did you borrow it from?

A. I got it from the Adams folks.

CROSS-EXAMINED BY MR. MILLER:

Q. You were coachman from 1870 to 1876?

A. Yes, as near as I can remember.

Q. I want to know how far you remember?

A. As near as I remember.

Q. Have you any doubt about the fact that you were coachman?

A. I have no doubt.

Q. You have no doubt that you were coachman all this time?

A. Yes, sir; I was.

Q. You say Mr. Gordon went away in winter?

A. Yes, sir.

Q. About what time did he go away?

A. Along about Thanksgiving, and sometimes later; I couldn't swear to the dates.

Q. And stayed away till spring?

A. Yes.

Q. And that was the same every year till 1876.

A. Yes.

Q. And during that time he would be away at night part of a week—away from home?

A. Who is this?

Q. Mr. Gordon.

A. From where?

Q. From Woodbridge.

A. He was away all winter.

Q. And at other times during the winter, from 1870 to 1876, he would be away over night, wouldn't he?

A. Where?

Q. I don't know.

A. I don't know either.

Q. You don't know whether he was away or not?

A. No, sir.

Q. With the exception of during the winters he was not absent from his home at Woodbridge?

A. Once he went away South and remained away till Spring.

Q. Except the time he was away in the winter he was not away from that house at night?

A. I wouldn't say that?

Q. I want you to say?

A. I can't.

Q. You can't say whether he was there or not there, can you, at other times?

A. When I brought him home to the depot to his own place I knew; I didn't watch him after that; it was not my place to do that.

Q. He paid you for driving him?

A. Exactly.

Q. And you drove him home every night from 1870 to 1876, excepting the time when he was away during the winter,—did you drive him every night? 1C

A. I wouldn't swear to every night.

Q. How many will you swear to?

A. Every night, as near as I can remember. He was in the North and when he was South he went South.

Q. How much can you swear to as to his visits, and your driving him at times, other than when he was South? 2C

A. I won't swear any more than what I have sworn.

Q. I want you to be definite?

A. I am, sir. You use me like a gentleman and I will use you like a gentleman, but if you are crooked with me I will be crooked with yon.

Q. Will you?

A. Yes.

Q. Please don't be crooked. Do you mean to say that between 1870 and 1876 you drove Mr. Gordon home every night, except when he was away in winter? 3C

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Are you positive about that?

A. Am I positive? Well, I think I am.

THE ORDINARY:

Q. Do you understand that question? That is, every night. 4C

A. I wouldn't say every night; no, sir.

MR, MILLER:

Q. How many nights a week?

A. I couldn't tell you. (Interrupting counsel).

Q. How do you know what I am going to ask you?

A. I can't remember all this over. It is a good while ago.

Q. It was a good while ago?

A. Yes.

Q. And you can't remember how many nights he stayed away?

A. No, sir; I could not.

RE-DIRECT BY MR. COLLINS:

Q. When he was not South where did he spend his Sundays?

A. At home, sir.

Q. So, of course, you didn't bring him from the depot Sunday nights?

A. No. sir; of course not.

Q. When you say he went away in the winter and stayed till spring, where did he go?

A. South.

Q. Where?

A. Norfolk; Carolina, I believe; wherever his plantation was; I never was there.

Q. Mr. Hankins, what do you mean by saying you can't say how many nights you didn't drive him home? Do you mean somebody else might have driven him home?

A. I can't answer that question.

Q. Which do you mean—that you didn't drive him, or he didn't come?

A. He always come home on such a train, and he told me several times if he did not come on that train not to wait for him; if he come on a later one he would come whichever way he chose; but that was very seldom.

Q. You mean on these occasions you didn't drive him home and he came home himself?

A. Yes.

Q. Was he in the habit of staying away altogether nights, or did he as a general thing come to Rahway?

A. He come to Rahway; yes sir.

Q. Did you ever hear of any such thing as his having his home somewhere else?

A. In those years, no, sir; I never did; never.

RE-CROSS BY MR. MILLER:

Q. This was a long time ago, wasn't it?

A. Yes.

Q. Over fifteen years ago?

A. About that, I guess.

Q. Now, you don't pretend to remember, do you, just what nights Mr. Gordon came home and what nights he stayed away?

A. No, sir.

Q. And you don't remember what Sundays he stayed home and what Sundays he stayed away?

A. He was home every Sunday, as near as I recollect.

Q. You don't remember what Sundays he stayed home and what Sundays he stayed away?

A. No.

MR. COLLINS:

Q. Was he away enough over night or on Sundays to make an impression on your mind?

A. No, sir; I don't remember his being away on a Sunday when he lived in the North.

MR. MILLER:

Q. Never?

A. No, sir; never.

OWEN MCLAUGHLIN, a witness produced on behalf of the proponents, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. Elizabeth City.

Q. How old are you?

A. Fifty-five years.

Q. What do you do?

A. I work for the Singer Manufacturing Company.

Q. In 1867 what did you do?

A. I worked for George R. Mooney, a printer, in Vesey street, New York, on property he owned in Rahway.

Q. Did any one hold a mortgage on that property?

A. Mr. George P. Gordon did.

Q. The man who owned the press works there?

A. Yes, sir.

Q. Did you go to work for him.

A. Yes; sir.

Q. When?

A. In the fall of 1867, when Mr. Mooney sold out in New York.

Q. Then you went to work for Mr. Gordon?

A. Yes, sir.

Q. Where did you sleep at first?

A. In Mr. Mooney's place. All the valuable carpets laid on the floor, and they requested me to live there for some months.

Q. So that you worked for Gordon and slept in the Mooney place?

A. Yes, sir.

Q. Afterwards you slept in the carriage house; the same place that Michael Hankins slept in?

A. Yes, sir.

Q. How long did you work for Mr. George P. Gordon?

A. I believe till 1870.

Q. Do you know the Compton property?

A. Yes, sir.

Q. There were two Compton's; which was this one?

A. James is the one I have reference to.

Q. James was the deaf man, wasn't he? Did Mr. Gordon buy some of Compton's property?

A. Yes, sir.

Q. And did you work on that?

A. Yes.

Q. What did you do?

A. I cut the briars off it, as high as this room, and then ploughed and cultivated it. Mr. Gordon wanted it reclaimed.

Q. Mr. Gordon did?

A. Yes, sir.

Q. Did he cut an avenue through it?

A. Yes.

Q. When was it he bought that?

A. I couldn't tell you the date of the year; he bought it about that time, 1867; about 1867.

Q. Which did he buy first, the house where he lived before he bought this Compton property?

A. Yes; that was Mr. Gates' place.

Q. And did this property adjoin him?

A. Yes it joined him.

Q. Was the whole one Compton tract?

A. It was all one piece. One laid one side of Gordon's house and the other on the other side of the road, and the other back of Adams' property.

Q. You planted this property?

A. Yes. I ploughed and planted corn and oats imported from somewhere else.

Q. Did you raise cattle for Gordon?

A. Yes, sir, cattle. The cattle was bought in the State Fair by Mr. Henry C. Adams.

Q. Mr. Henry C. Adams bought the cattle for Mr. Gordon, where?

A. In the State fair.

Q. How many?

A. Three.

Q. What was done with them?

A. They were taken to Mr. Gordon's premises.

Q. And afterwards?

A. Me and Mr. Adams went and got them the day after the fair.

Q. Where were they afterwards sent?

A. There was none sent only two young ones. The cows remained there.

Q. And the calves went?

A. South.

Q. When was it Mr. Henry C. Adams bought these cows?

A. I will have to give a guess; it was in 1860, or something like that.

Q. You don't mean 1860?

A. No, sir; oh, no, I remained till 1870, didn't I?

Q. Yes.

A. Well, two or three years before that.

Q. How did he come to buy them?

A. I don't know; Mr. Gordon wanted some cows to give him milk and he gave Mr. Adams the privilege to go and buy those cattle.

Q. How did Adams come to do it—who asked him to do it?

A. Mr. Gordon.

Q. Do you remember, Mr. McLaughlin, the first fall Mr. Gordon went South, after you went there to live with him?

A. Yes, sir.

Q. State what happened on the day he left, when you were sent back for something,—how it came about?

A. I took a team of horses to Rahway to meet the Washington through line.

Q. What did you take with you?

A. The two trunks. There was another man taking the family. I went to the depot and Mr. Gordon turned to me and said he had to take that train to New Brunswick before he could take the through line, and he came back to me and says "You go home and take out that team and put in one horse single, and get my wife's valise; it is under her bed, between the matrasses; and you meet me in New Brunswick." I said "I never can do it, Mr. Gordon, to be there by half past nine." "Well," he says "You kill the horse and I won't blame you if you bring me the valise."

Q. The valise of Mrs. Gordon?

A. I can't say whether Mrs. Gordon's or Mary

Agnes'; but, I took the valise and got there a few minutes before the train came.

Q. Did he give you anything?

A. He gave me $5.

Q. Did he say why he was anxious to get that valise?

A. He said he would have no peace in the Southern States before that valise was produced.

Q. Did he say why?

A. He said there was some fancy letters in it that she didn't want anyone to see.

Q. Did he give you any money?

A. Yes, sir.

Q. And he said if he didn't get that valise he would have no peace in the Southern States?

A. Yes, sir.

Q. Did you know Henry DuBois Van Wyck?

A. Yes, sir.

Q. Was he there during that time?

A. Yes, sir. He was a good boarder—the very best in the house; no better.

Q. How did he spend his time?

MR. MILLER—I object to that.

No ruling.

A. I couldn't say how he spent his time. He had the whole run of the house.

Q. Did he have a room there?

A. Yes. He had the choice of two or three, I guess.

Q. How did he spend his time—about the country?

A. Well, part of the time he spent out in walking with Mrs. Gordon, and other times carriage riding at Elizabeth, so I understood, &c.

Q. Who went with him?

A. Mrs. Gordon.

Q. Did Mr. Gordon go at all?

A. No, sir.

Q. Where was he?

A. In New York, attending to his business.

THE ORDINARY:

Q. How do you know he was attending to his business?

A. Well, he went to New York for that purpose.

MR. COLLINS:

Q. How about evenings—whether he used to go out riding evenings?

A. Not much, unless they happened to be catched late.

Q. Did Mr. Gordon know this?

A. Yes, sir.

Q. How do you know it?

MR. MILLER—Objected to.

No ruling.

A. He was often on the stoop when they drove up to the house.

Q. Mr. Gordon was on the stoop when Mr. Van Wyck drove in?

A. Yes, sir.

Q. Did you ever see Mr. Gordon angry or excited?

A. Yes, once in my life.

Q. What was it about?

A. I don't know, sir. I wasn't in the kitchen or inside where it happened.

Q. Who else was there—was Mrs. Gordon there?

A. Yes, sir.

Q. How do you know he was angry?

A. I see him run across the yard two or three times; I never saw a man so vexed in my life before

Q. Where was Mrs. Gordon?

A. She was in the house.

Q. Who was coachman when you went there?

A. Pat McGee.

Q. Wasn't there some one there before McGee?

A. Yes. George Conger.

Q. And was George Conger there when you went there?

A. Yes.

Q. And after George Conger left, who came next?
A. Patrick McGee.
Q. Did Henry C. Adams visit the Gordon house?
A. Yes, sir.
Q. How often—Henry C. Adams?
A. The young man?
Q. This old man now?
A. Yes, sir.
Q. Did he visit there?
A. Yes, sir. 1C
Q. How often?
A. I saw him once or twice a week sitting with Mr. Gordon in the sitting-room.
Q. What were their relations—whether there were good feelings between them or not?
A. I don't know that there was any hard feelings.
Q. What were the feelings exhibited between the old gentleman and Henry C. Adams?
A. I don't know of any difficulty.
Q. Do you know of good feelings? 2C
A. Yes, sir; I know of good feelings all the time
Q. Between the old gentleman and Henry?
A. Yes, sir.
Q. How did you know?
A. Because I always saw them good friends on the stoop, or they met as any two friends would meet.

THE ORDINARY:

Q. Is Mr. Adams in the Court room now? 3C
A. I don't know as he is here now; he was here to-day.

MR. COLLINS:

Q. He was here to-day,—the old gentleman with the linen duster?
A. Yes, sir.
Q. And he is the one you mean that Gordon was frequently with?
A. Yes, sir. 4C

Q. Had he been brought up in the country and did he know about cattle?

A. I couldn't tell where he was born or what he knew about them.

Q. Did you ever borrow anything from the Adams'?

A. Yes.

Q. Why,—who told you to?

A. Mr. Gordon.

Q. What kind of thing did you borrow?

A. A new mowing machine, about two months in use.

Q. Anything else?

A. No; not that I remember.

Q. Who hired the men while you were there?

A. I did. Mr. Gordon furnished the money every Saturday night.

Q. You bought the supplies round there?

A. I ordered them but he gave the checks to pay them.

Q. Did you know Charles Beebe?

A. Yes; well, sir.

Q. How often did he come there?

A. Pretty near every Saturday night, during my time.

Q. Did you bring him?

A. Yes, sir.

Q. Where did he live?

A. He worked in the Adams Express, in New York.

Q. And you went and brought him in?

A. Yes, sir.

Q. Did Mr. Gordon ever speak to you about his wife and her demands on him?

A. Yes.

Q. What did he say?

A. He said he thought worse of the last hundred dollar check he wrote than the amounts he wrote all before that week, which was twenty-six hundred dollars.

Q. He felt worse over the last hundred dollar

check he had written that day for his wife than the whole he had written that week and that was twenty six hundred dollars?

A. Yes; to pay the demands of his place.

Q. I want to know whether he ever said anything to you about the way his wife acted when she wanted anything.

A. No, sir. He never said no. He said he could never find out what she did with this money every week or eight days, and she kept crying every six or eight days and he would have no peace till that was spent.

Q. He would have no peace until she got another check?

A. Yes, sir.

CROSS-EXAMINED BY MR. MILLER:

Q. When did you move away from the neighborhood of Rahway?

A. Sometime in the beginning of 1870.

Q. You lived in Rahway from 1867 to 1870?

A. 1866.

Q. Until 1870?

A. Yes, sir.

Q. You were employed by Mr. Gordon between certain dates, were you not?

A. Yes, sir.

Q. And you were how long in Mr. Gordon's employ, directly?

A. From 1868—the beginning of 1868; about three months of it.

Q. And how long were you at Mr. Mooney's?

A. About six months or a little over—seven months.

Q. From 1868 to 1870; you slept in the barn or slept in the carriage house of Mr. Gordon?

A. Yes, sir.

Q. And your duties were what?

A. Cultivating the ground and putting down under drains, to take away the water.

Q. Gardening?

A. Yes, sir. I had three men to help me, because of the increase of land he wanted reclaimed, and I gave the account to him every Saturday and he gave the checks.

Q. Did you act as coachman for him at all?

A. No, sir.

Q. Did you ever drive him back and forth?

A. I did, to Houtenville. He wouldn't drive with the coachman; he said he would like to die peacefully in bed?

Q. He was afraid of horses, wasn't he?

A. Yes, sir.

Q. Very timid?

A. Yes, sir.

Q. How much were you about Mr. Gordon's while you slept at Mooney's?

A. Sometimes till 9 o'clock at night, or 10 o'clock after seeing after things.

Q. Before you went to Gordon's carriage house you slept in Mooney's?

A. Yes, sir.

Q. During any part of the time did you go to Mr. Gordon's place?

A. I went to Mr. Gordon's place and slept at Mooney's.

Q. Did you work at Gordon's place from 1867 to 1870?

A. Yes, sir; and I got my board there.

Q. You were working for Gordon all that time?

A. Yes, sir.

Q. Did you hear Mr. Gordon tell Henry C. Adams to go and buy these cattle?

A. I did not.

Q. You drew that inference from the fact that he went and got them?

A. I know Mr. Adams didn't want them for his own use.

Q. You drew that inference from the fact that he went and got them? You didn't hear him tell him?

A. No, sir; I didn't hear him tell him.

Q. Now, I want you to go back to this time when you said Mr. Gordon asked you to go and get a valise or a satchel. When was that, or can you fix the time?

A. I don't know. It was the first Fall he went down South and I kept no account of it. I was a year sleeping at his place, pretty near; the first year he went down South.

Q. Can you fix the date a little more closely?

A. I can't.

Q. Was it a year before you left Mr. Gordon?

A. At least a year.

Q. It was at least a year before you left Mr. Gordon?

A. Yes, sir; at least a year.

Q. Now, tell us all over again about that bag that he spoke with you about—his telling you to go and get a satchel?

A. I took the two trunks from Mr. Gordon's house down to Rahway. When I got down to the depot I left the trunks at the depot. Mr. Gordon come to me and he says, "My wife forgot her valise under the head of her bed, between the matrasses; can't you make New Brunswick with one of those horses against the Washington Through Line comes to take me through to the South?" I says, "I don't know, Mr. Gordon, whether I will be able to do it after going to your house." "Well," he says, "Kill the horse on the way or bring me the valise by the time I want it."

Q. At New Brunswick?

A. At New Brunswick.

Q. His wife was going South with him?

A. His wife was going with him. He says "If that horse is killed you bring me the valise and I won't blame you." And I landed in New Brunswick two or three minutes before the train arrived; and he was standing waving his stove-pipe and I handed him the satchel and he gave me a five dollar bill. And he said, "I own the horse and if he don't live I am satisfied. If you didn't fetch me this I

would never have an hour's peace while staying there; that is, the valise Mrs. Gordon keeps her letters in."

Q. And she wanted her valise and he wouldn't have any peace until you got it there?

A. Yes. She got hold of it pretty quick.

Q. And you saw him hand it to her?

A. Yes; I saw him hand it to her.

Q. How large was this valise—this satchel?

A. Quite a small satchel.

Q. Six inches long or a foot long?

A. Six or eight inches long; quite a respectable satchel for a lady to carry. It seemed to be all fixed with a lock, so that it couldn't be opened.

Q. Did you state between what years Mr. McGee was coachman for Mr. Gordon?

A. I think he spent two years in my time there. He was there two years during my time.

Q. During the first of the time you were working for the Gordons' or the last part of the time?

A. During the last part of the time.

Q. Who was Conger?

A. He was there when I went there.

Q. He was there before McGee?

A. Before McGee; yes, sir.

Q. Mr. Gordon always spoke kindly to you, didn't he?

A. Yes, sir.

Q. He was kindly to everybody?

A. Yes, sir.

Q. He talked to everybody very kindly?

A. Yes; sir.

Q. And he was very kind to everybody?

A. Yes. On one occasion I saw him give $10 to a Mr. Stiles, a man on the hill, to bury his child.

MORTIMER JAQUES—A witness produced on behalf of the proponents, being duly sworn according to law on his oath saith:—

EXAMINED BY MR. COLLINS:

Q. Where do you live?
A. Newark.
Q. And how old a man are you?
A. Sixty-four.
Q. What is your trade?
A. Carpenter.
Q. Did you help build the Adams' house on the place near Rahway, where old Henry Adams lived.
A. Yes, sir.
Q. What sort of a house was that?
A. A very nice house; a good house, well built.
Q. Large?
A. Yes, sir.
Q. It was a house of what value?
A. Well, in the neighborhood of $10,000.
Q. Was there a barn also?
A. Not included in the house.
Q. Was there also a barn connected with the house?
A. Yes, sir; a carriage house.
Q. Another building?
A. Yes, sir.
Q. How long did you work on that?
A. I worked from the time it started until it was finished.
Q. And after the house was done, did you continue to live on the place?
A. No, sir.
Q. Where did you go?
A. I lived on one of his places.
Q. He owned another place?
A. Yes; at Houtenville.
Q. And you lived on his place there, as tenant?
A. Well, I worked on both places.
Q. Doing farm work?
A. Yes.
Q. Did you know George P. Gordon, a friend of the Adamses?
A. Yes.
Q. What terms were old Mr. Gordon and the Adamses on?

A. They were on good terms.

Q. How about visiting?

A. I often saw Mr. Gordon call on Mr. Adams at their house.

Q. Which Adams?

A. Well, old Mr. Adams and Henry C. Adams, both.

Q. Did you ever see Mr. Gordon take his carriage to the Adams house?

A. Yes.

Q. Often?

A. Yes.

Q. Going which way?

A. I seen him stop for them going to the cars.

Q. You went out to the Black Hills with Edward Adams, I think?

A. Yes, sir.

Q. When was that?

A. That was in 1877.

Q. Do you know anything about where Gordon lived before you went away in 1877 to the Black Hills?

A. He lived there in Woodbridge township, the old residence.

Q. How do you know he did?

A. I used to see him very often.

Q. Did you see any difference in his method of life there in the last few years before 1877 from what it was before?

A. No, sir.

Q. Did you see anything to indicate that he did not make his home there?

A. No, sir.

Q. Do you remember the Hayes and Tilden presidential campaign in 1876?

A. Yes, sir.

Q. Do you know whether or not Mr. Gordon was in Rahway during that campaign?

A. Yes, sir.

Q. What do you know about it?

A. Well, I know he gave $2,000 towards that campaign.

Q. He might do that and simply have his business there. I mean whether he was living there at that time?

A. He was living there. I seen him two or three times a week. I lived on the road where he used to come down to the place, in Seminary street, and he used to pass my house.

Q. That is where the factory is?

A. Yes.

Q. And you would see him passing towards the factory in Seminary street, past your place?

A. Yes; through St. George's avenue to Stone street and then to Seminary.

Q. Would he be driving or walking?

A. Driving.

Q. Coming from where?

A. Home.

Q. What time would that be?

A. About 10 o'clock in the morning.

Q. He was going to his factory before going to New York?

A. I couldn't tell you.

Q. You say you would see him doing that two or three times a week in 1876:

A. Yes.

Q. How about supper time,—going home?

A. I never see him go up that way. He would go a different way to his house from the train.

Q. How do you know he went a different way?

A. Well, I supposed so; I don't know.

Q. Did you ever see Mr. Henry D. Van Wyck with Mrs. Gordon?

A. Yes, sir.

Q. How, and under what circumstances?

A. I have seen them riding from the cars, and back and forth.

Q. During what period?

A. Well, 1867 and 1868.

Q. How well did you know Mr. Henry C. Adams?

A. Well, I have known him for the last—I have known him ever since 1867.

Q. Up to when?

A. Up to now. I know him yet.

Q. Did you know his reputation for truth and veracity when he lived in Rahway?

A. Yes, sir.

Q. Was it good or bad?

A. Good, sir; no better.

CROSS-EXAMINED BY MR. MILLER:

Q. Have you been a friend of Mr. Henry C. Adams all this time?

A. Yes, sir.

Q. And a neighbor part of the time?

A. Yes, sir.

Q. Your relations have been altogether social relations with him, haven't they?

A. Yes, sir.

Q. You have never had any business relations with him, have you?

A. Well, no, not in particular, not with him; I had with his father.

Q. Now, will you kindly tell me again the years during which you lived in and about Rahway?

A. Well, I lived in Rahway—do you want to know all the time I lived in Rahway?

Q. Yes.

A. Well, I lived off and on there for the last sixty years.

Q. You say you live now in Newark?

A. I have lived in Newark for the last twelve years.

Q. That is back to 1879?

A. Yes.

Q. 1879?

A. Yes.

Q. And you lived all the time prior to 1879 at Rahway?

A. Off and on. I was not always in Rahway. I have been away two or three years at a time, two or three different times.

Q. Tell us the dates when you were away?

A. I went away when I was fifteen years old and I didn't come back till I was thirty.

Q. Give us what fifteen years they were? When were you born?

A. I was born in 1826.

Q. Then from 1841 to 1856 you were away from Rahway?

A. Yes, sir.

Q. Did you live continuously at Rahway after 1856?

A. Yes; pretty much all the time.

Q. Between 1860 and 1879 were you away from Rahway any considerable length of time?

A. No, sir.

Q. Your home was there all the time?

A. Yes, sir.

Q. And on what street?

A. In Rahway?

Q. Yes.

A. Well, I lived in Stone Street part of the time; that was where my residence was.

Q. And is that on the road between Mr. Adams' house and the depot?

A. Yes; that is as direct a road as you could go.

Q. That is one of the roads?

A. Yes, they have plenty of other roads.

Q. You were not intimate with Mr. Gordon; you just knew him as a rich man?

A. Yes; that is all.

Q. Everybody knew Mr. Gordon?

A. Yes.

Q. And he was a man who was courteous and kindly with everyone?

A. Yes, sir.

Q. You speak of the time of the Hayes and Tilden campaign; you remember that now, do you not?

A. Yes, sir.

Q. You remember when that was, do you not?

A. 1876.

Q. And the campaign was during the summer months? The election was in November.

A. Yes.

Q. How often every week did you see Mr. Gordon around?

A. I couldn't tell that; I didn't charge my mind how many times I seen him. I don't expect there was a week I didn't see him two or three times.

Q. It is a long time ago and you did not expect to be called as a witness here?

A. Yes.

Q. And your memory is not particularly distinct except that you saw him about sometimes?

A. Yes.

Q. And you think you saw him at least half a dozen times a week?

A. Yes.

Q. That was in the summer time?

A. Yes. I don't remember seeing him in the winter much, if at all.

Q. You saw him less in the fall and winter and spring?

A. Yes.

Q. Carrying yourself back to this Tilden and Hayes campaign,—was that the state of affairs at that time,—that Mr. Gordon was there, as you noticed, about half of each week in the summer?

A. He was not there so much.

Q. In the winter?

A. Yes.

Q. That is your recollection of it?

A. Yes.

Q. Was the same state of affairs true of the next year, 1877?

A. Yes.

Q. You went to the Black Hills in 1877?

A. Yes; but I went in the spring and came back in the fall.

Q. While you were there in 1877, the same state of affairs existed as to seeing Mr. Gordon, as you have testified existed in 1876?

A. I don't know about that when I was away.

Q. I say when you were there?

A. When I was away I couldn't tell anything about it.

Q. You were there in the fall?

A. Yes.

Q. And, so far as you observed Mr. Gordon, you saw him about as much in 1877 as the fall of 1876?

A. Yes.

Q. And so on to the time of his death?

A. And so on to the time of his death.

Q. You were not watching to count how many times he was there?

A. No.

Q. And you don't pretend to tell with any accuracy about that?

A. No, sir.

Q. It is only a general recollection that you have after twelve or fourteen years?

A. Yes.

Q. You said you are a carpenter?

A. Yes.

Q. Did you build this house for Mr. Adams?

A. No, sir; I did not. I worked on it.

Q. Why do you say a value of $10,000—what do you mean by that?

A. I say as near as I can judge, around $10,000.

Q. You mean it would cost as much as that to him to build it?

A. Yes. It was all day's work, and built of the best kind of material.

Q. What are the general dimensions of it?

A. I couldn't tell now what is the exact size of it. It is a big house.

Q. It is a pretty large country house for $10,000?

A. No; not now.

Q. This $10,000 would be the present price of it now to build?

A. Yes; I suppose you could build it for $10,000 now. I don't think you could build the house any cheaper then than you can to-day. If you build a good house it costs money.

Q. This was not an ornamental house; it was a plain house, wasn't it?

A. No, it was not so plain, either.

Q. You can't tell its dimensions.

A. No, sir.

Q. That is merely a business guess?

A. That is all.

EDWARD A. DIELLENBECK, a witness produced on behalf of the proponents, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. COLLINS:

Q. You live in New York City?

A. I do.

Q. What age are you?

A. Forty-seven.

Q. What is your business?

A. Commission, wholesale grain and hay.

Q. Grain and feed.

A. Yes.

Q. The same business as Mr. Mulvaney?

A. He is a customer of mine.

Q. Did you formerly live in Palatine, Montgomery County, New York?

A. Yes, sir.

Q. It is a very little village near Fort Plain?

A. About two miles away.

Q. Right across the river?

A. Right across the river.

Q. When did you live there?

A. From 1845 till 1869, and then after that till 1873 in Fort Plain, and then in New York.

Q. What year were you born in?

A. 1845.

Q. And then you were there when Henry Adams left there?

A. Yes.

Q. You knew Henry C. Adams when you lived there?

A. Yes, sir.

Q. Henry C. Adams is in Court to-day?
A. Yes, sir.
Q. Do you know him yet?
A. Yes.
Q. Do you know what his reputation for truth and veracity in that community was?
A. Very good, so far as I know.

CROSS EXAMINED BY MR. MILLER:

Q. What was your business at that time?
A. Up to that time I lived with my father at home; he was a mechanic, a wagon maker, and I lived with him.
Q. And you were employed by him in his place?
A. Yes, sir.
Q. And you were a young man of twenty-three?
A. Yes.
Q. How did you come to know Mr. Henry C. Adams?
A. That was my post office address, and I had occasion to go to Fort Plain every day or two or three times a week. When I was a boy I went frequently, sometimes for amusement.
Q. What were you doing in Fort Plain to meet Mr. Henry C. Adams?
A. Nothing.
Q. Didn't you meet him at that time?
A. I met him the same as everybody else, socially.
Q. Did you see him in the street?
A. Yes, sir.
Q. You had just passed him, and said "How do you do?
A. Yes.
Q. You were not on intimate terms with him?
A. No, sir.
Q. And what you mean by saying his character was good is, you never heard it discussed?
A. I never heard anything said against him.
Q. And that is what you mean by saying his character was good?
A. Yes.

JULIA D. MOORE — Further testifies as follows:

DIRECT ERAMINATION RESUMED BY MR. BECKETT:

Q. Will you now state the situation of the rooms that I referred to in my last question—Mrs. Gordon's room and the room known as Mr. Van Wyck's room, and the tower room?

MR. MILLER:—I object on the same ground as before.

Testimony admitted.

A. Mrs. Gordon's room was in front of the house. The house was a double house; her's was in front on one side of the house and directly opposite to her's in the back what was called Mr. Van Wyck's room, in between a passage-way which was used as a closet, and directly out from the closet a room into the tower room; the doors communicating across the passage exactly.

Q. Did you ever in your visits at the house in Rahway go into the room known as the tower room?

A. Never.

Q. Do you recollect having any conversation with Mary Agnes Gordon about that room?

MR. MILLER—Objected to.

THE ORDINARY—What is the purpose of it?

MR. BECKETT—I wish to show that Mary Agnes Gordon stated she was not allowed to go into that room, and the purpose is to show the relations between Mary Agnes and Mrs. George P. Gordon; and I also propose to go on and show how this witness and Mary Agnes looked into the room from the roof, in that same connection.

THE ORDINARY—And discovered anything there?

BECKETT—Well, they saw the furniture in the room; nothing going on. The object is simply to show, that Mary Agnes Gordon while living in the house was not allowed to enter that room.

THE ORDINARY—Allowed.

A. We had various conversations upon the subject.

Q. What were they?

MR. MILLER—I object again, your Honor.

Same ruling.

A. The first she mentioned I think was when she told me what a beautiful private room her mother had, how beautifully it was furnished, and she wished me to see it. I don't remember anything again until after some time when the family were South. Over the porch there were roofs where we could get out of the windows of Mrs. Gordon's room and Mr. Van Wyck's and open the blinds and look into the tower room, which she got me to do simply to see how beautiful the room was. She never was admitted to it.

Q. Did she state so?

A. Yes.

Q. She told you so?

A. Yes.

THE ORDINARY:

Q. That is the only way you know it?

A. That is the only way I know it.

MR. BECKETT:

Q. When was the next time you visited the Rahway house after this visit?

A. At Christmas.

Q. And in what year—fix it by the date of your marriage—was it before or after your marriage?

A. It was 1866.

Q. Christmas of 1866?

A. Yes.

Q. When were you married?

A. In October of 1867.

Q. And I believe you have already testified that Mary Agnes Gordon was your bridesmaid and Charles E. Beebe was groomsman; am I right?

A. Yes.

Q. State generally how often you visited the Rahway house and for how long a period?

A. Perhaps in all a dozen times between 1866 and 1867 or '8. After that I think but once or twice.

Q. And when was that?

A. After 1870.

Q. During these visits at any time did you hear the Adams family spoken of?

A. I have often heard the Adams family mentioned, but not in any way that would fix it in my mind particularly; only as friends.

Q. Do you know of your own knowledge whether or not Mrs. George P. Gordon corresponded with Henry DuBois Van Wyck?

A. Yes.

Q. You know that she did?

A. Yes; I know that she did.

Q. During those years that you have testified about?

A. I don't know how long; I have no idea of the length of the correspondence. I only know she corresponded with him.

Q. And about when did she correspond with him according to your knowledge?

A. I can't fix the time. I know of one occasion when I was there I heard her speak of what she had been writing to him.

Q. And do you recollect when it was that you were there?

A. Not at that time.

Q. But, it was upon one of the occasions you have testified to already when visiting Mary Agnes?

A. Yes, in Brooklyn.

Q. And do you recollect what the number of the house was?

A. 155.

Q. Columbia Heights?

A. Yes.

Q. When was the first time you went to visit her there?

A. I was with her the first time she went to the house.

Q. And when was that?

A. 1874.

Q. And you visited her there after that?

A. Yes; frequently.

Q. State how frequently you went,—about?

A. My visits generally were long ones, probably over night.

Q. Up to when?

A. 1876, and once, I believe, in 1877.

Q. And then they terminated?

A. And then they terminated.

Q. During your visit to Brooklyn at 155 Columbia Heights in 1874 to 1878, did you ever see George P. Gordon there?

A. Twice to my certain knowledge, and once I have a faint remembrance and that is all.

Q. I suppose, in your visits there, you would stay there all night?

A. Always.

Q. And you took meals there with Mary Agnes?

A. Yes.

Q. And do you understand that George P. Gordon was staying there upon these occasions?

Question objected to and overruled.

Q. What do you recollect about George P. Gordon being there upon these occasions?

A. I don't know as to anything particular,—yes, I have. The lady and gentleman are here now who were there the night after the wedding. Miss Mary Gordon came home. She came home and met her

father and was surprised to see him—that he had called.

THE ORDINARY:

Q. What do you mean by surprise?

A. Because of the infrequency of his visits——

Q. (interrupting) How did she exhibit her surprise?

A. Her pleasure in seeing him.

Q. What did she do?

A. In a daughterly and affectionate manner.

Q. What did she do?

A. She met him with a kiss and an embrace.

MR. BECKETT:

Q. How happenəd you to go over there in 1874 with Mary Agnes Gordon the first time she went to the house?

A. She asked me it I would go with her to see her father at his office. She was boarding in Fourteenth Street. And I went there and he asked her if she wouldn't go and visit the house he had purchased on Columbia Heights, and whether I would not go with her and we went.

Q. What do you know in regard to the management of that house? From the time Mary Agnes Gordon went there who managed it and controlled it?

A. She.

Q. Mary Agnes Gordon?

A. Always.

Q. Do you know whether anybody else had anything to do with the actual management and running of the house?

A. Not to my knowledge.

Q. What do you know that she did? Please testify in detail as to the management and running of the house?

A. She had the selection of the servants when any

were needed, and she told me on one occasion that the expenses of the house were put down to her, all of them.

Q. Do you know whether or not on the two occassions that you saw George P. Gordon at 155 Columbia Heights, during the period of 1874 to 1878 he had come from the South upon either occasion?

A. I don't know whether he had come from the South or Rahway directly.

CROSS-EXAMINED BY MR. MILLER.

Q. Where do you say your residence is?

A. 508 East 176 street, known as Tremont.

Q. Near what avenue is it?

A. It is known as Jerome Avenue, some call it the Boulevard.

Q. Near Mt. Hope?

A. It is Mt. Hope.

Q. Please recall now any specific occasion when you were at 155 Columbia Heights, between 1874 and 1878, after the first visit you made when Miss Gordon went there?

A. Well, I had been with my husband to call upon her, and she would call in the carriage at my house.

Q. Where were you living then?

A. In Fifteenth street, between Stuyvesant place and Second avenue; I have forgotten the number.

Q. She would call there in the carriage?

A. Yes, aud take me home with her.

Q. Give us an approximation of the number of times during 1874?

A. I am afraid I couldn't give it to you with any accuracy whatever.

Q. Will you say three dozen times between 1874 and 1876?

A. Yes.

Q. You say you saw her about once a fortnight?

A. Quite as often as that.

Q. Did you go over to her house as often as once a fortnight?

A. Perhaps averaging it I did.

Q. According to your best recollection, give us the number of times you are willing to swear you went there?

A. I went there many times, and there were times when the intervals were long and I had letters from her.

Q. Were there intervals as long as three weeks?

A. Averaging four weeks.

Q. There were periods of four weeks during this period that you did not visit her?

A. Between 1874 and 1876.

Q. You ceased calling in 1876 and 1877?

A. In 1877 I called once, and never again,

Q. And during this period, prior to that, to 1874, there were periods when you did not call on her oftener than once a month?

A. Yes.

Q. And she as often came to see you during that time, did she not?

A. I didn't put it as often as that.

Q. Brooklynites visit as often as New Yorkers do, do they not?

A. Well, perhaps so.

Q. That was so in this case, wasn't it?

A. It is likely. I had a family, you know.

Q. And on all these occasions did you stay all night?

A. Half the time. I think you may put it down at that.

Q. And when you say Miss Gordon managed the house, you mean she did the ordering, so far as you observed?

A. She had control of the house.

Q. I say so far as you observed?

A. She attended to the ordering of any of the repairs or anything of that kind.

Q. And you know nothing of how the bills were paid?

A. I know nothing of that beyond the fact that she would say to me sometimes that she was afraid her father would object to the expense she was incurring.

Q. But, you don't know how the bills were paid?

A. No, sir.

Q. Do you know of her being away from the house?

A. Yes; several times.

Q. Do you remember seeing Mrs Gordon at 155 Columbia Heights?

A. Yes.

Q. When Mr. Gordon was there?

A. Once in his presence, and once I called one night, when Miss Gordon was out, and Mrs. Gordon was there.

Q. And was that the occasion when you saw Mr. Gordon at night?

A. No. This was one of the times I remember hearing of his being there.

Q. Between 1866 and 1870, how many times did you visit Rahway, to your best recollection?

A. I will say ten times.

Q. In two years?

A. Yes; maybe not so many.

Q. And were not the visits generally made in the summer?

A. No; as much in winter as in summer.

Q. And as much in summer as in winter?

A. Yes.

Q. And you can't fix the dates?

A. No; I can't fix any of the dates that I visited the Rahway house.

Q. You said there was a time when Miss Gordon's engagement with Mr. Beebe was broken off?

A. Yes.

Q. What time was that?

A. 1870.

Q. And the evidence of that was his ceasing to visit her?

A Yes; that was one of the evidences of it.

Q. Are you sure of that time?

A. As sure as I can be of anything.

Q. How do you fix it?

A. I fix it as I do a great many things; sometimes the date of my marriage, sometimes my own birth and sometimes the birth of my children; and this, the date of the birth of my eldest son.

Q. You have talked this over with your son?

A. No; I have talked it over with myself. I have fixed it out in my own mind; I know the occasion concerning it.

Q. And it is an entirely unaided act of memory?

A. Entirely. It is something that I know.

Q. You inferred that Mr. Gordon did not live at 155 Columbia Heights in 1875, because you did not see him there or see any evidence of his being there when you visited the house?

A. Yes; I inferred that he did not for that very reason.

RE-DIRECT EXAMINATION BY MR. BECKETT:

Q Is that the only reason?

A. I have reasons in my own mind. His home I always ——

MR. MILLER: (interposing) I object, unless it is anything she observed.

Q. State anything you observed?

A. His home was always at Rahway. When he came North it seemed he came there as a stopping place, or to see his daughter. His house was at Rahway.

MR. MILLER:

Q. Please tell us all the facts upon which you based the statement that his home was at Rahway?

A. Well, never seeing him at the Columbia Heights house except upon those occasions, and from anything that was ever said in reference to the fact, I drew the conclusion that his home was in Rahway, and his wife being at Rahway. All these

are the reasons from which I supposed his home was in Rahway.

Q. You drew the inference that his home was Rahway because you didn't see him in the house at Brooklyn, and you did see him at Rahway?

A. Yes. When he moved South I was there on one occasion when he came to Rahway after I was there for a little visit, and then went back again.

Q. I want the facts that you observed from which you drew this inference;—if you have not given them to me.

A. I wouldn't have thought of it then, but now you ask if I know his daughter always spoke of his coming North; she seemed to be alweys looking for him and he never came.

MR. COLLINS:

Q. What do you mean "coming North"?

A. Coming from the South, north of Virginia where he was most of the winter.

MR. MILLER:

Q. You mean, when he was at the South, she wss looking for him longingly, and from that fact you judged he did not live at the Columbia Heights house?

A. Yes.

Q. Now, have you given all the facts upon which you based your inference?

A. I think I have given every one.

BY MR. BECKETT:

Q. You have said that your inference was olso from what you heard said?

MR. MILLER—I object, unless it was a statement by Mr. Gordon.

MR. BECKETT—I understood this witness

to say she drew this inference as to his residing in Rahway from what she heard people say.

Question unanswered.

Q. Do you recollect any statements made by George P. Gordon, or Mrs. George P. Gordon?

A. I do not.

ELSIE BOGERT, a witness produced on behalf of the proponents, having duly affirmed according to law deposes and saith;

EXAMINED BY MR. COLLINS:

Q. Are you a daughter-in-law of wealthy Jane Bogert, a sister of the late George P. Gordon?

A. I am.

Q. When did you marry her son?

A. In November, 1875.

Q. Did you during your engagement and in the year 1875 before your marriage visit the Gordon place near Rahway?

A. Yes, sir.

Q. With your intended husband?

A. Yes, sir.

Q. Whom did you find there?

A. My husbauds mother was down there making a visit, and she wrote to my husband that his aunt wanted him to come down and make a visit and stay over Sunday, We went down on Friday, and I found Mrs Bogert there.

Q. Who else?

A. There was no body else except Mr. and Mrs. Gordon.

Q. You found Mr. and Mrs. Gordon teere?

A. Mrs. Bogert came to meet us. She expected to meet her brother there, but we came without him; he came later.

Q. But during that visit Mr. and Mrs. Gordon both were there?

A. Yes.

Q. And he came up on the train that afternoon?

A. Yes.

Q. You got there Friday?

A. We stayed there one night.

Q. As to Mr. Gordon, was he there that Saturday?

A. Yes. He stayed up from the city, I suppose out of compliment to me.

Q. And you left there?

A. Yes.

Q. What time of the year was this?

A. I have a little memorandum,—I know it was five or six weeks before we were married. (referring to a paper) This I got from my husband's diary,—he has always kept a diary—Oct. 8, 1875.

Q. How was the household at that date,—how did household affairs seem to be?

A. I was only there one night; I didn't see much of the management of the house.

Q. Was it an ordinarily furnished house?

A. I was furnished handsomely and luxuriously.

Q. Who presided at the table?

A. At the table for dinner?

Q. Yes.

A. Mrs. Gordon, I think; Mr. Mayor was there. I have a vague idea of an elderly gentleman being there.

Q. Who presided at the table?

A. Mrs. Gordon.

Q. What did Mr. Gordon do?

A. He was at the other end of the table.

Q. And Mrs. Gordon at the head, and Mr. Gordon at the foot?

A. Yes.

Q. Were there horses and carriages?

A. Yes, we were met by a double-seated carriage. The coachman drove the carriage down, and I saw one or two female servants round the house.

Q. Was anything spoken about the homestead in any way?

A. Mr. Gordon took us out to drive the next

morning and pointed out improvements he intended to make, and said it would make a very nice place when he got through with the improvements. Mrs. Gordon spoke of it as her home.

Q. Did you after your marriage call at the Brooklyn house?

A. Yes.

Q. When was that?

A. May 2, 1876.

Q. What house was that?

A. Columbia Heights, I don't remember the number.

Q. Whom did you see there?

A. We went to call on Miss Mary Agnes Gordon, who had made her wedding call on us.

Q. Whom did you see?

A. I saw nobody but Miss Mary and a servant, who let us in; in fact, we went with the express purpose of calling upon her. There was no talk of anyone else being there.

Q. Do you know anything about her living there alone?

A. On our way down there I said to my husband ——

Q. (Interrupting.) Do you know anything about her living there alone?

A. Nothing except what had been spoken of in the family.

CROSS-EXAMINED BY MR. MILLER:

Q. Can you fix the date of the return of the wedding call?

A. May 2, 1876; I have it here on my paper.

Q. And those dates are taken from your husband's memorandum book?

A. Yes; I remember it was the spring after we were married.

Q. And the occasion of the visit to Rahway was October 8, 1875?

A. Yes.

EVA MEDORA DOANE- witness produced on behalf of the proponents—having duly affirmed according te law deposes and saith:—

EXAMINED BY MR COLLINS:

Q. You are the daughter of Mary A. Doane, a deceased sister of the late George P. Gordon?

A. Yes, sir.

Q. Did you know Mary Agnes Gordon, your cousin?

A. Yes, sir.

Q. How much did you see of her?

A. Well, I saw her from the time that she was fourteen years old up to the time she went to Europe the last time.

Q. How much were you together?

A. Frequently; that is to say I spent a great deal of my summer time there and a portion of the winter she spent with us.

Q. At your house?

A. Yes?

Q. At Rahway?

A. Yes.

Q. You went there every summer?

A. I went there from 1868 up to 1877; and the last time my uncle was there, the last fall.

Q. How long did you stay at Rahway at a time?

A. In 1870 I stayed four weeks, I think, and in 1873 I was there seven weeks.

Q. 1873 seven weeks, 1870 four weeks, and on other occasions how long?

A. Two or three weeks.

Q. Do you recollect Mary leaving there and going elsewhere to live by herself?

A. Yes.

Q. When?

A. After my uncle bought the house in 1874.

Q. Where—what house?

A. 155 Columbia Heights.

Q. Did you visit her there?

A. Yes. One winter she had a friend with her; other times she was alone.

Q. Did you sometimes stay with her?

A. Very frequently.

Q. How many servants were there?

A. Two.

Q. During any of the time you were there did her father stay there?

A. I never saw my uncle come there but once.

Q. When was that?

A. That was when my cousin was in trouble. That is there was a report about one of her gentleman friends in the newspaper, and we came over to see about it.

Q. Do you remember when that was?

A. I think it was in 1877.

Q. Do you know the tower room that has been spoken of in the house at Rahway?

A. Yes, sir.

Q. Were you in it?

A. Yes, sir.

Q. Who took you in it?

A. Mrs. Gordon.

Q. When?

A. In 1870, I think. It was one of those long visits.

Q. What did she say to you?

MR. MILLER—Objected to.

THE ORDINARY—Question overruled.

Q. What was the furniture in the room?

A. There was a lounge, table and chair. It was handsomely furnished.

Q. Was there a writing desk?

A. Yes.

Q. Do you know what the relations of Mary and her step-mother were to each other?

A. Yes, sir.

Q. What were they?

A. Anything but friendly.

Q. How do you know that?

A. Well, I know that they didn't speak for months, even at table; and my uncle would try and force it and make it pleasant by a chat with me across the table, to break the silence.

Q. Did either of them speak to you on this subject?

A. Of their disagreeing?

Q. Yes?

A. Yes, sir; both parties.

Q. Did Mr. Gordon?

A. No, sir.

Q. Did they ever have a difficulty at the table when Mr. Gordon was present?

A. Not that I remember.

Q. Do you know anything of a complaint of Mary not being allowed to select the furniture for the Brooklyn house?

A. Yes.

Q. What was it?

A. Well, she said if she had known that her father was going to buy that house for her she would have preferred to select her own things.

Q. When was this?

A. Just after he had bought the house.

Q. After the furniture had been put in?

A. After the furniture had been put in.

Q. Was any of the furniture taken to Rahway?

A. I never saw a thing. It was all new with the exception of a back room that was furnished from a family there, which I understood to be Mary's room.

Q. I understood that you visited at Rahway down to 1877?

A. Yes.

Q. When you were there was he there?

A. Yes.

Q. Did you ever see any difference between his mode of life at Rahway after the purchase of this Brooklyn house and before?

A. No, sir.

Q. Did you visit at Rahway the same as before?

A. Yes, I visited from 1868 to 1877.

Q. And saw no difference in the establishment?

A. None at all.

Q. Were you ever there in the winter?

A. Yes.

Q. After 1874?

A. Yes; I think we went down once. There was to be some entertainment and Mary wanted me to go down and we went there for a night.

Q. And Mary went down?

A. No, sir.

Q. Where was Mr. Gordon then?

A. He was South.

Q. Were you ever there at any time except the summer season, after 1874: when you saw Mr. Gordon at Rahway?

A. I think I was there once and stayed over Sunday.

Q. Was he there?

A. Yes.

Q. What time of year?

A. That was July.

Q. I say, any time excepting the summer season?

A. Oh, no, sir.

Q. Did you ever see George P. Gordon write?

A. Yes.

Q. Hasn't he written to you?

A. Yes, sir.

Q. Have you examined the will?

A. Yes, sir.

Q. P. I.—the original one?

A. Yes, sir.

Q. In your opinion, in whose handwriting is the signature to that will?

A. My uncle's.

Q. Did you ever hear your uncle, George P. Gordon, speak of the Adams'.

A. Yes.

Q. What and when?

A. The house was pointed out, and I said who lives in that house, and he said "the Adams'." And

he said that one of the sons played on the cornet; and I have heard him speak of the Adams' as good, kind friends and as good neighbors.

MR. COLLINS: I desire to offer proof of conversation by the witness with Mary Gordon as to Mrs. Gordon's relations with Mr. Van Wyck. I cannot bring it home to Mr. Gordon?

Excluded.

Q. Did you ever know or hear of any change in your uncle's residence down to the time of his death?

A. No, sir.

CROSS-EXAMINED BY MR. MILLER:

Q. Am I right in understanding from your evidence that your visits to Rahway between 1868 and 1877 were made solely, excepting on one occasion, during the summer months?

A. Yes, sir.

Q. Now tell us a little more particularly about your visits to the Brooklyn house between 1874 and 1877—how often were they?

A. Well I couldn't say exactly; because sometimes I would go oftener than at others. Sometimes I would go two or three times in a week; then perhaps I wouldn't go for three or four or five or six days again; but, on an average, I guess I was there once or twice a week.

Q. Weren't there times when you were not there once or twice a month?

A. No, sir.

Q. To 1877?

A. No, sir.

Q. You were there constantly twice a week?

A. I was there constantly once a week.

Q. And did you stay all night?

A. Sometimes I would go at noon, and I would stay all night; sometimes I would drive home with Mary.

Q. Where were you living then?

A. 28th street, New York. Sometimes she would come and say "I don't want to go home."

Q. On those visits to the Brooklyn house are you willing to state that you stayed every night at least half the time?

A. Yes, sir.

Q. Where was Mary's room, do you say?

A. The third story, back.

Q. Whose room was the secoud story front?

A. Part of the time they used it as a spare room, and after that as a sitting room.

Q. Whose was the second story rear?

A. Well, that was reserved for her father when he stayed there.

Q. When he stayed there?

A. Yes, sir.

Q. You say she was not allowed to select the furniture; Mr. Gordon selected it, did he not?

A. I don't know.

Q. When you said that she said that she was not allowed to select the furuiture—she would have preferred to select it—what did you understand from that statement?

A. Why, if she had known her father had been going to buy that house for her, she would liked to have picked out her own things.

Q. He bought the furniture, did he not?

A. I presume so; either he or Mrs. Gordon.

Q. Do you mean to say that you never saw Mr. Gordon at the house at night?

A. No, sir; that was not at night; that was the occasion of this Therriott affair.

Q. And you are positive that he never stayed there at night, so for as you have observed?

A. Yes, sir; so far as I have observed. I have heard Mary say "It is strange father doesn't come and see me."

Q. And did she say sometimes "Father was here last night"—or last week?

A. Yes, but very seldom.

Q. Did she as often say shat he had not been there?

A. It was quite frequently.

Q. Do you recollect one better than the other?

A. No.

Q. You recolledt them equally as well?

A. Yes.

Q. She just as often said he had been there as he had not been there?

A. No.

Q. It is your recollection I mean, Mrs. Doane?

A. Yes, my recollection.

Q. Do you want us to understand from your testimony that Miss Gordon did not frequently, a number of times, during the three years, tell you her father had been there before your visit?

A. Yes; but not as often in the winter as in the summer. Sometimes he would go and spend, perhaps, one night.

Q. It was not quite so often in the winter?

A. In the fall he wouldn't go as often as in the summer.

Q. To Brooklyn?

A. Yes. And that was very seldom.

Q. You said she told you he had been there oftener in the summer months?

A. When he was North.

Q. Well, a good deal of the time during the winter he went South at Norfolk?

A. Yes.

Q. You didn't know but you understood it?

A. Well, I have heard he was there.

Q. Where was it you noticed this unfriendly conduct between Mrs. Gordon and Miss Gordon?

A. At Rahway.

Q. And at what time?

A. Well, on many occasions,

Q. Well, during the summer between what years?

A. I think it was in 1870 or 1873 that they didn't speak for so long.

Q. You say you were there in the summer and you noticed this disagreement in the summer?

A. Yes.

Q. Did that unfriendliness continue during your whole three or four weeks stay?

A. Yes.

Q. And there were times between 1870 and 1873 when, during the whole of your visits Mrs. and Miss Gordon didn't speak?

A. Yes.

Q. And Mr. Gordon was present?

A. Yes.

Q. Was this during more than one summer?

A. Yes, sir.

Q. Two summers?

A. Yes, sir.

Q. Three summers?

A. Possibly.

Q. I wact your recollection?

A. Yes, sir; I think so.

Q. And you mean to say here on the stand, that during all of these summers of 1871, 1872 and 1873—during the three or four weeks of your stay with the family at Rahway, during each of these summers—Mrs. Gordon did not speak to Miss Gordon?

A. Well, during those three years, taking it in all they didn't speak; possibly Mary might have gone to her mother and asked for something, she being the head of the house; but, I mean, she didn't speak otherwise. They were not friendly.

Q. Did that apply to more than one summer?

A. Possibly two or three. She would knock at the door and then she would say "Mrs. or Mr. so-and-so is coming here. I would like clean linen." But, there was no friendliness; they didn't talk or ride together.

Q. They did not gossip together?

A. No, sir; they were separated.

Q. Do you mean to say they did not speak together all that time?

A. No, sir; not unless it was something they desired.

Q. How did that happen?

A. I don't know.

Q. Was it every day?

A. No, sir; perhaps it was once a week; whenever guests were coming. Or possibly she might ask whether Mrs. Gordon was going to take the wagon; she would ask "Do you desire the wagon, Mrs. Gordon?" "Yes; I do." But, as I say they were not friendly.

Q. But they spoke?

A. When it was necessary.

Q. Well, how many times out of necessity?

A. I don't know.

Q. Are you giving us your general impression of what you remember, or are you giving us a specific account of what you accurately remember?

A. What I remember.

Q. What you accurately remember?

A. Yes.

Q. And it is not a general impression?

A. No, sir.

RE-DIRECT BY MR. COLLINS:

Q. Will you give the date of this visit of Mr. Gordon to his daughter? I see the date of the newspaper impression is June, 1887.

A. It was June, 1887.

WILLIAM W. MCCLELLAND, a witness produced on behalf of the proponents, being duly sworn according to law on his oath saith:

EXAMINED BY MR, COLLINS:

Q. Where do you live?

A. In Allegheny City, Pennsylvania.

Q. What is your age?

A. 51 years.

Q. What is your vocation?

A. I am a professional penman, and also Professor of Commercial Science in Duquesne College, Pittsburg.

Q. How long have you been engaged in teaching the art of writing?

A. 25 years.

Q. Have you made a specialty of the examination of disputed writings?

A. I have.

Q. For how long?

A. 15 or 18 years,

Q. Have you had any special experienee that called you to examine handwriting in connection with banking?

A. I have.

Q. What?

A. I was three years in the First National Bank of Pittsburg; from 1865 to 1869.

Q. And since that time you have given special attention to hand-writing?

A. Yes, sir.

Q. Have you given testimony in courts of law?

A. Yes.

Q. In many?

A. Yes.

Q. Give a few of the leading ones?

A. In the County of Allegheny, in the McGary will case, both in the Orphan's Court and Common Pleas; also in the McCullough-Clark will case; in the Coller case with the Kittanning Bank and in the Evans vs. Owens case.

In Beaver County, in Harbison, McMillan vs. the administrators of Washington Johnson—the will of Rebecca J, Harbison.

In Greene County, Stone vs. Neeler.

In Fayette County, the McCleers vs. Dr. Robinson.

Q. And a great many other cases?

A. Yes, sir.

Q. Your experience has chiefly been in the Pennsylvania Courts?

A. Yes, sir.

Q. Have you been consulted in other cases where you have not testified?

A. Yes.

Q. In many?

A. Quite a number.

Q. Have you examined the propounded will, Exhibit P. 1?

A. I have.

Q. How much time have you given to that, in the examination of standards?

A. I first saw this will here in Jersey City on the 6th day of July, and I spent the entire week up to the adjournment of the Chambers on July 10, in examination of the papers and this will.

Q. You mean, the papers offered in evidence?

A. Yes.

Q. Have you examined all the papers marked as exhibits, and offered as standards on both sides?

A. Yes, sir.

Q. And after the 10th of July, on this occasion have you attended?

A. Yes, sir.

Q. How many days have you been here this time?

A. I have been here since Monday.

Q. And spent your time chiefly in the examination of these documents?

A. Yes.

Q. And have you examined the evidence of witnesses, experts, on the other side?

A. No, sir.

Q. And have you consulted with any of the experts on the other side?

A. No, sir.

Q. What is your opinion of the hypothesis that the person who wrote the body of the will P 1,

wrote either of the four signatures to the document —— testator and attesting witnesses?

A. I do not think that the person who wrote the body of the will was capable of writing the signatures to the will.

Q. Then, of course. you think he did not do it?

A. He did not.

Q. State why?

A. First, the writer of the body of the will does not possess sufficient skill, in my opinion, to have written the signatures to the will.

Second, the irregularity of tho slant in the body of the will, as compared with the slant in the signatures to the will.

Third, the writing in the body of the will is more angular in its character than that in the signature to the will.

I first saw an artotype copy of the will and signature of the will of George P. Gordon about June 5 or 6.

I never saw the original will P 1, till I came here.

Prof. David B. King brought the artotype copy and some of the original letters of George P. Gordon to my house in Allegheny City, Pennsylvania, without stating which side he represented, and asked me if I thought that the person who wrote the body of thd will wrote the signatures to the will; I told him that I did not think he was capable of doing that.

I examined the papers with the view to testifying in the case, which was to be called in July. I was here in Jersey City on the morning of July 6, and remained until the Chambers adjourned, viz: July 10, and was not called in the case but spent my time in examining the papers in the case. The papers—that is, the letters, the will and all the exhibits in the case, they were in the custody of the master, Mr. Carrick.

I made comparison of the standard signatures, that is the check signatures, and the letter signatures of George P. Gordon, for the purpose of de-

termining the genuineness of the signatures to the will. In my judgment they were written by the same person; that is, George P. Gordon.

I take the standards, that is the admitted signatures, to determine the characteristics of the person's handwriting. The standard for check signatures, particularly the capital letter "G," were with the whole arm movement; that is, by raising the arm from the desk or table.

In writing we employ four movements—the finger, forearm, combined and whole arm mevement.

The finger movement consists in the action of the thumb and first and second fingers and is used in making the downward mark with the hand.

The fore-arm movement consists in the action of the fore arm upon the muscular rest near the elbow, the hand riding on the nails of the third and fourth fingers.

The combined movement consists in the action of the muscles of the fore-arm, and the action of the fingers.

The whole arm movement consists in the use of the whole arm from the shoulder, the arm being slightly raised from the table and moving off the third and fourth fingers.

I refer more particularly to Exhibits D 56 to D 60, check signatures. The "G" has been made in two parts; the initial stroke of the "G" was made with a downward motion of the pen. The oadinary way of constructing the letter is by moving the pen upwards from the base line; that is, the blue ruled line on the paper.

The reason for saying that the initial stroke or line was made by a downward stroke of the pen is because it is shaded. This could not be made except the pen be held in a reverse position.

This method of making the initial stroke seems to have been Mr. Gordon's habit in his check signatures; but, in his correspondence he used the forearm movement.

In all cases where the initial line begins at or near

the base line, that is, the line upon which the writing rests, the initial "G" is not so bold as in the check standard signatures.

The rising line in the "G" in the signature to the will is similar in character to the rising line in "G" in Exhibits P 14, P 15, P 19, P 20, P 21 and P 22. It has more the characteristics of Gordon than of Adams.

Q. By "Gordon" you mean the man George P. Gordon?

A. I mean the man George P. Gordon.

Q. By "Adams" you mean the man Henry C. Adams?

A. Yes; the man who drew the will,

The strength of the shading in the downward line or left side of the oval may have been caused by the thickness of the ink; or owing to the pen, or position of the hand while writing, or quality or condition of the paper.

The paper upon which this will is written is what is known as laid paper, a paper very much used about the time this will was written, namely, 1886 to 1888.

In the finishing stroke a spherical triangle is found throughout all Gordon's correspondence—in his letters.

I refer to:

Exhibit P 35. The capital "P" in the signature.

Exhibit P 37. Capital "G" in the word "Gents"—the salutation to the letter.

Exhibit 38. Capital "G" in the signature; the second capital "G" in the signature. The second "G" in the letter.

Exhibit 39, The small "h" in "he" and the 6th line "I".

Exhibit 45. "T" in the 10th line and the first "G" in the signature.

Exhibit 119. "G" in the signature—both "G"'s in the signature. Third line "l" in the

word "listen" has the same character of line.

Exhibit 120. "D" in the "Dear Sir" in the salutation.

Exhibit 121. "Y" and "u" in the word "You", 25th line.

Exhibit 122. The "G" in the word "give" in the 19th line and the first "G" in the signature.

In these two cases I have now cited he joins the "G" with the small letter, but yet carries out that spherical triangle.

MR. MILLER:

Q. Isn't that true that it joins in all cases, except 119?

A. No, sir; it does not join in all cases.

Q. It goes along toward you?

A. As a general thing it ends that way.

Q. As a general thing he ends it as in the will?

A. Yes.

MR. COLLINS:

Q. Go on?

Exhibit 125. "G" in the word "George" and his name "Gordon" in the signature in the seventh line

Exhibit 49. "T" and "I" in the 11th line of that Exhibit. Both "G"'s in the signature of that Exhibit.

Exhibit 52. In the word "do" on the 2d page 6th line.

2nd page. "I" in the 8th line.

2nd page. "T" in the 18th line and "P" in the signature.

Exhibit 54. "P" in the signature.

Exhibit 55. "P" in the signature.

There are many others that I did not take any account of.

I do not find any of these features in the body of the will.

The finishing line or loop, as seen in the body of the will, extends below the base line.

The back of the oval of the "G" in the will, where ever it is used is very much flatter than it is in the signature, and has an angular turning a characteristic not found in Gordon's signature or Gordon's writing.

The "G" in "Gordon" in the word "Gordon" in the signature to the will is similar to the "G" in "Geo."

The shading in the last line instead of being at the top—the finishing part of the letter—is continued throughout; I mean, that this shading at the beginning of the last member of the "G" in the "Gordon" instead of being at the top, as it is in "Geo" is carried throughout the length of that part of the letter to the base line.

The finish in the "G" in "Gordon" unlike the finish on the "G" in "Geo.", is in my mind an evidence of the genuineness rather than that of forgery and is a prominent feature of Gordon's handwriting found all through Gordon's writing.

Q. That is, this dissimilarity?

A. Yes, the finishing part. I cannot find anything of the kind in the body of the will.

The Greek "e" used in "eo" is bolder and in keeping with the dashing form of "G" in Gordon's check signafures; while in his correspondence, whenever it is used it is in proportion to the other letters in the word in which it occurs; as in the signature to the will. The proportion preserved in both cases, namely, the top part, is one-third the length of the letter. I mean, the top of the "e" to where the part, unite angularly, is one-third of the length of the letter.

Q. That is both on the check signature and on the correspondence signature?

A. Not on the check signatures. In the check signatures it is much larger; but in his correspondence all through the body of his writing in his let-

ters, every place where he uses this form of letter——

Q. (Interrupting.) The Greek "e"?

A. The Greek "e" it is uniformly the same height as we find it in the signature to the will P 1.

This in my judgment is evidence that while the "e" in the check signature is somewhat larger than in the will signature, yet they are similar. The back or final down stroke is straight——the final down stroke is straight and unites angularly, and we find that in the check signature. I do not find this form of letter "e" occurring in the body of the will; neither do I think that he who wrote the body of the will judging from the construction of his short-looped letters—I can probably better explain what I mean by a short-looped letter. I mean, letters that occupy only one space in height as we find here. (Witness refers to the "e" in the words "seventy-three," in the date of the Brooklyn will.) This is for the purpose of explaining what I mean by a short-looped letter. I do not think he possesses the ability to execute a letter similar in character to Gordon's Greek "e."

The tendency of the writer in the body of the will in making the letter "e" was to curve, as you find it here in the word "whereof" in the third line from the bottom of the body of the will P 1.

Q. And all the small "e's" throughout?

A. And all the "e's" throughout.

The Greek "e" is characteristic of Gordon's handwriting as found throughout the body of his letters. It is larger than the "o" in the will signature, but not so large and bold as in the check signature. What I mean by that is, in his correspondence wherever he uses the Greek "e" it is about one-third higher than the letters that follow it; while in his check signature it is very much larger and bolder; it is nearly half a space higher.

Q. There is a variation in that regard between the "e" and the following letter in the check signa-

tures and the "e" in the following letter in the correspondence, is there?

A. Yes, sir.

Q. And the body writing conforms to the signature in P 1 in that regard?

A. Yes, sir; that is what I mean to convey.

MR. MILLER:

Q. The body writing of the will or the body writing of the letters?

A. The body writing of the letters of George P. Gordon.

See Exhibit P 235, original Exhibit 205.

The "o" in the "eo" in the signature of the will is characteristic of Gordon's handwriting: the same slant as the "e."

The "o" is curved on both sides, forming a complete oval. In the will signature the "o" is closed at the top; in the check signature it is sometimes closed and sometimes not; but, in Gordon's body writing, that is in his letters, it is customary for him to close it as frequently as it is for him to leave it open.

See—

Exhibit P 205. The first line in the word "over."

The 6th line in the word "opposite."

7th line. In the word "to."

9th line. In the word "does."

10th line. In the word "or."

11th line. The word "whole."

12th line. In the word "iron."

The word "one" in the same line.

The word "Eno" in the same line.

19th line. In the word "conclusively" and the word "all of."

Exhibit P 20. In the 6th line the word "to."

In the 11th line the word "two."

14th line. "to" and "two."

17th line. The word "sorry"; and in the signature "Geo."

Exhibit P 202. "o" in the word "Collins" and in the signature,

Exhibit P 203. In the signature.

Exhibit P 214. In the signature.

Exhibit P 93. In the 17th line "me" and in "Geo. P. Gordon."

Q. The "o" in the "George," or in the "Gordon?"
A. Well, I didn't mark it which,—in the "Gordon."

Exhibit P 235. The 3rd line from the top of the artotype in the clause, "Stay up to the impression."

In the 6th line. The word "to."

In the 7th line. In the word "Amos"; the word "look" in the 7th line.

In the 8th line. In the word "room"—the first "o."

The 9th line. The word "to" before "strength" and "room," in the first "o" again.

In the 12th line. "o" in the word "soon,"—the first "o."

The word "good" in the 13th line, and in the 14th line, and also the word "does" in the same line.

And in the signature "Gordon" in the footnote.

The 1st line. In the word "not."

The 3rd line. In the work "spoke."

In the 5th line. The work "rock" and the word "not."

In the 6th line. The word "other."

In the 7th line. The word "journals," and also in Exhibits P 60, P 61, P 205, P 66, P 62, and P 65, in Gordon's signature.

The "o" in the body of the will is dwarfish in size and the left side if straight throughout, indicating a cramped finger movement. This characteristic of the person who wrote the body of the will is one, in my judgment, he would likely incorporate into his

work nnconsciously in simulatidg the signature of another.

The connecting line between the "o" and the "P" occurs often in Gordon's writing.

Q. Between the final "o" of "George" and the capital "p?"

A. I refer to the line connecting the "o" of "Geo.," and the capital "P." Sometimes it is very faint and sometimes it is left out.

The stem of the "P" when it is connected with the "o" is in my opinion made by an upward movement of the pen.

MR. MILLER:

Q. In which?

A. In the letter "P"; the stem of the capital letter "P" when not connected with the small letter "o" as it is here; in my opinion it begins at the base line.

Q. You mean, in the genuine writing?

A. In all cases. However that is a question that I don't know really, because I never saw him do it; but, the probabilities are that is the manner in which it was made when it was not connected with the small letter.

MR. COLLINS:

Q. That is the way you think the signature "P" in P 1 was made?

A. Yes.

Q. And you think such was the fact with the capltal "P" in his genuine writing, when not connected with a hair line from the "o?"

A. As a rule there is a slight right curve. This characteristic curve or line in my opinion is impossible for the person who wrote the body of the will to make, for in all his upward lines in his capital letters, as well as his extended or looped letters,—what I mean by looped letters or extended letters are is the letters "I," "b," "h" or "k" and "f."

Adjourned until to-morrow at 10 a. m.—At the same place.

JERSEY CITY, September 11, 1891.

Hearing proceeds pursuant to adjournment.

WILLIAM W. MCCLELLAND further tistifies.

DIRECT EXAMINATION (Continued.)

BY MR. COLLINS:

Q. Resume your comparison of the signature P 1 with the standard?

A. In every handwriting there is incorporated a certain peculiarity of which the writer himself is unconscious.

The small hook in the stem at the top of the letter "P" in the signature to the will P 1, and which appears in Gordon's check signatures is strongly defined; that is in the check signatures it is strongly defined. It is rather obscured in the will signature. Yet, with the aid of a magnifying glass or a microscope it can easily be seen.

MR. MILLER:

Q. What is that peculiarity?

A. That little hook in the top of the stem.

The fact of this strong characteristic being hidden in the will signature is, in my judgment, evidence of its genuineness, as any one similating the signature of George P. Gordon would not have left off so prominent a feature.

I refer to Exhibit P 61, Exhibit P 62, Exhibit P 66, 20th line on the 2nd page.

P 78. In the 11th line.

P 205, cartoon, 11th line from the signature to the letter.

The top of the "P" in the signature to the will is in conformity to the top of the "P" in all Gordon's signatures. I mean, the top of the oval is flattened. I will illustrate this. (Witness illustrates in pen and ink to the Ordinary and Connsel.)

Sometimes he made a bold, open oval at the beginning as well as at the finish of the top. (Illustrating as before.)

I refer to Exhibits P 61, P 66, P 67, P 62, P 68.

THE ORDINARY:

Q. The signatures?

A. In the signatures; yes, sir. Sometimes he made a bold oval in the first part or beginning, and entirely closed it in the last part.

Exhibit P 60, P 205, P 235,—the cartoon. Sometimes he closes it in the first and last part of the top as in P 63, P 64 and P 65; also P 235 in the body of the letter; but, in all cases the tendency in the last part is a nearly angular, turning or pulling down sometimes, almost a straight line with a strong pen pressure. (Illustrating as before.)

The "o" in the word"Gordon" in the standard signatures and the "o" in the signature to the will, P 1, are alike. It slants more than the other letters in the signature, that is in the word "Gordon". This is the case in all of Gordon's hand writing wherever the word begins with "o".

BY MR. COLLINS:

Q. When you say "the word", you mean the part of the word composed of small letters,—whenever that is so?

A. The slant is greater than the letter following, while in the body of the wlll it is the reverse.

Q. Will you at this stage explain the method of measuring the slant of the letters, and show the Court the diagram you have prepared?

A. (Witness produces paper). We take the quadrant in measuring the slant of writing; we take the quadrant,—one-fourth of a circle. In determining the slant we begin at the base line to measure step by step toward the vertical or perpendicular line, untill we arrive at 52 degrees from the base line—the line upon which the writing rests. Beginning

again at the base line we step 30 degrees toward the vertical, to determine the slant of the conneeting line, or the majority of connecting lines.

This 30 degree line determines the slant of the majority of the connecting lines between parts of letters and letters. The slant of 52 degrees from the base line indicates the slant of all our extended, semi-extended, short letters and the capitals; in fact it is called the main slant.

Q. You mean, that that is the average line at which people write?

A. About the average. Sometimes they will vary from two to three degrees. Sometimes a man—and it is the case here in these papers, where they sometimes write at an angle of 48 degrees and at an angle of 50 degrees; but the staudard slant of work is 52 degrees.

I take the protractor, taking the base line and placing the protractor on the base line, move it along and measure the slant of those downward marks, and connecting line; that is, the lines between the letters "or"; the connecting line between the "o" and "r" is characteristic of Gordon's handwriting, and not of Adams'.

Q. Henry C. Adams'?

A. Henry C. Adams'.

The man who drew the body of the will put in many cases a full horizontal left curve. I will explain what I mean by a left curve,—a line that curves or bends to the left of a straight line connecting its extremities, is called a left curve; or, you may say a conex curve. A line which bends or curves to the right, we call a right curve; and the position of a straight line determines the name or character of the line. For instance, if it is in a horizontal position, a horizontal right curve, or if an oblique position, oblique right curve.

The "r" in "or" is nearly a horizontal straight line sometimes.

This connecting line in the signature of the will is identical with the same combination found in nearly

all Gordon's writing; for, wherever the "o" precedes the "r" "n" "m" "w"—see Exhibit P 60, if you wish.

The first line in the word "now".
"Anon" in the 11th line.
"Conclusion" in the 12th line.
13th and 16 lines. "upon".
The last line in the word "to-morrow".
Exhibit P 61. The first line in word "monster"
The third line in the word "or".
In the 8th line the word "harmony".
The second page of the letter in the 15th line in the word "you".
The 17th line, the word "more".
Exhibit P 62, the 5th line, in the word "through".
The 14th line in the word "you".
The 2nd page, in the 20th line. The word "anyone".
The 23rd line. The word "now".
Exhibit P 63, 3rd line. The word "bygone".
4th line. "recollection".
The 6th line, the word "words",
The 7th and 8th lines, in the word "iron".
21st line. In the word "longer"
The 2nd page, 29th line. In the word "alone".
Exhibit P 64, 2nd line. In the word "condition".
In the 3rd line the word "anxious".
The 4th line the word "Southern".
Exhibit P 65. The first line in the word "longer".
In the 3rd line, the word "patterns"
Exhibit P 235, or, cartoon, in the first line the word "work" and "money".
3rd line in "will" and in "impression".
4th line. In the word "rather".
6th line. In the word "grippers"
7th line. In the word "how".

8th line. In the word "larger", "will" and "room".

In the 12th line. The word "write" and "soon".

Last line from bottom the word "move", or in "more".

Q. Now, professor, you say that these examples pointed out in the Gordon standards signatures are what?

A. They are identical with the same combination found in the signature to the will P 1.

Q. In the "or?"

A. In the "or."

Q. How does that compare with the handwriting in the body of the will?

A. Whereas the connecting line in the will, wherever it occurs, is a horizontal right curve.

In the body of the will the rising line is carried about one-half space above the first part of the letter, and in every instance the direction of this line is downward towards the base line. The habit of the writer of the body of the will is to decrease the size of his writing, that is in the beginning of the words the letters are larger than at the end of the word. This in my judgment is strong evidence that he who wrote the body of the will would be unable to write the name "George P. Gordon" and preserve the uniformity throughout that appears in the signatures to the will P 1.

In writing the hand becomes habitual in repeating forms of letters with such precision, pressure and so arbitrarily, that it is almost impossible, try as we will, to vary to any great extent these peculiarities. There are many little things about their handwriting of which the writer has never taken any note, in fact knows nothing about it. Suppose he attempts to disguise his hand, he will make some awkward form, he will change the character of his writing; he can change the slope. If he is in the habit of writing a small hand he can use a larger one; if he uses a fine pen, he can use a coarse one.

The general appearance can be changed in various ways, yet, by introducing the disguises he has not learned to write a new hand; he has not learned to make different characters of angles or to introduce entirely different proportions throughout his writing. His own peculiarities will appear in spite of himself in simulating a handwriting. He must not only know the personal peculiarities and all the variations of the writer whose hand he is simulating, but he must get rid of his own. See what a task he has to perform!

The "or" in the word "Gordon" in P 1 is not joined to the "d." This is the characteristic of Gordon, and does not appear in the will; therefore, not a characteristic of Adams.

The "d" in the signature "Gordon" to P 1, is like the "d" found in Gordon's signature, namely, P 107, P 109, P 112, P 63, and P 60, and P 235.

Now, in that I would point out the lines in which there is a curve—the 3rd line in the word "bed."

The 9th line. In the word "do."

The 10th line. In the word "doing."

The 14th line. In the word "decidedly."

15th line. In the word "does."

That is, the "d" has the shading the same the entire length in the signature to the will, as it is in Gordon's body writing.

The left side of the pointed oval or first part of the "d" is slightly flattened, and conforms to the class of small letters or pointed oval letters to which it belongs; namely, "a," "d," "g" and "q."

In the body of the will the letter is shorter in the staff.

Q. The letter "d," you mean?

A. Yes. The staff of "d," and the staff is usually pointed at the top; the shading increasing as the pen approaches the base line.

This characteristic or form or shaded line is found all through the body of the will, not only in the "d" does this peculiarity appear, but in all the extended and semi-extended lines; while, in Gordon's hand-

writing these lines when shaded the shading is the same strength throughout. Take his "f," his "l," his "d," his "p."

The turn in the base of "d" in the signature of the will is round and smooth, while the finish to the "d" in the body of the will is uniformly angular.

The "d" in the word "Gordon" signature to the will, P 1, differs from his check signature but little; it has more the character of Gordon than Adams.

The "o" in "on" is open at the top in P 1, the signature to the will. And this is frequently found in Gordon's handwriting, but the slant is preserved.

The "o" in the body of the will in all of Adam's handwriting is squatty, short and usually begins with a right curve or a straiget line.

Q. Illustrate it?

A. (Witness indicates in pen and ink to Ordinary and Counsel.)

Gordon's "o" is larger and nearer a perfect oval; that is, both sides of the letter curve alike.

As to the character of the line between "o" and "n" in the word "Gordon," I refer back to my for mer testimony as to the character of the line between the "o" and "r" in the word "Gordon."

In the "n" in the word "Gordon," P 1, the first part of the "n" has the same slant as all the letters in Gordon's signature, except the "o" beginning "ordon." The turn in the back of "n" is the same as the turn in "r" and is strong and well developed. The second stroke in "n" is about one-fourth space shorter than the first part of the letter, and is more inclined to the vertical position, or, has less slant than the first part of the "n."

This is the case in all of Gordon's handwriting. The first part of the down stroke is 52 degrees: the last part of the slant is 70 degrees; yet, it is as well formed as the majority of business men write. It could not be mistaken for another letter or anything else than "n".

See Exhibits P 63, 205 or 235, P 66, P 67, P 62, P 65, P 68; cartoon D 56 to 60.

This characteristic is not found in Gordon's writing wherever the "m" or "n" occurs, namely, the last part of these letters, the terminal down stroke is shorter, angular and approaches the vertical position. I find nothing in the body of the will that resembles it.

Take away the other letters or words in which "m" or "n" appear and you have a waved line, a meaningless scrawl, having none of the elements of writing in it. I will illustrate that. (Witness illustrates in pen and ink).

The terminal line or flourish at the end of the word "Gordon" we find occurring frequently in the signature of Mr. Gordon. It differs nearly every time he makes it. Sometimes it is very long both above and below the line; sometimes it is heavily shaded and again not shaded; while they differ in length, shading and width, they all have the same slant, namely 45 to 48 degrees.

The "paraph" below the signature differs nearly every time he makes it. There are no two alike;—evident that this is no forgery in my opinion; because the man who is simulating this writing would not have made such a bungling character as he did in this case.

Q. What do you say to its distance below the signature?

A. The distance below, would, of course, be accounted for under different circumstances. The position of the person at the desk or table, the size of the table, the movement that he would have, and there are so many different reasons why it should be below, or closer, that we can't account for that.

Q. How about the space as in a check, being contracted?

A. Sometimes it is contracted and sometimes not; but, it is as bold and as contracted in his check signature as it is in the signature to the will P 1.

Q. You misunderstand me. How about the lack of space in a check having anything to do with the

"paraph";—having anything to do with a signature in a paper, where there is plenty of room?

A. The space on a check between the line upon which the name is written and the edge of the paper will certainly account for that.

Henry Adams, attesting witness to the will.

The strong probability of the genuiness of Adams' signatures is sustained by the fact that although there is a similarity of "Alonzo C. P." on the will, still there are different characteristics in each, which are sustained throughout but each different from the other.

It would be much easier for a person forging signatures to write on the same paper signatures differing greatly from one another than to make a forgery or copy of two signatures that are similar, but yet different in detail.

There is a difference in the spacing of the three Adams' signatures; the first Henry Adams being the closest and the last, John Q. Adams being the widest or longest, but consistent in each case.

It is to be noted that the signature is consistent in itself throughout. The loop in the "H" and "A" in the first are alike.

The loops in the "H" and "A" are alike, yet differ from "Alonzo's "A"'s which in themselves are alike.

The spacing of the small letters in Henry's name though irregular is consistent with the spacing in his "Adams"—"ams", "enry" or "e" and the "a" bearing the closest resemblance, yet differing from the "dams" of Alonzo and totally different from the "dams" of John Q.

The spacing in John Q.'s name is greater and consistent throughout, and the shading of his letters is consistent throughout.

The similarity existing between the signatures of Henry and Alonzo C. P. is frequently found in members of the same family. It may be caused by being associated together in business, by being taught by the same instructors or by copying documents written by a superior or one whose standard

they tried to emulate, or by copying the papers one of the other. I have frequently seen this the case and have had such results in classes under my instruction. Sometimes it is impossible almost to tell the difference in writing between the members of the same family.

The "H" in "Henry" in the will signature P 1 is similar in the first part or stroke in that to Exhibit P 173, cartoon; P 166, 157, 156 and check signatures P 175 and 174.

The slant of the last stroke of the "H" in all exhibits, taking cartoon P 174, 166, 136, 135, 134, 173 have all the slant of 50.

Q. And that is true of the will P 1?

A. Yes.

The "a" in Henry Adams' signature is sharp at the top and stops at the base line abruptly. There is no such line in the body of the will ending. In the body of the will it is usually angular and the ending line continuous.

The "d" in "Alonzo C. P. Adams" differs from that of Henry's, in that the top part is rounded; he has been in the habit of constructing the letter by a rising line to the top of the "d," coming down to the base line on the inside of the rising line. I will illustrate that.

Q. Coming down on the left or right?

A. Coming down on the left of the rising line. (Witness illustrates with pen and ink as before." And possibly if his pen had been better and the ink not so thick, that would have been an open loop in the signature P 1.

The standards differ in the "Alonzo C. P." one from another as much as any one of them differs from the signature to the will P 1.

The form of "d" that Alonzo had been in the habit of making would be looped at the top had not it been for the quality of the pen or possibly the condition of the paper or the consistency of the ink.

Q. Do you mean, that you so judge from the document itself, P 1?

A. Yes, sir.

I want to go back to Henry Adams' signature.

In the "H" that is characteristic, that is the loop, in the will signature is carried well up and forms a loop.

In P 174, P 136, P 135, P 134, P 173 and the will signature in P 134 it is not so large; yet, it is in keeping with the same feature in "A" in P 134. Wherever, this characteristic occurs in the body of the will, and it occurs only in the capital "A" in the word "Articles," there is no loop in it, but it is made angularly, uniting with the last part of the "A" the uniting line, the last part of "A" is carried to one-half the height of the letter, being a left curve. 10

I am speaking of the body of the will,—uniting angularly with a final or finishing line, which connects with the small letter in the word; hence, there is nothing in the body of the will resembling this feature of Henry Adams.

The "H" in the P 1 signature in the will is like that in P 173 as much as it is customary for men to write. 20

It is impossible for a man to write his signature twice alike in 15 or 20,000 times; I mean, that if by super-imposing one signature over the other and one covers the other in every point or detail, one of those signatures is a forgery.

There are three ways in which a forgery may be done; first, by super-imposing or holding the paper upon which you wish to make the signature to the will or to any document, against a pane of glass, tracing it with a lead pencil lightly and then building up the signature afterwards. 30

Another is by taking tracing paper and tracing the outline of the signature, blacking the back of the signature, and with a hard pencil, transferring that to the paper upon which you wish to reproduce the signature, and then building it up as before.

In either one of these cases you would probably be detected by the erasing of the lead pencil lines and the building up or shading of the pencil lines. 40

Another way, and one that is harder to detect than any other, is by taking the original signature and tracing it and doing this until you are able to trace a signature similar. This it would require a very expert penman to do.

The "n" in the word "Henry" and the "m" in the word "Adams" in Henry Adams' signatures are similar.

Q. In the slant?

A. In the slant.

The "A" in "Henry Adams" begins above the base line, about two spaces, and the stem of the letter is made by an upward movement of the pen. My reason for so stating is that the shading or pen pressure is on the first part of the letter,—the downward stroke.

Q. You are speaking now of the signature to the will P 1?

A. I am speaking now of the signature to the will P 1.

This manner of making the "A" by Henry Adams is not adhered to at all times, Sometimes he begins at the top of the letter.

The characteristic of the "A" is of the same length and form throughout and height, in Exhibits P 1, P 174, P 136, P 135, P 134 and P 173.

Q. By "characteristic" you mean, that which makes it an "A" to wit; the junction of the two members?

A. Yes.

Q. Which is a loop there?

A. Yes.

The pointed oval in the small "a" and "d" is flat and contracted in the back, and open at the top in Exhibit P 1, P 174, P 136, P 135, P 134, P 173, showing the same thing, and has less slant than in the body of the will.

The slant of the down strokes in "m" in "Adams" is the same; that is, they have the same slant throughout.

The habit of Henry Adams in his writing was to

make the connecting lines in his "m's" a full right curve. I will illustrate that. (Witness illustrates with pen and ink as before.)

While the writer of the body of the will always makes his connecting lines waved between the parts of his "m's"

The "s" in "Henry Adams" varies in form sometimes looped, sometimes as large as the capital letter "S." See Exhibit P 134.

Sometimes, though generally sharp at the top but slanting always about the same, while in the body of the will it is in an upright or vertical position.

Alonzo C. P. Adams, — attesting witness to the will.

His signature differs from the standard, though the standards differ from one another, as much as any one of them differs from the will signature, namely, the "A" in Exhibit P 178 differs from the "A" in 179 as much as it differs from the "A" in 177.

The "A" in Alonzo in P1 begins the rising line with a right curve, a slant of about 50 degrees; it is consistent with the capital "A" in "Adams" to the P 1 will signatures; slant 50 degrees.

The slant "d" in "Adams" throughout is the same as in Alonzo, excepting the "o" the terminal letter in the word "Alonzo", it has some slant. This may have been caused by the position of the forearm in writing.

The character of shade in "p" and the "A" in the standards, the strength of line,—the shaded lines—is similiar to that in P 1, the will signature.

The "1" in p 177, the character of shading is similar to the shade in P1 in the letter "C", namely, the shading is nearer the base line.

The back of "s" in P 1 is similar to that in P 179, 177 and P 180, standards.

The slant in the pointed oval is the same throughout, namely, 40 degrees.

The "paraph" which appears to the signature of the will while being absent from the signatures in the exhibits which we have just enumerated, a por-

tion thereof existed, namely P 178, 179 and 180. The character of the line is nearly the same in each to that of the lines in "paraph" in the signature of the will, as it is possible for a man to make. I find nothing of this character nor any attempt at it—at the same—in the handwriting in the body of the will. I found nothing that would lead me to believe that the writer of the body of the will could execute any such hieroglyphic or "paraph".

The shading and the distance between this "paraph" in Alonzo C. P. Adams' signature is nearly the same. See P 1 and P 178.

The "paraph" in Gordon's signature to the will is far superior, and of more artistic execution, and, if the writer of the body of the will did this one, he could not possibly have done the one in Gordon's signature to the will, for the reason that the movement required to execute this characteristic is absent in every line and effort of the writer of the body of the will. In my opinion he could not do it.

The "p" in Alonzo's signature to the will is very consistent with all the standards; the stem, tending to angularity at the base and the top. See P 177, 183 and 182, and D2 and D 3.

The terminal part of "d" in P 1 in the signature to the will, is similar in character to the line in the "paraph" to the word "Adams" in Alonzo C. P. Adams' signature; the strength of line is the same and is about the same slant.

John Q. Adams:

The point of ovals,—I am taking the "d", the small "d" and small "a" is different from all the pointed ovals in the other signatures of the will.

The "John Q" in the signature to the will,—in the beginning the capital "J" seemed to me in making this character he seemed—to be rather ambitious, and wanted to make his mark as prominient as within him lay, the "J" being the larger letter to his signature to the will. His characteristics, a bold dashing style, appears throughout his signature in the "J"

and "Q". See Exhibits 100 and 190, 191, 292, 193, 104, 195.

The "J" in the body of the will is not like the "J" in the signature on the will P 1. In the body of the will wherever this form of letter occurs, or the letter "I" or "J" the back of the letters or the slant of the letters is generally nearly in a vertical position.

The beginning of "J"—the loop or oval in the first part—is similar to the first part of the "Q" in his standard signatures. The proper construction of these letters would be to have the back part of the letter pass through this loop or oval—would be to have the staff pass through the loop or oval, but, he makes the first part of the oval in the top of "Q" in the same manner and in the same direction as he makes the first part of that "J"

Q. That is the "Q" in the standard?

A. Yes, the "Q" in the standards. The downward stroke in the back part of the "Q" in the standards. The downward stroke in the back part of the "Q" is similar in every respect to the back part of the "J". See Exhibits P 194, 195, 192 and 191. The pointed top on the "J" in the signature to the will P 1, we find in Exhibit P 190, 189, 191 and 193; while, this is not as angular as the check signature, yet the general tendency is towards an angular hand rather than an oval turn.

In the last part of his signature, the "Q" and the "Adams" he used less freedom or dropped his hand or arm rather on to the table in constructing those letters.

The "o" in the standard signatures, namely, 194, 190 and 195 differ from each other. The loop in the word "John" in the will P 1 signature is one-third the length of the letter. It is a little longer in the standards. This may be accounted for from the position of the hand, paper or physical condition of the writer.

The parts of the "h" slant in the signature to the will P 1 the same and are consistent throughout in all the letters that he makes; while, in the body of

the will, the last part of,—this part of the "h" (witness indicates the portion of the letter he refers to) is nearly a vertical position. The same occurs in "p" in the body of the will.

Q. That is, the second member has not the same slant as the first?

A. No, sir. It has nearly a vertical position. That is a characteristic of Henry C. Adams' and one which I think he would incorporate naturally in the signatures that he signed to that will or some one of them.

Q. If he were forging?

A. Yes.

The "n" in the "ohn" in the word "John" P 1, and the "m" in the word "Adams" are consistent, namely, the rising line is a left curve. The line from the base of the "h" to the back of the "n" from the base of the first stroke in "n" to the second stroke in "n," and in "m" in the word "Adams," the same character of line is observed throughout, namely, the left curve. See Exhibit P 194, P 189, P 192, P 191, P 193 in the will signature.

The construction of the "Q" in the signature to the will P 1,—in constructing this letter he began at nearly the top of the letter on the right side as he did in "A."

Q. In the word "Adams?"

A. In the word "Adams." He produced the oval or as nearly an oval as he was capable of doing, moving round to the left and then carried it with a right curve to the point of beginning, making an "o" or oval similar to an italic "o" in printing, after which he placed his pen at about one-half the height of the letter, producing a left curve, an oval, turning, making a straight line to within about two spaces below the base line, and finishing with a right curve.

The shading in the "A" and in the "Q" are alike and the shading and slant of the oval conform one with the other; and the shading in "A" in the will

signature corresponds with that in signatures of P 194, P 190, P 189.

The staff in the "d" conforms to the last down stroke of the "A"; that is, the shading increases to the base line. The turn at the base line connects with the letter "A." I am speaking of the character of the line in the last part of "A" and the character of the line in the staff of the "d"; it increases from the top to the base; the "A" is not connected with the "d," but the character of the line in the "A" at the base line, and the "d" at the base line are alike. The shading is the same, namely, the shading increases from the top of the staff in the "d" tc the base line, as it does in the last part of the capital letter "A" in the word "Adams" and therefore it is consistent.

Q. Now, Professor, as the result of your examination and comparison of the various signatures, what is your opinion as to whether or not the person who wrote the standards admitted as the genuine writings of George P. Gordon in this case, wrote the signature "Geo. P. Gordon, to the will P 1?

A. I believe he did.

Q. And what is your opinion as to whether the person who wrote the various standards proved to be the genuine handwriting of Henry Adams, Senior, wrote the signatures, "Henry Adams" attesting witness, to the will P 1?

A. I don't think I have got that question exactly right.

Q. (Repeated.) Whether the same person who wrote the genuine signatures of Henry C. Adams, also of Henry Adams, also wrote the attesting signature to the will P 1?

A. I believe he did.

Q. And what is your opinion as to whether or not the same person who wrote the various standard signatures proved to be the genuine writing of Alonzo C. P. Adams, wrote the name "Alonzo C. P. Adams," attesting witness to the will?

A. I believe he did.

Q. And what is your opinion as to whether or not the person who wrote the standard signatures proved to be the handwriting of John Q. Adams, attesting witness to the will, wrote that signature to the will?

A. I believe he did.

CROSS-EXAMINED BY MR. MILLER:

Q. You come here as a paid expert, do you not, McClelland?

A. Certainly, sir.

Q. I understand you have never testified in any case outside the State of Pennsylvania; is that so?

A. Never, sir.

Q. And, it has been your habit in that State, has it not, to testify from the internal evidence and not by comparison of handwritings?

A. Yes, sir.

Q. How long have you been engaged in the study of handwritings?

A. About 15 or 18 years.

Q. Exclusively in that work?

A. Not entirely exclusively.

Q. What other occupation have you had?

A. I have been teaching the art of writing and bookkeeping.

Q. You keep a commercial school; is that it?

A. Yes, sir.

Q. And you have been engaged, exclusively, in in that work, during 15 years and incidentally in studying handwriting?

A. No; particularly engaged in artistic pen-work until within the past month, when I became associated with the Duquesne College, at Pittsburgh. Prior to that nearly all my time has been devoted to the artistic pen-work.

Q. That is, you do engrossing—you do handsome writing?

A. Yes.

Q. And was that prior to the time of your asso-

ciation with the Duquesne College your principal occupation?

A. Well, it has been all my life for the past 25 years.

Q. In your direct-examination you spoke of four different kinds of writing, I believe; did you not?

A. No; I spoke of movements.

Q. Four different movements in handwriting.

A. Yes.

Q. Was that definition taken by you from Professor Ames' on handwriting? 1C

A. No, sir; it was taken trom the Spencerian system.

Q. Which was taken?

A. Why, Mr. Ames' definition.

Q. Then you took this from the same source, the Spencerian system,

A. Yes, sir; and by actual practice,

Q. You have said there are certain unconscious peculiarities of a writer, whieh he cannot conceal in making a forgery; is that so? 2C

A. Yes, sir.

Q. The most perfectly skilled is he who best conceals his own unconscious peculiarities?

A. Yes, sir; and closely imitates or reproduces the form of the party he is attempting to simulate.

Q. Closely reproduces form, which includes what?

A. All the peculiarities of the person's signature he is simulating, and getting rid of his own.

Q. It includes the pen pressure, the size of the letters, the spacing of the letters, aud the connection of the letters with each other as a whole. 3C

A Yes, sir; the slant.

Q. You include all that in form?

A. Yes, sir.

Q. The forger copies all those as closely as he can and keeps out of view his own unconscious peculiarities; that is true.

A. Well, he should do.

Q. And the forgery is good or bad, in as far as he succeeds in attaining that end? 4C

A. It is.

Q. Do you say Mr. Gordon's handwriting in the documents you have examined discloses characteristics—marked characteristics.

A. I do.

Q. There is a marked personality about his writing, if I may describe it that way?

A. You may say he had two personalities in his handwriting; one to his check signature, and the other to his ordinary body writing, such as he had in his letters and sometimes in his check signatures.

Q. But, in both of his handwritings, body writing and signature writing, he wrote a very bold hand.

A. Not at all times.

Q. That was the prevailing characteristic of his writing, was it not?

A. Not in his body writing.

Q. He did not write a free, round hand in his body writing; in your opinion, is that so?

A. In his body writing his movement was free; in his body writing, understand, in his letters, and as free as it was in his other signatures—to the check signatures.

Q. That was not my question. I asked you if the body writing was not free and round?

A. Well, yes, sir; it was.

Q. As you look at the signature "Geo. P. Gordon" to the will, do you say that is a characteristic of that signature, P 1, that it is free and round?

A. I do.

Q. Do you say that of the handwriting of the body of the will?

A. That it is free and round?

Q. Yes.

A. No, sir; it is angular.

Q. The thumb has a good deal to do with the performance of the writing of the body of the will, has it not?

A. The thumb and first and second fingers.

Q. That does not answer my question. It has not

much to do—the thumb has not much to do in the production of the signature writings "Geo. P. Gordon"?

A. It performs about the same duty that it does in the other.

Q. Is its exercise as apparent in the writings of George P. Gordon as it is in the body of the will?

A. It is apparent.

Q. The thumb's exercise?

A. In the body of the will?

Q. Yes. The thumb has a good deal to do in the performance of the writing of the body ot the will, has it not?

A. The action of the thumb in the body of the will is more apparent than it is in Gordon's handwriting?

Q. You have studied the handwriting of this will to some extent, have you not?

A. I have sir.

Q. Would you know any other handwriting of Henry C. Adams, do you think?

A. Well, I think possibly I might.

Q. Kindly look at this raper marked "For identification C. L. C." Look that paper over and state whether in your opinion it is in the handwriting of Henry C. Adams, or in the handwriting of the person who drow the body of the will—Henry C. Adams?

A. Yes, sir.

Q. Look all through it?

A. That first page is, evidently.

Q. You have seen that paper before, have you not?

A. This paper?

Q. Yes.

A. I never saw this paper before.

Q. Not during your examinations here in Court?

A. No, sir; I didn't see this paper. Every characteristic that is in the body of this will P 1 appears in this,

Q. Now go right through the instrument, care-

fully. Take your time about it. Any writing on that paper that you think is not Henry C. Adams' please, indicate, looking throughout, from beginning to end?

A. I believe this is all in the handwriting of Henry Adams.

Q. Just look at the end also. The signatures are copied by him also, are they not?

A. Yes, sir.

Q. Of Gordon and of the subscribing witnesses?

A. Yes. Of course, I exclude these words "For identification C. L. C." in it. Nobody can tell about the changes in one word at the end of article VI., section 2.

Q. Now, if Mr. George P. Gordon signed this will propounded for probate here, you do not expect to find in that handwriting the pecularities that exist in the body of the will.

A. No, sir.

Q. You do not?

A. No, sir.

MR. COLLINS:

Q. You mean, the pecularities in the handwriting of the signature?

MR. MILLER—Yes.

Q. That is, Mr. Gordon and Henry C. Adams did not write alike?

A. No, sir.

Q. And if you find peculiarities that exist in the body of the will in this contested signature, what judgment would you form—would that create a suspicion in your mind as to the genuiness of it?

A. Well, I don't find any of them.

Q. I say, if you do?

MR. COLLINS—I object to the question. If the question was "If you should find in that

signature"—as an abstract question, it would be a proper question.

No ruling.

Q. If you find peculiarities that exist in the body of the will in this contested signature, what judgment would you form—would that create a suspicion in your mind as to the genuineness of it?

A. Well, it possibly might, but——

Q. (Interrupting). It would depend upon how marked it was and how extensive it was, would it not?

A. Yes; how strong it was and how frequently it occurred throughout the handwriting of the different parties.

Q. You have gone over the whole body of the standards in this case. I understand you have spent considerable time examining the various standards?

A. Yes, sir.

Q. Will you please take a pencil or pen and describe how the second "G" in the contested signature "George P. Gordon" was made. Indicate by tracing it?

A. (Witness indicates as requested by council on a piece of paper).

Q. It is made by a continuous mark, commencing at the lower initial curve and finishing loop?

A. Yes.

Q. In your judgment?

A. Yes.

Q. In your judgment was the pen taken off in the execution of P 1, at any point in the letter, the second "G"? I want you to take the glass, for that purpose?

A. (Witness examines signature on Exhibit P 1, with glass.) No, sir; I do not think it was taken off.

Q. Was not the upper loop or the "1" portion of the "G" made first and then the pen taken off before the rest of the letter was completed?

A. I do not think so.

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Q. Well, look at it carefully?

A. I have examined it before.

Q. Was it not made as I now indicate, by taking the hand off at the end of the "l", the first loop of the second "G", and then continuing?

A. I think not, sir.

Q. Well, look carefully, please, and say whether you are positive?

A. Well, I am not positive, because I didn't see him do it.

Q. Are you positive from such examination as you can make from that glass?

A. Yes, sir; I am.

Q. You use that glass so that it is available to you to magnify, do you not?

A. Yes.

Q. And you are positive that it was not made in that way?

A. My opinion is it was not.

Q. Do you find among the standards a single "G" made by George P, Gordon, where the pen was taken off at the point I Indicate at the end of the "1" loop of the "G,"—the upper "1" loop of the "G?"

A. Have I found any?

Q. Yes.

A. No, sir.

Q. You have said that from the examination of the standard writings of George P. Gordon you find he makes his "o's" both with an open and closed top?

A. Yes, sir.

Q. Was it a prevailing habit of Mr. Gordon in making the standard writings to make a loop, or shoulder at the termination of the "o?"

A. In many cases he does.

Q. That is not my question?

A. What was your question, then?

Q. Was it a prevailing habit of Mr. Gordon in making the standard writings to make a loop, or shoulder at the termination of the "o?"

A. No, sir; it is not a prevailing habit.

Q. Is not the making of an "o" throughout the body of the will in that way, by ending it in a loop or blind loop or shoulder, a prevailing habit of the writer?

A. Of the will?

Q. Yes.

A. Yes, sir.

Q. It is?

A. Yes.

Q. Do you not notice that in all three "o's" of the signature P 1, the "o" is terminated with a blind loop or a shoulder?

A. No, sir; I don't.

Q. You don't see that in the contested signature to the will?

A. No, sir.

Q. Have you found in your examination of standards of George P. Gordon's signature, whether to letters or checks, any case wherein all three of the letters "o" where it appears in the words "George" and "Gordon," that he terminated his "o" with a shoulder or a loop?

A. Well, there are many cases in which he terminated the letter "o" as he did in the "eo" there. (Referring to Exhibit P 1.)

Q. That is not my question. Have you found in your examination of the standards of George P. Gordon's name, whether to letters or checks, any case where, in all three of the letters "o" it appears in the words "George' and "Gordon," that he terminated his "o" with a shoulder or a loop—have you or have you not?

A. He didn't terminate these with a loop.

Q. That is not my question?

A. I don't recollect.

THE ORDINARY:

Q. You say, that you think all of the "o's" in the disputed signature "Geo. P. Gordon" to the will, are not terminated with a loop or shoulder. It appears to me that they are. Will you explain why you say they are not?

A. It is the character of the point there those letters are made.

MR. MILLER:

Q. Where those "o's" are terminated?

A. Where those "o's" are terminated; you find it in many cases "o" we find it in the last "o"; in the "o" in the word "or," in the word "Gordon" and also as we find it in his body writing,

Q. The Ordinary asked you this question. He said "It appears to me that all three "o's" are terminated with a loop or shoulder; you said in your opinion they were not so terminated. Will you explain why you say it different?"

A. If it please your Honor, I didn't see the point. But, frequently in Gordon's writing that characteristic appears just as it is in this.

Q. Is there to your eye in any of these three "o's" a loop or shoulder—to the three "o's" in the contested signature?

A. Well, there is.

Q. Before you said there was not?

A. Then I misunderstood the question.

Q. Now, I asked you following that, whether in any writing of the name "Geo. P. Gordon" by George P. Gordon either to a letter or check, you find that peculiarity in each of the three "o's" in the name, and you said you had not noticed it. Is that so—as to the peculiar termination to the "o's" of Mr. Gordon—whether to a check or signature? Did you say you had not noticed or looked for that peculiarity?

A. I know it is there; I see it there. (Referring to Exhibit P 1.)

Q. All three "o's" in the same signature?

A. I can't recall that I have noticed it before.

Q. Well, at recess, will you try to find one?

A. Yes.

Q. And take a note, if you find it?

A. Yes.

RECESS.

Q? Having had recess, are you prepared to point out a signature "Geo P. Gordon" among the standards containing three "o's," in which the shoulder or loop appears?

A. Yes.

Q. Where in each of the "o's" the shoulder appears?

A. Yes.

Q. Where?

A. (Indicating on Exhibit P 60.)

Q. In the signature to Exhibit P 60, is not the last "o" a blind "o" without any shoulder whatever on it?

A. Well, I think it has a little shoulder there.

Q. Or loop?

A. Yes.

Q? Have you any other examples?

A. D 60.

Q. In the signature to the check D 60, you say there is a shoulder or loop at the terminal of each of the three "o's"?

A. As nearly as a man could possibly do it in his ordinary writing.

Q. Does not the "o" in Exhibit D 60 terminate by a right angled mark without a loop in each of the three "o's"?

A. Well, in the—

Q. (Interrupting). Does it or does it not?

A. It does.

Q. Have you any other examples?

A. That is all, sir.

Q. In the examination of disputed handwritings in your experience, have you found that there is any one peculiarity of a writer, unconscious peculiarity of a writer, who is simulating a signature, which he is most apt to repeat in the forgery?

A. Yes, sir.

Q. Well, what is your judgment on that subject?

A. The points that he would be most apt to repeat would be the character of his terminal lines, the crossing of his "t's" and slant of the parts of letters, and the pen pressure or shading.

Q. Then there are four things that you say would constitute unconscious peculiarities, which he is apt to repeat?

A. Yes.

Q. Repeat that again?

A. Shading, the slant of letters, the terminal lines in the letters, the crossing of his "t's" and the pen pressure or shading.

Q. And of these four which do you regard as of the greatest importance?

A. Well, I don't regard any one of any more importance than the others.

Q. You don't?

A. No, sir.

Q. Other experts have testified that the connection of letters is to some the most important item. What do you say of that?

A. The character of the line is.

Q. Well, do you say the failure or the presence of it?

A. Either the failure to connect or—

Q. (Interrupting.) Either the presence or absence of the connecting line?

A. I agree with that.

Q. Well, you have no particular notion, or hobby if I may call it so, as to any one thing for which you would look in examining simulated signatures?

A. I have not any hobby in regard to that at all.

Q. I didn't use that word in an offensive sense.

A. In studying the character of handwriting we must take into consideration the manner in which the person generally writes, the character of the line between the letters, between parts of letters, and the slant of a letter.

Q. Now, in this case, in examining the signature "Geo P. Gordon" to the disputed will, there are no "t's" that you can examine, so that we will leave that out of consideration?

A. Yes.

Q. There is the matter of connection of letters, pen pressure, and in the matter of slant of letters in this signature?

A. There is.

Q. Take the matter of shading. Is it a prevailing characteristic of George P. Gordon's handwriting to shade heavily at the bottom of a letter?

A. No, sir.

Q. In the disputed signature isn't it a prevailing method of shading?

A. I think that the pen pressure is equal throughout the entire length of a letter.

Q. And the shading does not form a sort of triangle, a triangular shape. Take that "o," isn't it a wedged or triangular shape. I refer to the first "o" in the word "Gordon" in the disputed signature?

A. Well, I fail to see the triangular shape.

Q. You fail to see that the first member of that "o" is shaded more heavily at the bottom than at the top?

A. I didn't see that.

Q. It is more shaded at the bottom than at the top?

A. Yes.

Q. Doesn't it to your mind form a wedge shape?

A. It has a wedge shape appearance. The pressure there I do not think was any stronger at that point than at the beginning. I think the pen, ink and the condition of the paper made that a little stronger there than at the top.

Q. And your observation is, that the letters in the disputed signature are not more heavily shaded in the bottom than at the centre?

A. No, sir.

Q. You said that the terminal could be regarded as an important point in examining the disputed signature?

A. Yes, sir.

Q. To your eye is not the terminal of the first "G" in style, in pen pressure and in characteristics, like the termination of the "P" in the signature "Alonzo C. P. Adams" to the will?

A. It is somewhat similar, and yet it is different.

Q. It is somewhat similar?

A. Yes.

Q. It is generally similar to the eye?

A. No, sir.

Q. Well, wherein is it not similar in this terminal of the "P?"

A. In "Alonzo C. P. Adams" the straight part of the loop, characteristic of the letter, is parallel with the base line. In P 1, "Geo. P. Gordon" it has the same slant as the back of the letter and the same slant as all the lines throughout.

Q. In what other respect are those two loops dissimilar?

A. The character, or slant rather, of the terminal or down stroke of the "P" in the "Alonzo C. P." is not nearly so vertical as the terminal of the first "G" in the disputed signature.

Q. In what respect are they dissimilar?

A. They are dissimilar in the place where the last stroke crosses the first part of the loop—the part of the loop first made in "Geo. P. Gordon." It is dissimilar to the "P" in "Alonzo C. P." as the pen pressure is the greater at the middle, where the turn is made.

Q. At the middle of the down stroke of the "P?"

A. No, the finishing part.

Q. Where is the pen pressure heaviest?

A. Half the height of the letter.

Q. Half the height of what letter?

A. I mean half the height of the "P," the "P" in "Alonzo C. P. Adams." The shading in that stroke ——

Q. (Interrupting.) I am not asking about the stroke of the "P"; I am asking about the loop in which the "Alonzo C. P." terminates and the loop in which the signatures of the "G" in the disputed will terminates. Wherein the loops differ?

A. The shading in this part of the letter, before you make that ——

Q. (Interrupting.) I am only talking about the loop, and not the other part of the letter. Please point out where the shading in the loop differs?

A. In the shading in the loops of the "G" in the

"Geo. P. Gordon," P 1, the strength of shading is the same as that part of the "P" in "Alonzo C. P. Adams."

Q. The right curve of the "'P' is what?

A. Is stronger.

Q. Of the "Alonzo C. P." than in the first "G" of the disputed signature?

A. Yes.

Q. In any other respects do they differ?

A. That is all I notice.

Q. Then, are they both irregular triangles, ending with a shaded stroke, due largely to the thumb pressure?

A. No, sir. The thumb pressure has nothing to do with the shading. This index finger does the shading, simply because an index finger is placed directly over the poiut. It is the construction of that fore finger that makes the shaded line.

Q. Are not these two lines an irregular triangle, terminating in a down stroke made by the pressure of the fore finger?

A. Most undoubtedly.

Q. Now, let us come to the matter of the slant of letters. Should I have understood you as testifying, that in the disputed signature the slant of the first "o" of "Gordon" and of the following "r" were different—the "o" slanting more to the right than the "r," and that this characteristic was a characteristic of the genuine signatures of George P. Gordon?

A. I did.

Q. I should have so understood you?

A. Yes.

Q. And you also said that that peculiarity, to wit, the slant of an "o," when connected with a letter following, or the "o" and the next letter in the will, was the same?

A. I said it was not the same.

Q. In the will?

A. Yes; it is directly opposite. It has nearly a vertical position.

Q. I am talking of the relative slant of the "o" and

the "r." Did you not say it was a characteristic of the body of the will, that the slant of the "o" was about the same as the slant of the following letter, when "o" was the first letter?

A. I did not.

Q. Is it not a characteristic of the body of the will that the "o" and the "r" have a different slant, the "o" slanting as it does in the disputed signature?

A. No, sir.

Q. Is it not a characteristic of the will?

A. No, sir;

Q. Will you please look at the first page of the will? Are not the "o" and the "r" of the word "Gordon" on the first line of the first page slanted relatively the same as the "o" and "r" in the word "Gordon" in the disputed signature?

A. No, sir.

Q. They are not?

A. No, sir.

Q. The "o" I call your attention to on the first page. Does it not slant more to the right than the following "r" does?

A. The "o" in the word "Gordon" you mean.

Q. Yes. It does not slant more to the right than the following "r", does it?

A. Now, I say no, but I would have to illustrate that probably by drawing the lines there.

Q. Well, draw them on a piece of paper?

A. We determine the slant of an oval by drawing the line through the axis of the oval. The left side of that "o" is straight; the slant in the "o" and the slant in the "r", if you carry the lines to any length they will converge or come close together.

Q. Now turn to the word "foregoing" in the will, on the sixth leaf, in article 4, section 3, line 13; does not the first "o" slant more to the right than the following "r", as in the disputed signature?

A. It does.

Q. As in the will—as in the disputed signature?

A. Yes, sir.

Q. Turn to the last page of the will, the word "or" on the ninth line, and state whether the slant of the "o" preceding the "r" is not greater to the right than the slant of the "r"?

A. I think they are about the same.

Q. That is your observation?

A. Yes, sir.

Q. I mean the "or" between "him or his"?

A. Yes; it has more slant.

Q. There is the same peculiarity in that as in the disputed signature?

A. Yes, sir.

Q. You stated that it was characteristic of the will that the letters had a diminishing effect. Look at the first line, the letters "on", in "Gordon" P 1, and state whether that is not a dimnishing writing—is it?

A. It is.

Q. Look at the disputed signature, the same letters "on" and state whether they are not also diminishing but to a less degree?

A. No, sir.

Q. They do not diminish?

A. No, sir.

Q. Look at the signature "Henry Adams" and state whether from your observation in the word "Henry" there is not evidence of a diminishing writing?

A. Yes. In the word "Henry".

Q. Yes.

A. Yes. There is from the "e". "e" is larger than the other letters in the word.

Q. Have you examined this letter "y" in the word "Henry" Adams?

A. I have.

Q. From the commencement of that letter, where the "u" part of the "y" appears until you reach the final stroke at the bottom member to the "y", the tail to the "y", has the pen been taken off?

A. No, sir; I think not.

Q. Will you kindly take a glass and look at that?

A. I have examined that under a glass.

Q. (Handing paper to witness). Will you also look at that which I have drawn while sitting at the table, and state whether the pen has been taken off in making that "y"?

A. Yes, sir.

The paper handed by counsel to witness is marked "For identification D. 130."

Q. That is, you notice in this "y" I have drawn, D. 130, for identification, the first continuous stroke of the pen was taken off where the bottom part of the "y" reaches the line of the "y".—that is, the "u" portion of "y", and then the pen was put on again before it was finished?

A. Yes, sir.

Q. Is not that exactly the way the "y" of "Henry" in the disputed signature was made?

A. I think not, sir.

Q. Then please take the glass and examine that carefully in the light.

A. I have done that very carefully.

Q. Well, will you do it now?

A. Yes, sir; certainly. (Witness examines paper with glass, in front of a window). I don't think the pen was taken off there. I could illustrate to you how that——

Q. (Interrupting). No, you simply say you think the pen was carried continuously and that the stroke covers the "u" portion of the "y"?

A. Yes. I will tell you how that was written, in my opinion. (Witness illustrates with pen and ink.) It has that appearance.

Q. It has the appearance of having had the pen taken off and the tail made as a separate member?

A. Yes.

Q. Did you say that there were no characteristics in the word "Henry" or "Hemery" Adams in the will like those in the body of the will?

A. I think I did; yes, sir.

Q. You said that, did you?

A. Yes, sir.

Q. What do you say, in this case assuming that Henry Adams was the father of the man who wrote that will, about the similarity of writing between members of the same family?

A. Well, the similarity between the signatures of Alonzo Adams and Henry Adams are similar – no, I don't think I understand exactly what you mean by that question.

Q. Well, Henry Adams wrote the signature to the will and Henry C. Adams, the son, wrote the body of the will; and yet you say there is no characteristic of the two alike?

A. There is very little of the same characteristics in those two writings.

Q. You said there was no characteristics?

A. Well, I don't see them.

Q. You don't see them, yet?

A. No.

Q. Well, if the signature of the name of the subscribing witness, Henry Adams, was written by the father and the body by the son, and when you take into consideration that there was the relation of father and son between them, and also the further fact that Henry C. Adams was a law student in his father's office and that he copied papers in his father's office, is it not strange that there is no similarity between the two?

A. Well, yes; and yet it is not. The similarity between the body of the will and the signatures of Henry Adams and Alonzo C. P. Adams—there are no characteristics scarcely existing; but, between the "Henry Adams" and the "Alonzo C. P. Adams" there is quite a similarity.

Q. I asked if you didn't think that was strange?

A. No, because these men were younger and had the characteristics of the school or time in which they lived.

Q. I asked you to take into consideration the fact

that Henry C. Adams, the son, before 1868, when this will was said to have been made, was a student in his father's office and had been copying his father's handwriting; taking those facts into consideration, don't you think it is strange there is no similarity?

A. No.

Q. This "Henry C." case is one where the family likeness did not obtain?

A. That is between the father and son.

Q. Between the father and this son?

A. Between the father and son.

Q. Between the father and another son?

A. No, sir; two other sons.

Q. Didn't you say there was a similarity between Henry Adams and Alonzo C. P. Adams?

A. Yes.

Q. Henry is the father, and Alonzo C. P. the son?

A. Yes.

Q. There is a similarity between that father and that son?

A. Yes.

Q. But, there is no similarity between the father and the other son, according to your notion?

A. No, sir; there is not.

Q. And that, in your judgment, your failing to find any similarity of characteristics in the writing of Henry Adams as subscribing witness compared with the body of the will, does not lead you to believe that the person who wrote "Henry Adams" was disguising his handwriting?

A. Yes, sir.

Q. It does?

A. I say that the characteristics—now, I will just see whether I have got this correctly or not; that the characteristics in Henry Adams' signature to the will are not like those in the body of the will. The party who wrote "Henry Adams" did not write the body of the will, or the person who wrote the body of the will did not write the words "Henry C. Adams" to it.

THE ORDINARY:

Q. I understood you to say on your direct examination, that you would look for characteristics common to handwritings where there were father and son, or preceptor and pupil, where relations existed that led one to notice the other's handwriting. Now, where there is a relation here of a son and father and, after a fashion preceptor and pupil, in the matter of handwriting, and an absence of characteristics common to their handwriting, does it not strike you as singular?

A. Well, in my direct testimony what I wished to convey was this point, that as to Henry Adams and Alonzo C. P. Adams, I wished to compare the features, the characteristics of these two signatures; not with the body of the will. If you so understood me—

MR. COLLINS:

Q. They were father and son?

A. I understand.

Q. They say, why would not you look for resemblance between those two?

A. Well, I did; but I couldn't find them.

MR. MILLER:

Q. Isn't that strange?

A. No, sir; it is not strange.

Q. And if Henry C., who wrote the body of the will, had written "Henry" and forged his father's name, you would not think it strange that he did avoid the peculiarities and characteristics of his own handwriting in writing the name "Henry Adams"?

A. Well, I don't think he would have done so?

Q. Now, I want you to take the glass and look over the words "John Q. Adams" where they appear in the attestation clause, and state whether or not that signature has not been painted or patched; that is, whether the pen has not been put on a second time at the points which I now call your atten-

tion to; upon the down stroke of the first loop of the "J", upon the sweeping flourish to the left of the bottom part of the "J"; upon the down stroke of the first member of the "h" upon the down stroke of the second member of the "h"; upon the first stroke of the "n" in "John"; upon its second stroke and upon the final "s" of that name?

A. You ask me if I thought it had been painted.

Q. I asked you if you thought in those places the pen had been put on a second time and inked over at the places I indicated?

A. No, sir.

Q. In no one of them?

A. No, sir.

Q. Take the glass to the window, please. (Witness examines paper at window as requested by counsel). Look carefully at the first member of that "h" in "John". Is there not a distinct, straight, second stroke over that letter in that place?

A. I don't see.

Q. Are you positive it has not; look carefully?

A. In painting letters I want to say to you, that when you put the pen on a second time it will certainly show.

Q. Well, look carefully and see if that has been done in that. (Witness again examines the paper).

A. It has not.

Q. Look at that final "s". The pen has not been put on a second time there?

MR. COLLINS—Do you mean the flourish or the "s"?

MR. MILLER—The "s".

A. No. Will you allow me to state my reasons?

Q. Yes.

A. It is impossible for one to make a stroke of that character and put on the same degree of pressure in painting it, it will show. In other words, you can

not spread the teeth of the pen in the same width as you did in that first attempt.

Q. And it is because it cannot be done that you say it has not been done?

A. No.

Q. Does not that ink appear heavier and thicker under the glass than the other letters?

A. Certainly: because there is more of it.

Q. Look at it again and compare it with the names of the other subscribing witnesses, and state whether the letters are not very much thicker and heavier at the points I have named in the name of "John Q." than in the names of the other witnesses?

A. Well, they are, because the pen's pressure was stronger.

Q. That is your explanation of it?

A. Yes; the pen-pressure was stronger at that point.

Q. There is no evidence to your eye upon an examination of the name "John Q." under the glass that two inks in "John Q's" name were used?

MR. COLLINS—Two different kinds?

MR. MILLER—Yes.

A. No, sir.

Q. And no indication of two different applications of the ink?

A. No, sir.

Q. How do you describe the double or bifurcated prong of the "h" in the signature, if the pen was not put on twice?

A. You will find that occur in every one of these lines where they unite.

Q. In every one of John Q. Adams' name?

A. Yes. When he got to the bottom of the down stroke he lifted the pen and touched the paper again to make the up stroke. He used the finger movement and came down to the bottom of the "h", then lifted the pen and started again.

Q. And that second prong is the starting mark?

A. Yes.

Q. And that is so where that double prong appears at the bottom of letters in the name of "John Q. Adams"?

A. Yes, sir.

Q. And it is not because the down stroke has been done over twice?

A. No, sir.

Q. Does that same thing occur in "m" of "John Quincy Adams"?

A. I think not, sir.

Q. Why does he do that in an "n" in his name and not do it in an "m" in his name?

A. That is very difficult for me to explain to you; but, that is frequently the case, that a person in writing their name, the last part they will write more rapidly and freer than the first part as is demonstrated in this case.

Q. The signature "John Q." as a whole, appears very much heavier than the signature of the other subscribing witnesses?

A. In some points it does.

Q. In some points?

A. Yes, sir.

Q. Not in the "am" of "Adams", however?

A. No, sir.

Q. Now, you have compared the disputed signature standards and checks, and you are prepared to say that the writing in the disputed signature has the same general characteristics, same pen-pressure and is substantially like the standards—the signature "Geo. P. Gordon"?

A. His standards, in his correspondence or letters I say yes; but, in his check standards they are not.

Q. Then, you say the characteristics of his letter signatures are different from the characteristics of his check signature, as you call it, leaving out of account the shape of the capital letters?

A. Yes; I mean, the pressure.

Q. It is different?

A. Yes.

Q. That is all you mean?

A. Yes; a little heavier.

Q. You have looked at the several standards of the name "Alonzo C. P. Adams" have you not?

A. Yes, sir.

Q. And you are prepared to say that the disputed signature "Alonzo C. P." compares with and is like in characteristics the standards that have been submitted?

A. As far as the pen-pressure is concerned, the connecting lines and the curves in the letters in "Alonzo C. P. Adams" to the will, in comparison with those that I have examined.

Q. I want you to take the signatures as a whole—take the standards of "Alonzo C. P." as a whole, and take "Alonzo C. P." to the will as a whole, and state whether you are prepared to tell this Court, as an expert in handwriting, whether those characteristics appear and have the same general appearance?

A. They have, where the same general character of letters are used.

Q. Then, the disputed "Alonzo C. P." have differently shaped letters?

A. Yes; they differ.

Q. And, notwithstanding that, they have a different slant too?

A. They have nearly the same slant.

Q. They have a different slant?

A. Some of them have.

Q. Do not the letters in "Alonzo C. P." have a greater slant than the letters in the standard?

A. I think not.

Q. You have studied all these signatures?

A. I have.

Q. And you are an expert in handwriting?

A. I am.

Q. And you are prepared to say that?

A. Yes.

Q. On the first blush did those two standards appear to be alike?

A. No; they did not.

Q. They looked very different?

A. No, not very different; they looked different.

Q. And you had to go to work and try to explain how they could be written by the same person, had you not?

A. No. I didn't have very much trying.

Q. You came easily to it,—the moment you studied it?

A. When I analized the letters, the shading and the form of the curved line in the letters, then they were as nearly alike as one man could possibly write his signature at different times.

Q. And you are prepared to make that same answer concerning the comparison you raise between the will signature of "John Q. Adams" and the standard "John Q. Adams"?

A. Yes.

Q. At first they did not look alike, but afterwards they did look alike.

A. After examining the pen-pressure and slant of the letters throughout, they were similar.

Q. So that you came to the conclusion, without any question, that they were written by the same person?

A. Yes, sir.

Q. Did you see any "Q" in the standards of "John Q." like the "Q" in the disputed signature?

A. I did not.

Q. Will you look at the copy of the name "John Q. Adams" made to this draft will, marked "For identification C. L. C." which you say was written by Henry C. Adams who wrote the body of the will and state whether that "Q" is not exactly like the "Q" of the signature "John Q. Adams"?

A. No, sir; it is not.

Q. It is not an "O," "Q" with a tail to it?

A. Oh, yes; it is, an "O" "Q" with a tail.

Q. And you don't find a standard with that?

A. No, sir.

Q. But, it is the same type of "Q," isn't it?

A. Very nearly.

Q. Then you find one written by "Henry C." in that form and found none by "John Q.?"

A. No, sir.

Q. And you are prepared to say, without question, that this disputed signature is genuine?

A. Yes, sir; I am.

Q. That does not cause you to hesitate for a moment, does it?

A. No, sir. If you will allow me I will explain my reasons. The character of the line of the "Q" at the initial point, as I described in my direct-examination testimony, corresponding with the "A" in the name "John Q. Adams," is identical.

Q. The "Q" and "A" were undoubtedly written by the same person?

A. Yes. I stated why the "Q" I have written here was not written by John Q. Adams. The curve on the left side, Mr. Miller, is as strong and as well developed as "A" in the word "Adams."

Q. But, the "John Q." throughout was written with the same pen?

A. Yes.

Q. Did you not say it was the habit of Mr. Gordon to separate the "r" and "d" of "Gordon"; that that was a characteristic of Gordon's?

A. Yes, sir; the "o" in the word "or."

Q. The "r" and "d" in the word "Gordon," as in the Brooklyn will and other signatures?

A. Yes, sir.

Q. That was his habit, was it?

A. Yes, sir.

Q. And you also said it was the habit of the person who wrote the body of the will, that is, the handwriting of Henry C. of the "Henry C, will" to connect in the body of the will the letter "r" wherever it occurred with the "d" following it, did you not?

A. I don't remember that.

Q. Didn't you say that?

A. I said in the base of the "d."

Q. No, the connection between the "r" and the "d?"

A. I did say so. The "or" is not joined to the "d." This is a characteristic of Gordon and it does not appear in the will and is not a characteristic of Adams.

Q. And in the disputed signature you say that characteristic appears?

A. Yes.

Q. And you speak of that as an evidence of genuineness?

A. Yes, sir.

Q. Will you please look at the name "Gordon" as the name appears on the draft will marked "For identification C. L. C." which you say is in your opinion in the handwriting of Henry C. Adams, and say if that same peculiarity does not appear?

A. It does.

Q. Then, sometimes Henry C. Adams did not connect his "r's" and "d's?"

A He did in this instance.

Q. Well, does that impair the weight that you attached to that circumstance in your evidence?

A. Well, the character of the line is what I was demonstrating. I wished to demonstrate between the "r" and the "d" and the "r" and the "n."

Q. You told me on cross-examination that the connection of the letters was one of the facts or circumstances that you take in consideration in determining the genuineness of a writing, and on your direct-examination you said in this disputed signature the "r" and "d" were separated; that that was a characteristic of Gordon as disclosed in the standard signatures and that that was not a characseristic of Adams, judged by the body of the will. I now show you a sample where that same peculiarity like Gordon's appears?

A. That is not in the body of the will; it is in the signature.

Q. Does not the calling of your attention to that

have any weight with you in forming a judgment as to the genuineness of this signature?

A. Not when it occurs but once.

Q. Is not a signature as a signature far more valuable for comparisons, than a letter in the body of an instrument?

A. Yes.

Q. That turns against you in this case; is that so?

A. I don't see it.

Q. You don't say so?

A. I don't see it, I say.

RE-DIRECT BY MR. COLLINS:

Q. The exception proves the rule, doesn't it, Mr. McClelland?

A. Yes, sir.

Q. Mr. McClelland, what relation do you understand Henry Adams and Alonzo C. P. Adams, who signed as attesting witnesses, to have born to one another?

A. Well, I don't know.

Q. What blood relation were they, as you understood it?

A. I understood they were brothers, but I didn't know that until I was so informed.

Q. You spoke of them as such a little while ago, in your testimony?

A. Yes, sir.

Q. Henry Adams was the father of Alonzo C. P.?

A. Well, I thought they were brothers.

Q. That Henry and Alonzo C. P. were brothers —I heard you speak of them as brothers. Alonzo and John were brothers, but Henry was the father of Alonzo and John?

A. Yes.

Q. What relation did you understand Henry C. bore to Henry—Henry C. who drew the will, bore to the Henry who signed it?

A. I thought he was the father.

Q. You thought Henry C. was the father of Henry?

A. Yes; and the three witnesses to the will were brothers.

Q. And that this old gentleman here was the father of the three witnesses?

A. Yes, sir.

Q. Now, does it follow that because in some cases there is a family resemblance in the writing of members of the same family, necessarily there must be a similar resemblance between other members of the same family related in the same way?

MR. MILLER—Objected to.

Question allowed.

A. I think not.

Q. Being now correctly informed that Henry C., who drew the will was the son of Henry, who was the witness, does the fact that you see no resemblance between the body of the will and "Henry Adams" attesting witness, seem to you at all strange —does that make any difference in your opinion?

A. No.

Q. In other words, it I understand, if you find a family resemblance it does not surprise you; but, if you don't find it that does not surprise you either; it frequently happens there is a resemblance?

A. Yes, sir.

Q. Even between members of the same family you have said there is a habit?

A. Yes.

Q. You have said that there is a habit of Henry C. Adams, who drew the body of the will, to put a shoulder to his own small "o?"

A. Yes.

Q. Is the shoulder of the small "o" alike in characteristics with the shoulder of the small "o" that appears in the "Geo. P. Gordon" signature and, if not, point out the difference?

A. They are not alike.

Q. Point out the difference?

A. The shoulder on the "o" in the body of the will is more pointed and is drawn down from the top of the "o" toward the base line, in all the cases where he makes the shoulder on the "o" or on the next letter.

Q. Instead of being horizontal, as in this case?

A. Yes.

Q. And, is the "o" which has the shoulder at all alike in characteristics with the "o" in the word "Gordon" which has the shoulder?

A. No.

Q. So that from the mere fact that both have shoulders you draw no conclusion that one hand drew them both?

A. Yes.

Q. You do not draw that conclusion?

A. I did not draw the conclusion.

THE ORDINARY:

Q. In this Exhibit C. L. C. for identification, do you find shoulders there on the three "o's" in the signature "Geo. P. Gordon?"

A. I find them, but the character of the line is drawn down, as I pointed out in that "Gordon" in P 1.

MR. COLLINS—They are not drawn down in P 1.

A. I didn't mean to say they are drawn down. I say in C. L. C. Exhibit they were drawn down and were not made as I have in P 1 explained.

Q. Then, where the "o's" in the signature to the draft shown you by the Court all have shoulders, the shoulders are made in an entirely different way from the way they are made and connected with the next letter in the signature P 1. Am I right?

A. Yes, sir; they are short.

Q. And come slanting down, do they?

A. Yes.

Q. Mr. McClelland, you have said that it was not

the prevailing habit of George P. Gordon to make a shoulder or loop to his "o's," though you found many instances of his doing so. You also were unable to find in looking through the standards any case where all three of the "o's" was so made, except a couple of instances that were not quite clear?

A. Yes.

Q. How do you account for the fact that in this will signature P 1, the "o's" do all appear to have shoulders or loops, apparently?

A. Well, I can't account for that in any other way than possibly the position of the hand when the man was writing. The space that was allowed to him upon which to write, the condition of the ink, the consistency of the ink and the condition of the paper.

Q. Whether or not he was cramped in position in writing—would that have anything to do with it?

A. Yes, it would, most undoubtedly. If in writing he had free use of the fore arm, as I have on this table, to make a free movement; or, if I had my hand placed in this position—or arm rather (Illustrating)—

Q. (Interrupting.) With the elbow off the table?

A. Yes; and resting on the heel of the hand—I would not have the same free movement that I otherwise would have.

Q. You would be more likely to make these shoulders?

A. Yes.

Q. Do I understand you that in the various standards of George P. Gordon you found exemplifications of all these movements that these writings have?

A. Yes.

Q. So that he had different movements in writing?

A. Yes.

Q. Finger, fore arm and whole arm combined?

A. Yes.

Q. You started to say something which counsel didn't have you finish, when your attention was

called to the draft. C. L. C., "or" in the name "Geo. P. Gordon" where copied as a signature, the "or" did not connect with the "d." You were going to add some qualifications. What were you going to say—something about the character of the line?

A. The character of the line in this exhibit, C. L. C., as well as in the will, the body of the will, the line where it unites with the top of the "o" instead of being a blind loop, as you call it in P 1. it unites angularly and sharp where the line is down towards the base line.

Q. Which line?

A. The line which connects the "o" and the "r" and the "o" and the "n" in the word "Gordon"; the character of the line between the "o" and the "r" and between the "r" and the "g" in the word "George."

Q. Those things you were about to speak of, but, s there not also a difference in the character of the line, although it fails to connect between the "r" and the "d"—is there any difference in the character of that connecting line between the "r" and the "d"? You have not mentioned that.

A. Well, the character of the line between the "r" and the "d" is a very full horizontal right curve; it curves toward the base line?

Q. In which?

A. In the "r" and the "o."

Q. I am asking about between the "r" and the "d"?

A. Well, between the "r" and the "d" in the word "Gordon"?

Q. Is the character of the connection between the "r" and the "d" although the line does not go to the "d" different from the character of lhe line in Gordon's "r"?

A. In P 1?

Q. Throughout Gordon's?

A. It is different.

RE-CROSS:

Q. There is one matter about the resemblance of writing in the same family which I would like to ask you about- Didn't you say on your direct-examination that such resemblance might exist between father and son, as well as between brothers?

A. No, I didn't?

Q. They are not of the same family in the sense you used the word "family"?

A. No; not in the sense I used the word "family."

Q. But in this case you say there is a resemblance between Alonzo C. P., and the father and Henry?

A. I guess I did, but I thought they were brothers.

Q. Well, now you know they are not brothers; but father and son, does that similarity still exist?

A. Yes.

Q. Is it not a fact that in testifying as an expert, when you can work this argument to the advantage of your case, you use it, and if not, you leave it out?

A. *No, sir;* I will state that many times I have been called as an expert in which my opinion did not agree with the parties who called me.

MR. COLLINS:

Q. And then you declined to testify?

A. I did not testify. They didn't want me.

JONATHAN WOODRUFF, a witness produced on behalf of the proponents, being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live, Mr. Woodruff?

A. Rahway.

Q. And have lived there how long?

A. Some 50 or 60 years.

Q. What is your age?

A. I have entered my 77th year.

Q. Were you president of the Union National Bank of Rahway?

A. I was, sir.

Q. During what periods?

A. From the organization of the bank until they closed it up.

Q. And were you acquainted with George P. Gordon, who owned the Gordon Press Works at Rahway?

A. Very well; yes, sir.

Q. Was he or not a depositor of that bank?

A. He was, for a good many years.

Q. Was he a depositor up until the date of his death?

A. I think, as near as I can remember, somewheres from 1866 or 1867 up to the time of his death.

Q. Did he frequently come to the bank?

A. He did.

Q. Where did he reside?

A. He resided just outside of the city limits, or rather out in Woodbridge township. He had a country residence there.

Q. When did he come there to live?

A. That I can't remember.

Q. About when?

A. I think it was previous to 1865.

Q. From the time he came there, about the time you mentioned, how long did he continue to reside there?

A. Well, I think he resided there until he went down South and was taken sick and died.

Q. Did you ever visit him there?

A. I have.

Q. Did you ever observe or know or hear of any change in the manner of conducting that establishment there after he went there to live, until he went to Norfolk and died?

A. I do not, sir.

Q. Was he or not accustomed to stop at your bank?

A. Very frequently.

Q. How did he come?

A. He came down in a horse and carriage, his wife frequently with him. He came in and stopped and stayed there a while and sent his horse and carriage home.

Q. Then he would take a train to New York?

A. Then he would take a train to New York.

Q. That was in the morning?

A. Yes.

Q. Did that continue after 1876?

A. I think it was just the same up till the time he went away down South.

Q. How often would he come in there?

A. I should say from three to sometimes every day in the week. He made it a sort of headquarters. He drove down there and come in and chatted a few words.

Q. Have you seen him write?

A. Yes.

Q. Were you familar with his handwriting?

A. Somewhat, sir.

Q. Did you have, previous to to-day, submitted to you for examination the artotype 99, or a duplicate thereof, of the last page to the will, including P 1, including his signature in these artotypes, 101 to 113, to examine?

A. I have had papers presented to me by two or three different parties.

Q. This copy of the will among the rest—this artotype copy of Mr. George Gordon's signature-photograph?

A. I think I have seen the signature to the will.

Q. Now I show you the original, P 1, purporting to be the will in this case of which this artotype 99 is a copy, and I ask you where was this alleged will submitted to you first to look at.

A. I don't know that I have seen the will excepting this morning, a few minutes ago, out there.

Q. Then you did see it this morning?

A. A few mieutes ago.

Q. In your judgment in whose handwriting is the signature to that will P 1?

A. Well, it looks to me like Mr. Gordon's.

Q. You believe it to be such?

A. I shouldn't hesitate to pay a check with that signature.

CROSS-EXAMINED BY MR. SAVAGE:

Q. Mr. Woodruff, did you have submitted to you on a former occasion some of the photographs of Mr. Gordon's signature, taken from checks, at your house?

A. Yes, sir: I did.

Q. I submitted them?

A. Yes, sir.

Q. And also a photograph of the signature of the will?

A. I think you did, but I am not sure.

Q. And you spent some little time in your parlor with me in comparing the signature of the photograph of the will and the signature of some of the checks drawn on your bank—The Union National Bank, is that so?

A. I don't remember that you had any of the checks of the Union National Bank—did you?

Q. Well, I had a number of checks there?

A. You had checks; but, I think they were of a New York bank which you showed me.

Q. You recognized the signature of Mr. Gordon on those checks?

A. I did, sir.

Q. Mr. Woodruff, did you or did you not express doubt to me as to the genuineness of this signature shown you at the time, purporting to be a photograph of the will—of the signature to the will?

MR. COLLINS—This so far has been entirely irregular, without producing the papers. Is this the photograph—D 63?

(Unanswered.)

MR. SAVAGE:

Q. Is that the photograph I show you?

A. I can't say.

Q. Or a copy of it?

A. That I can't say, Mr. Savage.

Q. You recognize that as similar to the one I showed you?

A. You showed me a number of checks on the Nassau Bank.

Q. Did I show you also a photograph similar to that?

A. It is very possible, but I couldn't say. I wouldn't like to say you did or did not.

Q. At that time did we not have a photographic signature of Mr. Gordon to the will—have it in comparison with other signatures of Mr. Gordon?

A. I think you had.

MR. COLLINS:

Q. In the way that D 63 is?

A. Yes.

MR. SAVAGE:

Q. Now, Mr. Woodruff, didn't you express to me at that time a doubt as to whether that was Mr. Gordon's signature?

MR. COLLINS—As to whether what was Mr. Gordon's signature?

MR. SAVAGE—The signature to the will.

MR. COLLINS—As to whether this signature at the bottom of D 63 was the signature to the will?

(Unanswered.)

A. My impression is, Mr. Savage, now, that I told you it looked very much like Mr. Gordon's signature.

MR. SAVAGE:

Q. Didn't you in that interview point out to me dissimilarities between the signature on the will and the photograph of the check signature?

A. Mr. Savage pointed out little discrepancies to me on those and I said, "Yes, I see them now when you point them out." On the bottom twirl of the "G" I think Mr. Savage pointed out the difference, and I said I could see a difference.

Q. Did you offer to find for me the signature book of the Union National Bank?

A. If I didn't at that time I furnished it to you afterwards.

Q. I say, you offered to furnish it to me and subsequently did furnish it to me?

A. Yes.

Q. Just examine this book and tell me whether this is the signature book (handing witness Exhibit D 95) of the Union National Bank?

A. It is, sir; this is the signature book.

Q. You furnished it?

A. Yes.

Q. Did you compare the signature in that book, D 95, with the photographic signature to the will, at the bottom of D 63?

A. I don't remember, certainly, whether Mr. Savage had the will presented to me or not.

Q. This photograph?

A. You had quite a large number of checks and I think several photographs.

Q. Well, did you make comparisons?

A. We did; we made comparisons.

Q. Did you at that time consent to testify in this case?

A. I don't think that you asked me. If I did I should ——

Q. (Interrupting.) Didn't you ask me, as a favor, not to subpœna you, because you were then suffering from the grip and confined to your house?

A. I don't think I did, Mr. Savage. I have no recollection of it.

Q. Mr, Woodruff, isn't it the fact that you were then ill at your house and had been for some weeks?

A. I had the grip, I think it was last year, for about a month, pretty severely.

Q. Did you not request me at that time not to subpœna you if I could get along without you, or something like that, as a special favor?

A. I simply say I have no recollection about it.

Q. Were you not willing, after comparison of the photographs with the signature book, to testify that in your opinion that was not the signature of Mr. Gordon, at that time?

A. Oh, no; I don't think I could.

Q. Did you tell me so?

A. I think I told you that it looked very much like Mr. Gordon's signature. That is my recollection.

Q. But, did you express an opinion as to whether or not it was?

A. Well, I don't remember whether I even doubted it; I don't remember, Mr. Savage, that I did.

Q. Mr. Woodruff, I would like you to examine that signature to P 1, the will, critically, and compare it with the signature in the book of the bank, and tell the Court whether, in your opinion, that is a genuine signature?

MR. COLLINS—Which?

MR. SAVAGE—P 1.

A. I would hardly like to express an opinion upon it, and yet I think if he came with a check with that signature I would pay it.

Q. It is twelve years since you have had any experience in the banking business, is it not?

A. Yes, sir.

Q. What business have you been engaged in in the last twelve year?

A. Principally in real estate.

Q. Practically attending to your own affairs?

A. Yes, sir.

Q. And have you seen Mr. Gordon's signature except on the occasions you have mentioned, when I showed it to you or when it was shown to you by the counsel on the other side?

A. I have had checks shown me by the counsel on both sides, I think.

Q. Mr. Woodruff, do you consider yourself an expert in handwriting?

A. No, sir.

Q. Will you please point out to the Court any similarity or the similarity between those two signatures, P 1, and D 95?

A. I think the "Gordon" except the lower twirl on the "G"—the "ordon" is very similar.

Q. Do you see a similarity in the "G's"?

A. I see in the lower twirl there is a difference.

Q. How is the "P"?

A. Well, there is a difference there in the top of the "P"; one is much smaller than the other.

Q. Have you examined the flourish at the end of the signature?

A. Of course, I can see a little difference on the "ordon"; it is very similar, very accurate. The flourish under there in the signature book is different from that.

Q. Mr. Woodruff, just examine the signatures "Geo. P. Gordon" on P 106 to 113 and tell me if Mr. Gordon did not write a free, flowing hand?

A. Allow me to ask, are those genuine signatures of Mr. Gordon?

MR. COLLINS—Those are all genuine.

A. Well, that don't look as much like Mr. Gordon's signature as that P 1, does.

Q. Did Mr. Gordon write a free, flowing hand?

A. Not remarkably so; sometimes more than others.

Q. Why do you say sometimes more than others?

A. Because, if he happened to be in a hurry he

would write his name different from what he would sitting there and going more deliberately about it?

Q. Do you recollect any occasion when Mr. Gordon came into the bank and wrote his signature hurriedly, where it was different from his usual signature?

A. No; I don't remember any occasion.

Q. Then, when you say he wrote differently that is simply your opinion, not based on any particular fact?

A. No particular time that I can refer to.

Q. Mr. Woodruff, I want to call your attention again just for a moment to the interview which took place at your house; will you swear positively that you did not express to me in that interview doubt as to the genuiness of the signature P 1, as shown you by the photograph?

MR. COLLINS—I object to that. What does it prove?

THE ORDINARY—It is a declaration inconsistent with the present testimony.

MR. SAVAGE—I want to refresh his recollection.

Question allowed.

A. I don't remember that I did. My impression is that I did not.

Q. Your impression is—are you clear on that?

A. Well, on the contrary Mr. Savage, my impression is that I told you that it looked very much like Mr. Gordon's signature.

Q Will you swear you did not?

THE ORDINARY—He is swearing under oath now.

A. I can't swear any stronger than this.

Q. Let me refresh your recollection. Didn't you say you would like to examine that signature in com-

parison with the signature book of the Union County Bank and that I should call upon you a day or two later, when you had made the comparison?

A. It is possible.

Q. Didn't you get the book and make the comparison?

A. I think I did.

Q. And after you had made the comparison didn't you lend me the book for the purpose of this suit?

A. Yes.

Q. Now, at the time the book was loaned and after you had made the comparison, didn't you express doubt as to the genuiness of the signature, then?

A. Mr. Savage, my impression is that I did not, to the best of my recollection.

Q. Mr. Woodruff, Mr. Gordon was a director in your bank at one time?

A. Yes, sir.

Q. And the bank failed?

A. No, sir; it did not.

Q. It went into voluntary liquidation?

A. Yes, sir.

Q. It didn't pay 100 cents on the dollar?

A. It didn't pay the stockholders in full. It did pay the depositors in full.

Q. Mr. Gordon was also director of the Dime Savings Bank in Rahway, was he not?

A. Yes, sir.

Q. Did that fail also.

A. That failed.

Q. What did that pay to its depositors?

A. I don't know.

Q. Did it pay anything?

A. I don't know.

Q. Didn't Mr. Gordon voluntary make a donation to the receiver of that bank, in order that its depositors should receive some dividend?

A. I understood that he did.

Q. Did you ever hear Mr. Gordon at or about that time express his opinion in regard to the banking institutions in Rahway?

A. I did not, sir.

Q. Shortly after the failure of the Dime Savings Bank, did not Mr. Gordon take up his residence, at least for a part of the time in Virginia?

A. I don't know whether he took up his residence there or not; he went down there, but I don't know how long he remained there.

Q. Isn't it a matter of fact, that after the failure of the Dime Savings Bank he remained in Rahway for a short time—one year after that time?

A. I have no recollection about it.

Q. Isn't it a matter of fact that he was out of Rahway during the last few years of his life, and a great deal more than he was in town?

A. I think not, although I can't remember positively.

Q. You remember that his place was in charge of servants, and the family was not there the best part of the two or three years prior to his death?

A. I don't know about that.

Q. You know that Mr. Gordon was not in Rahway; you didn't see him in Rahway as much the last two or three years as you had previously.

A. No, sir.

Q. Didn't he substantially sever his connection with Rahway as a place of residence after the failure of the Dime Savings Bank?

A. I never thought he did, and I never knew he did, and never supposed that he did.

EZRA C. WILLIAMS, having duly affirmed, being called as a witness in behalf of the deponents, deposes and says:

EXAMINED BY MR. COLLINS:

MR. MILLER—I understand this witness is called on the question of character, and I suggest that perhaps we have witnesses enough on that question.

THE ORDINARY—It does not appear what the examination is to be.

Q. Where do you live?
A. West Orange.
Q. What is your business?
A. I am a partnes in a plumbing establishment.
Q. What is your age?
A. Forty-two next January.
Q. How long have you lived in Orange?
A. Twenty-two years.
Q. Do you know Henry C. Adams, now in Court?
A. I do.
Q. How long have you known him?
A. Six or eight years.
Q. What has been your means of knowing about him?
A. He was in the habit of dropping in my office frequently, almost daily. I am well acquainted with his sister. She has been a customer of the establishment for the last twenty years.
Q. His sister?
A. His sister; yes, sir.
Q. And you became well acquainted with Henry C.?
A. Yes.
Q. Do you know his reputation for truth and veracity in the commnnity in which he dwells?
A. I do.
Q. Is it good or bad?

MR. MILLER—Objected to.

THE ORDINARY:

Q. Will you tell me what you mean by reputation?
A. The general opinion of a man, the public opinion, the sizing up of a man?
Q. How do you estimate that?
A. Why, by common talk, the standing he has in the community?

MR. MILLER—I take the objection that the counsel on the other side have called not less than twenty witnesses as to character, and I simply suggest that this be stopped, in the discretion of the Court.

THE ORDINARY—Is it the purpose of the Counsel to pursue the calling of these witnesses until the Court stops it, and then to say they could have produced more?

MR. COLLINS—No, sir. I have no such purpose or thought.

The question objected is allowed and repeated to the witness.

A. Oh, first-class.

CROSS-EXAMINED BY MR. MILLER:

Q. None higher in Orange?
A. I should say not.
Q. Have you had any business relations with him?
A. I have.
Q. In what way?
A. Sold him goods.
Q. Is that all?
A. That is all.
Q. Are your social relations pleasant?
A. Very.
Q. He is a sociable, affable gentleman?
A. He is.

WILLIAM J. TINGUE—A witness produced on behalf of proponents, being duly sworn according to law on his oath saith:—

EXAMINED BY MR. COLLINS:

Q. Mr. Tingue, where do you live?
A. Port Chester, New York.

Q. How old a man are you?
A. Fifty-two.
Q. And in what pursuit are you engaged?
A. I am a manufacturer.
Q. Of what?
A. Woollen and plush goods.
Q. Of Tingue, House & Company?
A. Yes.
Q. Where did you formerly reside?
A. Fort Plain is my native place.
Q. And when did you leave there?
A. January, 1866.
Q. And have lived there all your life up to that time?
A. Yes, sir.
Q. Did you know Henry C. Adams in Court to-day, up to the time when you left?
A. Yes, sir.
Q. How long had you known him?
A. I have known him from a child up; we had grown up together.
Q. How near to your place of business in Fort Plain was his office?
A. Next door.
Q. Do you know and did you know his reputation for truth and veracity in the neighborhood of where he dwelt in Montgomery County?
A. Yes, sir.
Q. Was it good or bad?
A. Good.

CROSS-EXAMINED BY MR. MILLER:

Q. You were twenty-seven years old in 1866, weren't you?
A. About that.
Q. And what was your business at that time?
A. I was a merchant; a dry goods merchant.
Q. Keeping a store?
A. A dry goods store, in Fort Plain, New York.
Q. Did the Adams family deal with you?
A. Yes, sir.

Q. They were customers?

A. Yes, sir.

Q. Your relations were pleasant and social, Mr. Tingue?

A. Always.

Q. You had no relations with Henry C. Adams?

A. Yes.

Q. Buying goods?

A. Yes.

Q. Where did you meet him—in your store?

A. Well, we grew up together; I couldn't say where we were together, perhaps every day. His office was next to my store, and I would perhaps see him every day.

Q. You regarded yourself then as a personal friend of Henry Adams at that time?

A. Yes, sir.

FRANK JONES—A witness produced on behalf of the proponents, being duly sworn according to law on his oath deposeth and saith:—

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. Orange, New Jersey.

Q. In what business there?

A. Pianos and organs and music.

Q. How old a man are you?

A. 48.

Q. And how long have you lived there?

A. Between 11 and 12 years.

Q. You have kept a piano establishment all this time?

A. Yes; that is, in the music business.

Q. Do you know Mr. Henry C. Adams now in Court?

A. Yes, sir.

Q. How long have you known him?

A. Probably ten years,

Q. What have been your relations with him?

A. He very often comes to see me in my place of business.

Q. And how well do you know him?

A. Well, I see him probably three or four times a week, and have done.

Q. And do you know others who know him?

A. Yes, sir.

Q. Do you know his reputation for truth and veracity in the neighborhood where he lives?

A. He is thought a great deal of there.

Q. (Repeated).

A. Yes.

Q. Is it good or bad?

A. Good.

CROSS-EXAMINED BY MR. MILLER:

Q. You have musical affinities?

A. Oh, yes, plenty of them.

CHARLES G. WILLIAMS, a witness produced on behalf of the proponents, being duly sworn according to law on his oath deposeth and saith:

EXAMINED BY MR. COLLINS:

Q. You live, Mr. Williams, in Orange?

A. Yes, sir.

Q. What age are you?

A. 33 in December.

Q. What business are you in?

A. Pharmacist.

Q. How long have you been in that business?

A. 21 years.

Q. How long have you lived in Orange?

A. 32 years.

Q. How long have you been in business in Orange?

A. About 22 years.

Q. Do you know Henry C. Adams?

A. I do.

Q. How long have you known him?

A. About 10 years.

Q. What have been your opportunities of becoming acquainted with his character?

A. By his visiting our store.

Q. Is he one of a group of gentlemen who were accustomed to come there?

A. Yes.

Q. For what purpose?

A. For business and social chat.

Q. Social conversation?

A. Yes.

Q. And do you know many people who also know him?

A. Yes.

Q. And do you know Mr. Adams' reputation for truth and veracity?

A. I do.

Q. Is it good or bad?

A. Good.

Q. You say "social and business relations"—what were the business ones?

A. Well, he generally comes in and buys cigars and sits down and smokes them.

Q. That is all?

A. Yes.

Q. Those are the only business relations you had with him?

A. That is all, sir.

CHARLES E. DODD, a witness produced on behalf of the proponents being duly sworn according to law on his oath deposeth and saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. Orange, New Jersey.

Q. And your business?

A. Mason and builder.

Q. For yourself?

A. Yes, sir.

Q. How old a man are you?

A. 52.

Q. Do you know Henry C. Adams?
A. Yes, sir.
Q. How long have you known him?
A. About eight years, I think.
Q. What have been your opportunities for knowing about him?
A. Well, I have met him on occasions socially only.
Q. Only socially?
A. Yes.
Q. Do you know other people who also know him?
A. Yes.
Q. Do you know his reputation for truth and veracity in the community in which he dwells?
A. I never heard it questioned or criticized.

CROSS-EXAMINED BY MR. MILLER:

Q. You know him socially?
A. Yes.
Q. You claim on that point to know all about his reputation?
A. I do not. I say I have never heard it questioned or criticized.
Q. All you mean is that you have never heard anyone say anything about him—against him?
A. That is all.

SOLOMON A. MORTON—A witness produced on behalf of the proponents being duly sworn according to law on his oath deposeth and saith:—

EXAMINED BY MR COLLINS:

Q. You live where?
A. New York City.
Q. How long have you lived in New York?
A. Since April 1.
Q. Before that where did you live?
A. Fort Plain.
Q. Fort Plain, Montgomery County, New York?
A. Yes.
Q. How long have you lived there?

A. All of my life time.
Q. How old are you?
A. 52.
Q. What is your business?
A. I am a fruit broker.
Q. What year were yon born in?
A. In 1839.
Q. In 1868 you were 29 years old?
A. Yes.
Q. Did you know Henry C. Adams, formerly a lawyer in Fort Plain, before he left there?
A. Yes.
Q. How long?
A. The last four years.
Q. How well did you know him?
A. I used to meet him every day.
Q. And you knew the whole community there?
A. Yes.
Q. Do you know what his reputation in that community for truth and veracity was?
A. I never heard it questioned.

CROSS-EXAMINED BY MR. MILLER:

Q. Were you a store keeper there?
A. Yes.
Q. And Mr. Adams used to trade with you?
A. Yes.
Q. Did Mr. Henry C. Adams, Sr., trade with you?
A. He might have bought segars or tobacco or something of that kind.
Q. When you knew Henry C. he used to come in and buy segars or similar articles, and you used to know him personally?
A. I knew him the same as anybody else.
Q. You never had any social relations other than trading with him?
A. That is all.
Q. Was your store near his office?
A. Not very far away.
Q. Used he to stop in and chat with you socially?

A. Not very much.

Q. When you did see him that was the way you saw him?

A. In the store and on the street.

Q. You never heard any one question his character?

A. For truth and veracity; no, sir.

Q. Nor his character in any respect?

A. No; I don't think I have.

Q. Are you sure of that?

A. I don't remember anything now.

Q. Well, are you positive you never have?

A. Yes; I am quite positive.

Q. Quite positive?

A. Yes.

Q. And that is the highest degree of positiveness you will go to?

A. Well, that is as high as I can get it.

WILLIAM B. BLOODGOOD—A witness produced on behalf of the proponents, being duly sworn according to law on his oath deposeth and saith:—

EXAMINED BY MR. COLLINS:

Q. Are you a practising physician and surgeon, doctor?

A. No, sir.

Q. What then,—they call you doctor?

A. No. I studied when I was young enough to get the title, and it has stuck to me. I am a manufacturer.

Q. You are not engaged in any business now?

A. No, sir; not at present.

Q. You are retired?

A. Yes, sir.

Q. Where do you live?

A. I live at Elizabeth.

Q. Did you ever live at Rahway?

A. Yes, sir; at least, I lived in Clark, what was formerly a part of Rahway, three miles from Rahway.

Q. You were formerly in business there, I understand?

A. Yes; I was in manufacturing business there.

Q. Were you acquainted in Rahway?

A. Yes, sir; more or less.

Q. What was the name of your firm?

A. My firm at that time?

Q. Yes?

A. William E. Bloodgood.

Q. You say you were well acquainted in Rahway?

A. Yes, sir.

Q. And did you become acquainted with Henry C. Adams, who sojourned, as he called it, there some years ago, and now present in Court?

A. Yes, sir.

Q. When was that?

A. That was along in 1868 or 1869.

Q. For how long a time did you know him?

A. I must have known him intimately for two or three years. Since then I have not lived there, and have not seen him.

Q. During the time that you did see him under what circumstances did you meet him?

A. I met him socially only; I never had any business relations with him.

Q. What was the character of the intercourse between you and Mr. Adams?

A. In Rahway?

Q. Yes.

A. Well we used to meet. He was musically inclined, and I being the same way our tastes drew us together, in that way; and I met him in that connection, and he has been in my house, and I have seen him in society.

Q. What is the Rahway Lyceum?

A. It was a little amateur theatre. Mr. Adams and myself belonged to the orchestra. It was composrd all of amateurs.

Q. Did you know his reputation for truth and veracity in that community?

MR. MILLER—I want to cross-examine as to his competency.

MR. COLLINS—Very well.

MR. MILLER:

Q. Did you know it?

A. No, not particularly, I never discussed the matter with anybody.

THE ORDINARY:

Q. Was he there sufficiently to have a reputation in the community?

A. I thought so sir; He was there constantly, all the time.

MR. MILLER:

Q. Between what dates?

A. It was along between 1867, '8 and '9?

Q. Do you mean to say that Henry C. Adams was sufficiently and continuously in and about Rahway during 1867, '8 and '9?

A. About that time-

Q. Do you remember any three years when he was continuously there?

A. No, sir.

Q. Isn't it a fact that he merely visited there?

A. I understood that he was visiting.

Q. Then he would go away, and you wouldn't see anything of him for months?

A. Well, I can't say. It seems to me I saw a great deal of him.

Q. Wasn't that all confined to one winter?

A. No, sir; I think not.

Q. You don't know how much you saw him there, and how much you did not see him there, during those three years?

A. No, sir.

MR. MILLER—I submit the witness is not qualified.

THE ORDINARY:

Q. Was he well known to the community?

A. I thought so. I lived out of town; and I did not see him as much as I would have done if I had lived in the town of Rahway. I only met him on occasions when we made appointments.

MR. MILLER:

Q. All you know about it is that you never heard his reputation questioned?

A. No, sir.

EDEN LAIN, a witness produced in behalf of proponents, being duly sworn according to law, on his oath deposeth and saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. In Rahway.

Q) You are a man of what age?

A. 62.

Q. What is your business?

A. Livery.

Q. Did you buy some property adjoining where George P. Gordon lived in the outskirts of Rahway?

A. Yes.

Q. When?

A. I can't tell you exactly, It was between 1865 and 1870.

Q. Between 1865 and 1870 you bought it?

A. Yes.

Q. My notes say in the fall of 1865. and you had some little trouble in getting the title; it was delayed until March 25, 1866?

A. There was no trouble in getting the title; I bought it.

MR. MILLER—May I enquire the materiality of this?

MR. COLLINS—Explaining some of the terms in the will.

Q. Between 1865 and 1867. That is all you will say?

A. Yes.

Q. Of how many tracts did it consist?

A. It consisted of one tract.

Q. A road divided it, didn't it?

A. This tract laid in next to Mr. Gordon's.

Q. Did that have any house on it?

A. No, sir.

Q. Then you bought another tract.

A. I bought all, but part lay on one side and part on the other side; the part on the north side I sold to another party.

Q. There was 15 acres?

A. That is it.

Q. That is on the south side of the road?

A. Yes.

Q. Leading from the Six Roads to Plainfield?

A. Yes.

Q. What do they call the property opposite?

A. The Bramhall.

Q. Did you live in the house on that property?

A. I lived in the house on the property I bought below on the north side of the road—the house next the Bramhall's place.

Q. How long did you live there?

A. 17 months. I went there in October, and I lived till there the next spring.

Q. That would be the spring of 1867?

A. 1867 or 1868; I wouldn't say.

Q. And that you sold?

A. I sold it to George P. Gordon after I sold the north side.

Q. The piece you lived on you didn't sell to Gordon?

A. No, sir.

Q. Whom did you sell to?

A. U. M. Herrick, in the Custom House.

Q. And the other you sold to George P. Gordon?

A. Yes.

Q. When?

A. I couldn't tell you; about two or three years after I first bought it; the deed will tell.

Q. The deed is dated Sept. 7, 1869. Did Mr. Gordon have the refusal of it before he bought it?

A. Mr. Gordon wanted to buy it when I sold the other part on the north side, and I offered te sell it to him then, but he did not come up to my figures and I told him he couldn't have it. Finally in our conversation I agreed to give him the refusal if I had a chance to sell it; and I told him I would, and three or four years after I had a chance to sell and I told him I would do as I agreed, and I wanted him to say then if he would buy it or not, and he bought it on the spot.

Q. At how much an acre?

A. About $225 per acre.

Q. The price that you had asked Mr. Gordon this three years before was how much?

A. $1500.

Q. For what?

A For this piece.

Q. And when you did sell it he gave you $3500 didn't he?

A. About $3500; maybe a few dollars over.

Q. How many acres was there in it?

A. 15 acres and some odd hundredths.

Q. And this piece that he bought was a piece that lay opposite the Bramhall place?

A. Yes, sir.

Q. Did you know Alonzo C. P. Adams?

A. Yes.

Q. How long did you know him?

A. I guess 6 or 8 years, probably more. I knew him sometime—as long as he was up round there.

Q. Were or were not his habits intemperate?

A. They were sometimes.

Q. So as to be noticeable?

A. Well, I have taken him home a number of times myself.

Q. When he was how?

A. He was sometimes in liquor and sometimes he was not.

Q. When you took him home?

A. He was in liquor when I took him home.

Q. And was that a matter of considerable frequency?

A. Of course, it was a number of times. At that time I drove a hack, and I would see him at the depot and he would ask me to take him home, and I took him home. I can't say how many times it was.

CROSS-EXAMINED BY MR. MILLER;

Q. There was no contract existing between you and Mr. Gordon for this propery?

A. No, sir; only a verbal one.

Q. You say Alonzo C. P. Adams was sometimes drunk?

A. Yes, sir.

Q. Was that at night?

A. Sometimes towards the afternoon and sometimes at night.

Q. Late in the day?

A. Yes.

Q. How many times has that happened?

A. I couldn't tell you.

Q. That was towards the last of his life, wasn't it?

A. Yes, sir.

Q. About 1875.

A. And before that, too.

Q. Between 1870 and 1875?

A. When they first came up there till he went away. I used to see him in liquor very often, but not always; sometimes he was right.

Q. How about John—was he sober?

A. I can't say much about him.

Q. How many times have you taken Alonzo home drunk?

A. It might have been ten times and it might have been fifty. I don't know for it never entered my mind.

Q. And it might have been five?
A. Yes, sir.
Q. And it might have been three?
A. More than three.
Q. Did Edward get the same way?
A. I don't know about him. He used to play the banjo.
Q. He didn't get drunk?
A. I don't know whether he did or not.
Q. You don't know that he did?
A. Well, he might have got a little funny once in a while.
Q. You remember Henry C. being down in Rahway about 1868?
A. Yes, sir.
Q. He was there some time?
A. Yes.
Q. And used to talk with you?
A. Yes.
Q. Did he know all about these things that you have testified to to-day?

MR. COLLINS—Objected to, as too general.

Question waived.

Q. He knew about the situation of your farm?
A. Mr. Henry C. Adams?
Q. Yes.
A. Yes; they knew it.
Q. He knew about the situation of your farm, with relation to Gordon's?
A. Yes.
Q. He knew about the situation of your house?
A. Yes.
Q. He knew all the things about the property that you have testified to-day?
A. Yes; I suppose he did.
Q. You have no doubt about it, have you?
A. I won't say for certain, but I suppose he did.
Q. This plot you sold to Mr. Gordon was beautifully located for a residence, was it not?

A. Yes.

RE-DIRECT EXAMINATION:

Q. Did Mr. Henry C. Adams know Mr. Gordon had the refusal of your place?

A. I don't know.

Q. Do you know that he did?

A. I don't know that he did; I never told anybody at all. The reason I did not sell it was because he wouldn't give money enough.

RECROSS-EXAMINATION:

Q. You don't know that Henry Adams did not know about it?

A. No, sir; I don't know.

WILLIAM E. WINSLOW—A witness produced on behalf of the proponents being duly sworn according to law on his oath deposeth and saith:—

EXAMINED BY MR. COLLINS:

Q. You live where?

A. Brooklyn.

Q. You were in some way related to Mr. Gordon's first wife, as I understand it?

A. Yes.

Q. In what way?

A. Nephew.

Q. Have you any interest under this will?

A. No.

Q. Did you know George P. Gordon?

A. I did, sir.

Q. Who had the Gordon Press Works?

A. Yes, sir.

Q. For how long?

A. For a great many years.

Q. And during the last few years of his life did you see much of him?

A. I did; quite a great deal.

Q. For how long?

A. I should judge for the last five or six years.

Q. And for the last four years particularly, how much were you with him?

A. Well, a great deal when he was in New York.

Q. For what period—how did you come to be with him?

A. Well, socially; going there to the office.

Q. Did you go with him to the Centennial Exposition at Philadelphia?

A. Yes.

Q. How long did you stay there?

A. I should say ten days or two weeks, before the Centennial was open.

Q. Did you ever see him write?

A. Yes, sir.

Q. How often?

A. Well, very frequently.

Q. Did he have any habit with regard to writing his name?

A. Well, he had a habit of sitting in his office with nothing to do, scribbling on paper, writing his name and drawing patterns.

Q. You saw the artotype Exhibit P 9,—you have seen it before this day?

A. Yes; the copy of the will.

Q. And you have seen and examined the will signature itself, P 1?

A. Yes.

Q. You went to Trenton with Mr. King, counsel, and saw that there—the will itself?

A. Yes.

Q. In your opinion is or is not the signature "Geo. P. Gordon" to Exhibit P 1, the proper handwriting of your aunt's husband, George P. Gordon?

A. It is.

Q. When he wrote at his office, what sort of a pen did he write with?

A. Well, the last few years he wrote with a gold pen.

Q. Do you remember giving him a present?

A. Yes.

Q. What?

A. A gold pen.

Q. When did you give it to him?

A. Somewhere around 1874 or 1875, when he moved into the Nassau street office.

Q. Where did George P. Gordon live?

MR. MILLER—I object. This should be brought out by proper questions, and not by leading.

(Objection sustained).

Q. What do you know of George P, Gordon's residence—as to where it was?

A. Rahway.

Q. What do you know of it?

A. That was his home. His wife lived there. That was his home naturally, I should think, from the fact that he lived there or went out there.

THE ORDINARY:

Q. How do you know that his wife lived there—how do you know he went out there?

A. Well, I have come to the ferry with him, and knew he took the train and went out there to Rahway.

MR. COLLINS:

Q. Which ferry?

A' Cortlandt street.

Q. That would come over to the Pennsylvania road?

A. Yes.

Q. How many times have you done that?

A. A number of times.

Q. How often since 1874—how frequently?

A. Well, that I don't remember, how frequently. When he was in town, if I happened to be at the office in the afternoon I would walk to the ferry with him, and then go home to Brooklyn.

Q. Have you done that in 1865, 1866 or 1867?

A. Yes; as near as I can recollect it was around that time.

Q. Have you heard him make any remarks when he left the office in the afternoon, and you went with him as to where he was going—what did he call it?

A. If he was going home he would say "I am going home," and if he was going to Brooklyn he would say "I am going to Brooklyn."

Q. Have you on occasions heard him say he was going home, and gone with him?

A. To his house?

Q. Gone home from the office?

A. Yes.

Q. Where did he go to?

A. To the ferry.

Q. What ferry?

A. The Cortlandt street ferry.

Q. What date was that—what years?

A. I don't remember the exact years.

Q. See if you can remember, with reference to the Centennial or any other event?

A. Any years from 1775 to 1877 or around there.

Q. You have heard him speak of going home, and when he has started he has gone to the Cortlandt street ferry?

A. Yes.

Q. And during those periods you said you heard him say he was going to Brooklyn?

A. Yes.

Q. Anything else, did he say anything about Mary.

A. "I guess I will go and see Mary"'

Q. Did you ever see Mrs. Gordon at that Brooklyn house?

A. Never but twice.

Q. What were those occasions?

A. Once, Mr. Gordon's funeral; once in the summer, when Mary was not there.

Q. And when you have been there who was there?

A. Mary only, unless there was some company.

CROSS-EXAMINED BY Mr. MILLER:

Q. You are the son of Martha Winslow, are you not?

A. No.

Q. And she was a sister of Mr. Gordon's first wife?

A. Yes.

Q. If the Mary Agnes will is overthrown in New York, you or your mother come in as a party interested?

A. I presume she would; I don't know.

Q. Have you ever thought of that subject—you have never thought of that subject?

A. Why, naturally she was one of the direct heirs.

Q. Then, why do you speak with such doubt when I speak of you as being a party interested?

A. (Unanswered).

Q. Your mother was interested in the settlement?

A. Yes.

Q. In which Mr. Van Cott appeared?

A. Yes.

Q. Do you know that your mother received money in that settlement?

A. No, sir.

Q. What was your business at the time that you used to see Mr. Gordon?

A. Printing business.

Q. You used to be very frequently with Mr. Gordon, did you not?

A. Yes.

Q. You used to see him, and get money from him, did you not?

A. Yes.

Q. Do you remember his buying the Brooklyn house?

A. I don't remember the time he bought the house.

Q. You remember he did buy a house in Brooklyn?

A. I remember he did buy a house in Brooklyn?

Q. You used to go out with Mr. Gordon at night?

A. Yes.

Q. Frequently. to the theatre?

A. Yes.

Q. Frequently to the theatre in Brooklyn?

A. Yes.

Q. Were you there with him the night of the fire in the Brooklyn Theatre?

A. No, sir.

Q. Were you there about that time with him?

A. I was there a night or two before.

Q. And you went and stayed with him at the house, 155 Columbia Heights, that night?

A. Yes.

Q. And whenever you went with him to the theatre in Brooklyn, you stayed at the house with him?

A. Yes.

Q. Why did you say the only person you saw in the house at Columbia Heights was Mary Agnes Gordon when Mr. Gordon was there also?

A. I didn't understand.

Q. You made a mistake?

A. I made a mistake.

Q. You saw Mr. Gordon there every time and stayed there with him?

A. Yes; when he went to the Brooklyn house I went there.

Q. You fixed the time of staying over one night by the Brooklyn fire, do you not?

A. No, not by the Brooklyn fire. I was home. I was not with him that night.

Q. You used to go about that time to the theatre with him?

A. Yes.

Q. And that was December, 1875?

A. Yes.

Q. And you understood that he had bought the Brooklyn house in 1874?

A. I don't remember the year.

Q. Did you have any disagreement with Mr. Gordon before his death?

A. No, I did not.

Q. And you continued your practice of going with him up to the fall of 1877?

A. Yes.

Q. And when you went to the theatre you stayed with him in the Brooklyn house?

A. Yes.

Q. Do you remember the time when Mrs. Gordon was in Virginia, and Mr. Gordon in the north?

A. Yes.

Q. Do you remember seeing Mr. Gordon at his house 155 Columbia Heights?

A. I went there with him.

Q. He stayed there when his wife was in the South?

A. Yes.

Q. What years were those—1875, 1876 or 1877, weren't they?

A. You can fix them.

Q. Have you any questions about those being the dates?

A. No; it was somewhere around then.

RE-DIRECT:

Q. You have said that you understood that he had bought a house in Brooklyn?

A. Yes.

Q. What did you hear about it?

A. The house was bought before I heard anything about it.

Q. For what purpose was it bought?

A. That I can't say.

Q. You say when he went to Brooklyn you went with him?

A. Yes, generally I went with him, and especially the last four or five years.

WILLIAM B. A. HICKS, recalled, deposeth and saith.

EXAMINED BY MR. COLLINS:

Q. Mr. Hicks you live where?

A. In Brooklyn.

Q. You were already sworn in this case, weren't you?

A. Yes.

Q. And you testified to the handwriting of George P. Gordon, in order to prove certain of the standards?

A. Yes.

Q. You have known George P. Gordon how long?

A. About 30 years.

Q. And your business relations with him were what?

A. As clerk, salesman and manager.

Q. And how familiar did you become with his handwriting?—seeing him write,—seeing papers that had been written by him in the office?

A. Yes.

Q. A great many?

A. Yes.

Q. How long do you say you have been with him?

A. I have known him since 1876; I went with him in 1876.

Q. And were with him from that time up to his death?

A. And I was with him from that time up to his death.

Q. And did you continue with those who succeeded to the business?

A. Yes.

Q. And are still there?

A. Yes.

Q. The receiver found you under the parties in succession when he took charge?

A. Yes.

Q. And you are still there?

A. Yes; still there.

Q. Have you examined, previous to being called as a witness, the artotype known as P 99 in the case, which purports to be a copy of Mr. Gordon's will now propounded,—the last page?

A. I have.

Q. And have you also examined the signature itself, on the will P 1?

A. I have.

Q. In your opinion in whose handwriting is the signature, George P. Gordon, to that will P 1?

A. In my opinion it is the hand of George P. Gordon.

Q. The one who carried on the Press Works and for whom you worked?

A. Who carried on the Press Works.

Q. Where was your place of business under him —where?

A. 99 Nassau street.

Q. In the New York office?

A. In the New York office.

Q. What do you know of George P. Gordon's residence during the last four years of his life?

A. I believe his residence to have been in Woodbridge.

Q. Why do you think so?

A. Because he always lived there to the best of my knowledge.

Q. Did you ever hear of any change in that respect?

A. Never.

Q. What was his custom, when in business in New York City as to where he would go after leaving business?

A. He would go to Woodbridge, as a rule.

Q. And the exception was what?

A. Occasionally he went over to stay in the Brooklyn house.

Q. With whom?

A. With his daughter.

Q. You knew that she lived there?

A. Yes.

Q. What was he accustomed to say, if anything, when so departing at night, as to where he was going?

A. Well, when he went home he would say, "I guess I will go home"; and then he went to Jersey City, and if he was going to Brooklyn he would say, "I am going to 155 Columbia Heights; going to stay with Mary."

Q. Was that habitual with him?

A. That was habitual with him.

Q. He was absent on several occasions during the last few years of his life?

A. Yes.

Q. Where was he then?

A. Norfolk.

CROSS-EXAMINED BY MR. MILLER:

Q. How do you know he was going to Rahway?

A. Because he gave directions to the driver.

Q. Did you go with him?

A. No.

Q. Then, how do you know he went there?

A. Because I have heard him tell the boy where he wanted the driver to go.

Q. That is all you know about where he went to —what you heard him on such occasions tell the boy?

A. Yes. He wanted a coach to go to the Jersey ferry.

Q. Did you go to the Brooklyn house with him at any time?

A. No, sir; never.

Q. You and Mary Agnes were not on good terms?

A. We were.

Q. Don't you know she disliked you?

A. No.

Q. Didn't you dislike her?

A. No.

Q. Are you quite positive about that?

A. Yes.

Q. Your affiliations in this case are with the Doanes and Cornishs?

A. No; not particularly.

Q. Well, if not particular with whom are they except the Doanes and Cornishs?

A. What reference do you mean? I would like most decidedly to see the family win, because I don't think that the family ever got their just dues.

Q. You are sympathetic with them?

A. Yes.

Q. And that is the reason you are for them and this will?

A. No, I was asked to certify to the will.

Q Somebody asked you to come; was it by the Cornishes or the Doanes?

A. I was asked by Mr. Black.

Q. You know he represents Mr. Cornish and Mr. Doane?

A. I don't know he represents Mr. Cornish.

Q. You didn't know that Mr. Black and Mr. King represented them?

A. No.

Q. Or any of the contestants of Mary Agnes Gordon's will?

A. No, sir.

Q. You thought they were only connected with this case?

A. Yes.

Q. Who first spoke to you about this letter?

A. Mr. Black, I think was the first one.

Q. How did he come to find you?

A. I was in the same building with him for years.

Q. Did he seek you out or did you seek him out?

A. He came to see me.

Q. And had you written to him before that?

A. Never.

Q. When was this he saw you first?

A. I think about July, after the death of Miss Gordon:

Q. About a year ago?

A. Yes.

Q. Did he show you the will then?

A. No, sir.

Q. When did you first see this will?

A. Two months ago, here.

Q. In this Court room?

A. Yes, sir.

Q. You say you have seen Mr. Gordon write?

A. Yes.

Q. When did you see him write—just before his death?

A. Yes; in 1876 and 1877.

Q. Have you seen any of his handwriting between 1876 or 1877 and the time this will was shown you?

A. No.

Q. And that was a number of years?

A. Well; yes. I have seen a good many of the papers around the office, checks and letters.

Q. When?

A. In 1880, 1881, 1882 and 1883, and all around there—checks, &c.

Q. You have seen Mr. Gordon write, have you not?

A. I have.

Q. When he commenced signing his signature, he made a sweep with the first member of the "G," didn't he?

A. I don't know whether he did or not.

Q. You have seen him write?

A. Yes, but I paid no attention to how he formed his letters.

Q. You didn't have any money to pay out on his signature?

A. No, sir.

Q. You didn't come in that department of the business?

A. No, sir.

Q. How many times have you seen Mr. Gordon write?

A. I don't know how many times I have seen him

write in the office there, scribbling aud writing letters.

Q. Do you claim to be particularly familiar with his writing?

A. Yes.

Q. How did you become so?

A. My handling his papers that he had written, letters and checks.

Q. And when you saw the signature—this disputed signature to the will—you thought it was his signature?

A. Yes.

Q. Without any question?

A. Yes.

Q. Did you examine the scroll?

A. No; I examined the signature without the scroll.

Q. You examined the "G's"?

A. I examined the signature.

Q. And without any doubt you thought it was his signature.

A. Yes.

Q. Sidney Doane was more familiar with his affairs than you?

A. Yes.

Q. And knew more about his comings and goings than you?

A. Yes.

JERUSHA C. CASE, a witness produced on behalf of the proponents, being duly sworn according to law on her oath deposeth and saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?

A. In New York city.

Q. You are a widow, I think?

A. I am.

Q. Are you the mother of the witness, Julia D. Moore; who testified?

A. Yes.

Q. Was she or not a close friend of Mary Agnes Gordon, the daughter of Mr. Gordon, the printing press man?

A. She was a very close friend.

Q. For how long a time?

A. 25 years, I tbink, at least.

Q. When did you first meet Mary Agnes?

A. When she was 14.

Q. Was she your daughter's bridesmaid?

A. She was.

Q. Who was the groom?

A. George Beebe.

Q. Did you know of her engagement?

A. I did.

Q. How?

A. From their telling of it.

Q. Did you visit Rahway?

A. But once.

Q. When was that?

A. I don't remember, 1869 or 1870; 1869, I think.

Q. The Gordon house?

A. Yes.

Q. Did you hear anything of the Adams' family who were neighbors?

A. Yes.

Q. What did you hear?

A. I heard they were neighbors. Nothing special, but only heard them spoken of.

Q. By whom?

A. By Mary and Mr. Gordon.

Q. As people with whom they were familiar, or with whom they were friendly?

A Very; I should judge, very friendly indeed.

Q. Did you know of Mary Agnes moving to 155 Columbia Heights, Brooklyn?

A. I did.

Q. Did you visit her?

A. I did.

Q. Did you ever have any conversation with George P. Gordon, with respect to that house, and, if so, when was it and what was it?

A. It was in relation to having Mary living there alone. I never saw him there but once.

Q. And when you saw him there that once, how did he come there and how long did he stay?

A. He came that night and left again for Rahway.

Q. That was the only occasion you ever saw him there?

A. That was the only occasion I ever saw him there.

Q. Where was this conversation or interview you had with him on the subject of that house?

A. This very evening.

Q. When was it?

A. I don't remember the year.

Q. About when?

A. I don't remember any circumstance to make me recall just the year. It was the evening after the marriage of one of his nieces and Mary had returned from the wedding.

Q. Was it this Mrs. Bogert?

A. I think it was.

Q. This has been fixed as in 1875?

A. Yes. And Mary had returned from the wedding, and her father had asked her at that time ——

Q. (Interrupting.) November, 1875?

A. November, 1875. Her father asked her at that time when she was going to be married, and how many times she was going to be engaged; and I said to Mr. Gordon, "Why do you leave Mary here alone so much? It is dreadful to leave this girl alone here." And he said it seemed to be necessary—some casual remark; I don't remember the exact words he expressed; but that seemed to be the thought, and Mary had often said she and her mother could not live together.

Q. What did he say about his being there?

A. He said he couldn't be there very often.

Q. What did he say—can you recall just what he said?

A. No; I cannot recall all that he said.

Q. I mean, about not being there?

A. Nothing more, than that it seemed to be impossible for him to be there, and that his home was in Rahway with Mrs. Gordon.

Q. Down to how late a date did you visit Mary Agnes?

A. Till after her father's death.

CROSS-EXAMINED BY MR. MILLER:

Q. You are positive, Mrs. Case, are you not, that in November, 1875, in this conversation with Mr. Gordon, he used this language, his home was in Rahway?

A. Yes.

Q. And the date was November, 1875?

A. It was.

Q. And how many times did you go over to the Brooklyn house?

A. I couldn't tell you that; I went over very frequently.

Q. Between what years did you go?

A. From the time of her moving there till her father's death.

Q. From 1874 till 1877?

A. Yes.

Q. Did you go in company with your daughter?

A. Sometimes I did, and sometimes alone.

Q. You didn't go in company with your daughter?

A. No, not always.

Q. She went more frequently than you did?

A. Yes.

Q. You speak of conversation you had once, or heard at Rahway once, did you not?

A. I don't think I spoke of any conversation at Rahway. I never was there but once, and then I don't remember any special conversation any more than in general.

Q. Have you forgotten what you said on your direct-examination?

A. I said I heard them speak of the Adams' living close by as neighbors.

Q. And that is what you meant to say in your direct-examination—that you heard that?
A. Yes.

CAMILLE E. BAUMANN, a witness produced in behalf of proponents being duly sworn according to law on his oath saith:

EXAMINED BY MR. COLLINS:

Q. Where do you live?
A. Rahway, New Jersey.
Q. Are you a brother of Philip Baumann?
A. Ernest Joseph Philip Baumann.
Q. A witness in this case?
A. Yes.
Q. Do you know what his relations with George P. Gordon were?
A. They were intimate, as far as I know.
Q. You knew George P. Gordon?
A. Yes.
Q. He carried on the press business at Rahway?
A. Yes.
Q. Where did you live in 1865?
A. In 1865, at Morrisania.
Q. And moved to where?
A. Rahway.
Q. How long did you remain there?
A. In Rahway?
Q. Yes.
A. Until now; I am there now.
Q. In what business are you there?
A. Florist.
Q. When did you become acquained with George P. Gordon?
A. In 1869, I should judge.
Q. Did you ever go to his house?
A. Yes, sir.
Q. Was Mr. Gordon living there at that time?
A. Yes.
Q. How near did you live?
A. In Rahway proper, in the suburbs.

Q. How often were you out in the neighborhood of his home?

A. I couldn't specify; probably I was there every evening for a long time or every other evening. I couldn't tell the number of times.

Q. And for how long a time and down to when?

A. Probably a day or two for two or three years.

Q. Then after that not so often?

A. Then after that not so often.

Q. Take it after 1874; how often were you out there?

A. After 1874 I guess my visits ceased, more or less.

Q. To the house?

A. Yes.

Q. But in the neighborhood?

A. I remained in the neighborhood; I lived there.

Q. But, that is two miles away. How often were you in the neigheorhood of the Gordon homestead?

A. We remained two years after. We used to fill the vases.

Q. Of the grounds around the house?

A. Yes.

Q. You don't know much about Mr. Gordon's domestic affairs?

A. After 1874? No.

Q. What do you know about whether he continued to reside in Rahway?

A. My impression was he resided there till he died.

Q. What made you have that impression?

A. I couldn't tell you.

Q. Did you see him around there?

A. Yes.

Q. Where would he be when you saw him?

A. Driving by, or seeing him in town.

Q. How frequently?

A. That I couldn't tell you.

Q. Do you know Henry C. Adams here in Court?

A. Yes.

Q. Do you know whether or not he was on friendly relations with George P. Gordon?

A. As far as my knowledge goes he was always on friendly terms.

Q. Did you know Alonzo C. P. Adams?

A. Yes,

Q. From what time did you know him?

A. About the same period; I couldn't specify as to dates exactly.

Q. Do you know anything about his habits, as to intemperance?

A. They were irregular.

Q. Irregular as to intemperance?

A. Yes.

Q. To a considerable extent?

A. That I can't state. I know I have seen him occasionally under the weather.

CROSS-EXAMINATION WAIVED.

ELIZABETH BURLINGHAME, a witness produced on behalf of proponents, being duly sworn according to law on her oath saith:

EXAMINED BY MR. COLLINS:

Q. Are you the Elizabeth May who has been spoken of in this matter?

A. Yes.

Q. Were you of the Gordon household in the summer of 1868?

A. Yes, sir.

Q. Do you remember a very serious illness of George P. Gordon—that George P. Gordon had that summer?

A. I do.

Q. How long did it last?

A. Well, I couldn't say, exactly.

Q. About?

A. He was confined to the house several days.

Q. What was the character of the symptoms of it?

A. Well; it was the effects of drinking.

Q. Beer?
A. Beer and other things.
Q. Excessive drinking at that time?
A. Yes.
Q. Do you remember some one recommending or prescribing medicine for him?
A. Yes, sir; I do.
Q. Who was it?
A. Mr. Henry C. Adams.
Q. Henry C. Adams?
A. Yes.
Q. The one who is here in Court now?
A. Yes.
Q. Do you remember what he called it?
A. Lactucarium.
Q. Did Mr. Gordon take it?
A. He did.
Q. Do you know what his relations with Mr. Gordon were—Mr. Henry C. Adams?
A. They were intimate friends.
Q. Did they not become closer after this sickness?
A. They did. They became very warm friends.
Q. Did you ever have any conversation with George P. Gordon, in which he asked where his wife was, when she was away one day?

MR. MILLER—I object. What is the point of this?

MR. COLLINS—The point is to prove something that Mr. Gordon said to this witness, with regard to his wife being out with Van Wyck. Mr. Gordon asked the witness, "Where is Mrs. Gordon?" and she responded, "Out driving with Mr. Van Wyck." Then he made a remark which I don't wish to put in her mouth.

WITNESS—Yes, I did.

Q. Where was it?
A. It was one night just before tea time.

Q. Of what year?

A. I couldn't say, for I was at the Gordon house in 1867 and 1868, and I think I went home in the winter of 1869.

Q. So, it was in that period?

A. It was sometime during my stay there, and I am rather under the impression it was in the year 1867 or the fore part of the year 1868.

Q. He came home from New York?

A. He came home from New York.

Q. What did he say?

A. I was busy in the dining-room and he said, "Where is that woman that calls me husband, George P. Gordon?" I says, "She and Mr. Van Wyck went out riding about 3 o'clock and have not returned yet." He said, "Yes, my house, my horse and my wife," and turned and left me and went up stairs to his room.

Q. Did Mr. Gordon have a conversation with you in the year 1868, in respect to his will or making a will?

A. Well, he spoke to me shortly after his sickness, and he said to me after he got up—he always called me Lid—my name is Elizabeth—he said, "I am going to make my will and am going to remember you in it," and I always supposed that was because I was attentive to him in his sickness.

Q. This same sickness that you have spoken of?

A. Yes, sir.

CROSS-EXAMINED BY MR. MILLER:

Q. You were housekeeper for Mr. Gordon during the time you have spoken of?

A. Yes, sir; I acted as housekeeper and companion.

Q. You managed the affairs of the house?

A. Yes, sir; I did.

Q. How were you related to Mrs. Gordon?

A. I am half sister to Mrs. Gordon.

MR. COLLINS:

Q. The same father and a different mother?

A. The same father, two mothers.

MR. MILLER:

Q. What were your relations durirg her life time until after you left there?

A. They were unfriendly from 1869 down; yes, we used to have some little trouble.

Q. Well, you lived apart from that time?

A. Well, I only met her once or twice.

MR. COLLINS—Did you correspond with her?

A. Yes, I was in correspondence with her up to the time of her death?

HENRY C. ADAMS—Recalled, deposes and says:—

EXAMINED BY MR. COLLINS:

Q. Mr. Adams, are there any of your contemporaries at the Bar in Fort Plain now living?

A. There is one living there of the name of Dewey.

Q. And what is his physical condition?

A. I understand that he is paralyzed.

Q. You knew of course, Judge Yost, so called?

A. Yes.

Q. County Judge, was he?

A. Yes.

Q. What were his relations to you?

A. Well, I testified from my knowledge and I repeat his testimony in 1885—that for forty years, ever since he came to Fort Plain, the relations between us were unfriendly. I have that in print.

Q. What were the relations of James Genter to you?

A. Unfriendly; very hostile.

Q. And what were the relations of Henry B. Cushney?

A. From the time I obtained this judgment against

the Foxes I pursued my claim and got a judgment of $6,400, growing up from $375, that they undertook to cheat me out of. From that time he was hostile.

Q. One of the witnesses has mentioned a George Smith, a member of the Bar of that date; he said something derogatory to you. What were your relations to George Smith?

A. From my boyhood we were of the best of friends. He was one of my best friends in Montgomery County.

Q. And continued so down to the time you left there?

A. Yes, sir.

Q. On terms of intimacy, was he, with you?

A. Yes, sir.

Q. How is it with Peter J. Webster, who has been referred to?

A. He was also a school boy with me, and from that time down we were the best of friends. He died in Poughkeepsie in the spring. In the autumn previous he came to Brooklyn and tarried there with Mrs. Schenck, who was a sister to his wife, and while there he wrote me to come and spend the day with him; and I went and took dinner with him and had a friendly talk. And that is the last that I saw of him.

Q. Were your relations intimate with him down to the time you left Fort Plain?

A, Yes, sir.

Q. Had you ever any reason to suppose that either he or Mr. Smith entertained opinions derogatory to your truthfulness?

MR. MILLER—Objected to.

Objection sustained.

Q. Mr. Adams, you have testified on cross-examination when you were called in chief that you drafted three papers in the preparation of Mr. Gordon's will, first, a draft which he took and returned

to you with a memorandum; then another prepared afterwards, which he took; and then a third which is P 1, which he executed. When you prepared the draft No. 2, what did you do with it and with draft No. 1?

A. No. 1, was the first attempt to make a will for Mr. Gordon, from memoranda which he gave me; and when he saw it put together and read it he concluded to change it, and did and gave me the memoranda for changing it and we made the changes in it I believe; and, from that drew another that is No. 2.

Q. I ask you what you did with those papers after you drew No. 2?

A. I gave them as each was drafted to Mr. Gordon, and he carried them and read them and studied on them a few days and made changes and gave me memoranda.

Q. When you gave him No. 2, what did you do with No. 1?

A. I gave it to him. I gave him both.

Q. Both No. 1 and No. 2, together?

A. Yes. The one first drawn and the one drawn from that, with these changes.

Q. Did you ever get back No. 1?

A. No; I did not.

Q. When he brought back No. 2 to you you said he furnished you other memoranda for still further changes; upon what were those memoranda written?

A. They were written on slips of paper that looked like a memorandum pad.

Q. What did you do with No. 2 after you got it back with the additional memoranda?

A. Then I drew from it this No. 3.

Q. What did you do first with the paper itself before you copied it?

A. From the memoranda I took red ink and made the changes that he suggested,—changed some phraseology, to make it read smoother, and erased what he wanted struck out.

Q. And did you do that in red ink on draft No. 2?

A. Yes; and then before anything further was done he took that.

Q. With the red ink on it?

A. Yes.

Q. Then what did you finally do?

A. And then he brought that back and I drew this No. 3 and he executed it.

Q. That is P 1?

A. Yes.

Q. What did you do with No. 2?

A. After this was executed and came back to me I held it.

Q. Now did you do anything after No. 3 had been executed and he had gone away, making No. 2 a complete copy of No. 3, as executed, and, if so, what?

MR. MILLER—No. 3—You mean P 1?

MR. COLLINS—Yes.

A. I made no changes except I added these names from my memory.

Q. That is the name "Geo. P. Gordon" and the names of the three witnesses?

A. Yes, sir.

Q. And you say you did that from memory?

A. Yes.

Q. Do you remember how long after the execution of the paper?

A. I think the same day or the same evening.

Q. Can you tell anything about it?

A. That is my recollection.

Q But, you did it afterwards?

A. Yes, sir.

Q. Now, Mr. Adams, I think you have said that you showed this paper, No. 2, to Messrs. Black and King?

A. I showed it to Mr. King.

Q. What was finally done with it, so far as you are concerned?

A. Well, after I wrote to Mr. King to come and see me I showed it to him. They felt a little anx-

ious about it and I did too; it seemed then to grow into importance, and I suggested it should be put somewhere where it was safe, and it was finally decided to take it to Trenton.

Q. Was it put in an envelope and sealed up and endorsed by you?

A. Yes, sir.

Q. (Handing envelope to witness.) Is this the envelope?

A. Yes.

The envelope referred to bears the following inscription: "Original draft will G. P. G. dated July — 1868. Deposited this 30th of October, 1890, by Henry C. Adams for use of Black and King, Counsellors, &c., 71 Wall street, N. Y., for probate.

H. C. ADAMS,
Orange,
New Jersey."

Q. Did you make that endorsement?

A. Yes.

Q. And seal up the paper?

A. Yes.

Q. And what was done with the sealed package?

A. It was delivered to the gentleman who appeared to be the clerk of this Court.

Q. In the office of the Secretary of State?

A. Yes.

Q. And deposited by yourself?

A. Yes.

It is admitted that the sealed package referred to was opened June 4, 1891, by direction of the Ordinary, by Charles L. Carrick, Esquire, the Exhibit Master, in the presence of Louis V. Booraem, for the proponents, and William Abbett, Esquire, for the contestants.

Q. I show you a paper drawn from that envelope and ask you whether that is the paper, No. 2, of

which we have been speaking, with the red ink changes and with the additions of the names as testified to by you?

MR. MILLER—Draft, No. 2.

MR. COLLINS—Yes; draft No. 2, with the red ink changes.

A. Yes. This is the one.

Q. With the red ink changes and the addition of the names at the foot, as testified?

A. Yes.

Q. How do you account for the fact that you reversed the position of John and Alonzo Adams?

A. Well, that is a failure of memory; that is all. Those names were put there from memory. I intended to keep this as a keepsake, as long as I lived.

MR. COLLINS—I offer this in advance.

Received and marked Exhibit "P 236."

MR. COLLINS—Also the envelope.

Received and marked Exhibit "P 237."

Q. Mr. Adams, when was the last time you ever saw Mr. George P. Gordon alive?

A. The last time was in the Autumn of 1877; I think in this month. It was just such a day as this.

Q. Where did you see him?

A. In Cortlandt street.

Q. What city?

A. New York.

Q. In what direction was he going?

A. This was the early part of the day and he was going to his office; he was going up and I going down.

Q. What were you doing?

A. We sat down in a shoe-blacker's chair.

Q. He did, or you did?

A. He did.

Q. Did he have his shoes polished?

A. Yes. And while he was sitting there he saw me, before I really knew who it was; he waved his handkerchief for me to come across the street and I went across. He asked me how I was getting along and asked about my work and asked how far I had got down, and I said I had got down pretty low, near the end. And he congratulated me and talked encouragingly and said, "I will stand by you. You bring that out." Then I said, "Mr. Gordon, I heard the other day that you have bought a house over in Brooklyn. Are you going to move back to Brooklyn?" "Oh, no," he said, "I bought that for Mary. It is a sort of a home if I want to stay here over night from bad weather, I can go and stay there I have got another home," he said, "down in Virginia. I have got three homes." And after telling me that he says, "But," says he, "that is my home over there." Pointing to New Jersey, "That is my home over there."

CROSS-EXAMINED BY MR. MILLER:

Q. Please give me the date of this conversation, Mr. Adams?

A. Of this last I am speaking of.

Q. Yes.

A. I think it was the 7th of September, 1877; it was before he went South.

Q. Then it was some time after he had bought the house?

A. Yes; but, I hadn't heard of it before.

Q. You hadn't for three years?

A. Yes.

Q. Wasn't it earlier than 1877 that you had this talk?

A. I don't think so.

Q. You have no way of fixing the date?

A. When we had this conversation?

Q. Yes.

A. No; I can't fix the precise date.

Q. Can you fix the year? That is all I want to know?

A. Yes; September, 1877.

Q. How do you know it was September, 1877?

A. I know it was the same year I moved over to Brooklyn. I was living in Brooklyn then.

Q. I call your attention to Exhibit P 236 and heretofore referred to as C. L. C., which counsel on the other side has spoken of as paper No. 2, and which you identified as the second draft of the will of George P. Gordon. You stated here that this paper was completed in all respects as it now appears, both as to black and red ink, before Exhibit P 1, was executed? 1C

A. Yes, sir. P 1, was drawn from this.

Q. This was written as it now stands, in all respects, except as to the signature, but in respect to red and black ink as it appears now, before it was executed? 2C

A. Yes.

Q. Of that there is no question?

A. No sort of doubt.

Q. After you had parted with Exhibit P 1, and after its execution as stated by you, you added to this instrument P 236 the names of Mr. Gordon and of the subscribing witnesses, from memory?

A. Yes.

Q. And that was shortly after P 1, was executed?

A. I believe it was. Shortly after, but I am not sure. 3Q

Q. Was it within a month or so?

A. I should say likely it was.

Q. Is there any question but that it was done in the year 1868?

A. No.

Q. So that this paper was completed as it now stands sometime during the year 1868?

A. Yes.

Q. And of that there is no question? 4Q

A. I don't think there is a bit of doubt of it.

Q. Where has that paper been during these years?

A. This paper No. 2?

Q. Exhibit P 236, which Mr. Collins called paper No. 2, and now marked Exhibit P 236?

A. After the execution and disposition of that business I put it in the drawer of my desk and there it was for all the time.

Q. Drawer of your desk where?

A. In my *Studium.*

Q. Where?

A. In that time it was in my father's house; when I moved away from there I took all those papers along to Englewood and other places where I went.

Q. And among them you took this paper?

A. Yes.

Q. And this paper has been continuously in your possession since the time you made it a completed copy?

A. A completed copy, as you find it there.

Q. This paper has been continuously in your pospossession since the time you made it a completed copy until you deposited it in Trenton, in the envelope marked P 237?

A. Yes.

Q. And that was on the date named, October 30, 1890?

A. Yes.

ARTHUR H. ELLIOTT, a witness produced on behalf of the proponents being duly sworn according to law on his oath deposeth and saith:—

EXAMINED BY MR. COLLINS:

Q. Where do you live, Professor Elliott?

A. I live in Brooklyn.

Q. What is your age?

A. I was 40 years old last July.

Q. Where were you born?

A. I was born in England.

Q. Where were you educated?

A. Partly in England; partly in the United States.

Q. Where in England?

A. At the Royal School of Mines.

Q. Under what professors?

A. The professors I had there were Prof. Tyndale, Hofmann, Guthrie, Franklin and Percy, I think were the men I specially studied under.

Q. Where in this country?

A. In the School of Mines of Columbia College.

Q. Under whom as preceptors?

A. Profs. Rood, Eggleston, Newbury and the other members of the faculty.

Q. In this education what were your special studies?

A. Chemistry and physics.

Q. And what do you include in that, optics—the microscope and photography?

A. Yes.

Q. How long have you studied with the microscope?

A. Since 1868, or around there.

Q. Are you a member of the New York Microscopical Society?

A. Yes.

Q. What experience have you had in microscopical examination?

A. In the adulteration of food and drugs, the examination of fabrics, rocks, rock sections, writings and documents.

Q. When did you first begin the study of photography?

A. About the same time; I began chemistry about 1868 or 1869, I believe.

Q. Do you understand the copying of photographic pictures, copies of writings, etc.?

A. Yes.

Q. Do you understand the enlargement of writings by photography?

A. Yes, sir; I do.

Q. Are you a member of any photographic society?

A. I belong to the Photographers' Association of America; to the New York Camera Club; to the Photographic Section of the American Institute; and the New York Society of Amateur Photographers.

Q. To what men is membership in any of these societies given?

A. To men who are practically and theoretically interested in photography.

Q. Have you held any official place or temporary place in photographic exhibitions?

A. I was once judge of the exhibition of the Photographers' Association of America, when it was held in Chicago.

Q. One out of how many?

A. I was one out of five others.

Q. Out of how many constituents who voted?

A. There were 1,000 members.

Q. Who voted for the judges?

A. Yes.

Q. Is there any photographic work you have done which would make you an authority on photographic subjects?

A. I have been for the last seven years, this is the seventh year, editor of Anthony's Photographic Bulletin in conjunction with Prof. Chandler of Columbia College, and for the past four years I have been with Mr. Jerome Harrison, editor of Anthony's International Annual of Photography.

Q. Whom did you succeed in that position?

A. Mr. Henry T. Anthony.

Q. And he was the head of the profession?

A. He was probably the greatest theoretical and practical man they ever had.

Q. You succeeded him?

A. Yes.

Q. What other position do you hold now, Professor?

A. The Chair of Chemistry and Physics in the College of Pharmacy in the city of New York.

Q. How long have you held that position?

A. Since 1887, I think it was.

Q. Have you given attention to the study of handwriting?

A. Yes.

Q. What first led you to give your attention to that?

A. A comparison of the papers at the College. It is sometimes difficult to decide whether one student helps another or not, and I have often had to decide in the examination whether one student did not help his fellow student out.

Q. And these students in the College of Pharmacy include mature men as well as youths?

A. Yes; anywhere from 13 to 35 years old.

Q. Have you testified as an expert in Court on a matter of comparison of handwriting, as to genuineness of disputed signatures?

A. Yes, sir.

Q. Have you had occasion to notice the effect of circumstances upon the writing of individuals; that is, as to the nervous strain upon a man, or his mental or physical condition?

A. Yes, sir. In the case of an examination paper of a student you will find that when a man knows a question and can write the answer he writes in his usual handwriting, and it is deliberate; on the other hand, he is nervous about a question when he does not understand it or is "rattled" as we say, and he is then liable to write a different handwriting, and sometimes there comes in the question to determine whether he wrote it or not.

Q. Now I want to attract your attention to the enlargement photographs, and ask you whether cartoons considerably enlarging the size of the writing are reliable as exact eulargements of the original, and, if not, why not?

A. Such enlargements as those I see before me (witness refers to Exhibits D 72, 73 and 74; being the

largest of all the cartoons) by the method I understand that they were made, which I understand to be the bromide enlargement process—those must necessarily be distorted, because in each case the paper has to be wet in making the developed print, and the paper stretches and then when it is allowed to dry on these wooden frames, which we call stretchers, it is very liable to pull the writing either in one direction or the other; so that it is almost impossible—I don't say it is thoroughly impossible, but it is almost impossible to get perfect reproductions that way.

Q. Does the irregularity of outline on such an enlargement at all indicate patching or painting of the original writing?

A. No, sir. The outline is dependent upon the perfection of the focus that the original negative was made with, for one thing; and, in the second place, that the paper, if it be rough, would cause an irregularity of outline necessarily.

Q. What is the thoroughly safe method of examining a piece of writing in minute detail, to learn its method of construction and patching, painting, etc?

A. With the microscope, undoubtedly.

Q. Have you examined the signature of George P. Gordon to the will P 1 with the microscope?

A. Yes.

Q. With what power?

A. Up to 150 diameters, or somewhere near there.

Q. Have you also examined the three attesting witnesses' signatures?

A. Yes, sir.

Q. In the same way?

A. In the same way.

Q. Have you examined the various standard exhibits in this case?

A. I have examined what I believe to be all of them; I am not quite sure that I have examined every one. I have examined a large number.

Q. Up to the hundreds in each case, have you not?

A. Yes, sir.

Q. Now, did you examine those standards under the microscope, or not?

A. Yes; some of them I did, but not all.

MR. MILLER:

Q. Did you mark those you examined?

A. I have notes of them; yes, sir.

MR. COLLINS:

Q. And did you examine the body of the will, Exhibit P 1.

A. Yes.

Q. How much time have you given to the examination of the papers in this case?

A. That is hard to say, because I have done a great deal at home as well as here; but, the examination of the document, exhibits, checks, etc., has occupied me here eleven or twelve times as near as I can remember.

Q. And you have seen them in the custody of the exhibit master?

A. Yes. I have seen them at different times of the day.

Q. Have you brought your microscope with you?

A. Yes.

Q. Now, before going into testimony as to the writings themselves, I wish to ask you a word or two as to the photographs. I show you Exhibit D 63. Have you made careful measurements of the originals of the signatures which that purports to give fac similes of, and of the reproductions on the photographs as well?

A. Yes.

Q. Can any one make the measurements for himself—a layman?

A. Yes.

Q. By the use of dividers as a rule?

A. Yes.

Q. What was the result—first generally as to the

check signatures, their reproduction on D 63, as to whether they are longer than the originals?

A. They are shorter.

Q. And what is the fact as to the reproduction of Exhibit D 1, in that regard?

A. You mean the lowest signature?

Q. Yes.

A. That is longer than the original.

Q. A difference of how much, averaging it between the two?

A. I shall have to refer to my notes for the figures. I have all the measurements.

Q. Then just give them all?

A. The checks D 56, that is the one marked July 16.

Q. D 56 is enough.

A. From the initial stroke of the "G" to the top of the tail of "n" in Gordon, in the original it is 2 inches and 14-40 long.

Q. And in the photograph D 63 it is—?

A. In the photograph D 63 it is 2 inches and 11-40 long.

D 57, from "G" at lower curve of the "G" to the end of the loop of the flourish of "n" in Gordon, in the original it is 2 inches and 30-40 long. In the photograph it is 2 inches and 28-40 long.

In D 59 from "G" at the beginning of the first curve of the upper loop to the end of the loop flourish in letter "n" in Gordon, in the original it is 2 inches and 26.40 long. In the photograph it is 2 inches and 24.40 long.

In D 58, from the "G" at lower curve of foot of the letter to the end of the loop of the flourish in "n" in Gordon in the original it is 2 inches and 11-40. In the photograph it is 2 inches and 9-40 long:

In D 60 from the initial stroke of the "G" to the end of loop of "n" in Gordon, in the original it is 2 inches 17-40 long. In the photograph it is 2 inches and 15-40 long.

Now, in the will P 1, from the initial stroke of the "G" in "Geo." to the end of the loop of the flourish

of "n" in "Gordon," in the original it is 2 inches and 22-40 long. In the photograph D 63 it is 2 inches and 28-40 long.

The signature to the will P 1 is only the 99-100 of a per cent. longer than the average of the four signatures, D 57, D 58, D 59 and D 60.

The photograph D 63 shows the will signature to be 99-100 per cent. longer than the average length of the signatures of D 57, D 58, D 59 and D 60.

In D 63 the photograph of the questioned signature is 6-40 of an inch longer than the original of the will, while the photographs of D 57, D 58, D 59 and D 60 are each 2-40 of an inch shorter than the original; making the total difference of length between the photograph of the signature of the will and the photograph of D 57, D 58, D 59 and D 60 to be 8-40, or 1-5 of an inch.

D 56 is 1-40 of an inch shorter.

Q. And, of course, the enlargement of these photographs only emphasizes the difference—makes it greater?

A. Yes. If they were made from the same negatives.

Q. Have you compared the signature "George P. Gordon," Exhibit P 1, with the standard writings that is proved in the case?

A. Yes, sir.

Q. And have you done the same with each of the subscribing witnesses' signature, with the standard of the alleged writer of that signature?

A. Yes, sir.

Q. After such examination what is your opinion of the signature "George P. Gordon" to the will P 1,—is it genuine or is it a forgery?

MR. MILLER—I wish to cross-examine this witness as to his expertness in handwriting.

Allowed.

MR. MILLER:

Q. In what cases have you ever testified by way of comparison of handwriting?

A. In the Monroe case, last year, before Surrogate Ransom.

Q. What others?

A. None others.

Q. You have never testified in any other case?

A. Not in handwriting.

Q. In what cases have you been employed to give any opinions where you have not testified?

A. None other.

Q. Except the examination of handwriting of students, what study have you given to the matter of handwriting?

A. None other.

MR. MILLER—I submit, he is not qualified.

MR. COLLINS:

Q. What did you do in the Monroe will case?

A. The question in the Monroe will ease was, I was shown a writing which was in a aniline ink. It was said to me that that had been pronounced first a forgery, and, second, a photographic transfer from the forgery. I made a careful examination of it by the microscope, and came to the conclusion that it was an original writing in aniline ink, and I compared the signature with the genuine writing of Thomas J. Monroe and convinced myself that it was his writing.

Q. And had you a large number of exhibits?

A. Yes.

Q. Who were the other experts?

A. Mr. Carvalho on one side and Mr. Ames; and on our side Professors Chandler, Vanderwegde and myself.

THE ORDINARY:

Q. Were you called as a chemist?

A. I can't tell that I was called as a chemist especially.

Q. Is Professor Chandler an expert in handwriting?

A. Yes, sir.

MR. COLLINS:

Q. Were you called to testify as to handwriting?

A. Yes.

Q. How often has it happened that you have examinations of handwriting?

A. For a number of years I have had the examination of papers of the School of Mines, students; the students in the College of Physicians and Surgeons, and the students in the College of Pharmacy. I suppose for the past ten or twelve years, each year I must have examined three or four hundred of those papers, and it is always coming up,—a question of whether a student assisted another in his examination.

Q. Who has grown to be the authority on that subject among the faculty?

A. Well, it is usually referred to me.

THE ORDINARY.

Q. Do you mean to say that it is a matter of so common occurrence that you are designated as an expert to detect it?

A. I won't say that.

Q. Or, is it simply a cursory examination in the course of your other examination of the papers?

A. Yes. It is an examination to decide whether a student has been honest or not.

Q. With that express purpose in view; or, is it an incident to the other examination of the papers?

A. These papers are picked out as being doubtful papers.

Q. And referred specially to you?

A. Not always, but they have been.

MR. COLLINS:

Q. Have you been consulted by the other Professors?

A. Yes, sir.

Q. On that very subject?
A. Yes.

MR. MILLER:

Q. In the Monroe case the principal question was of aniline ink?
A. Yes.
Q. And you testified on that?
A. Yes.

THE ORDINARY: I will let the answer to this question be taken.

A. I think it is genuine.
Q. Please give your reasons for such belief?
A. I have made a careful comparison under the microscope of a number of exhibits which contained "George P. Gordon's" signature, and letters containing his handwriting generally.

MR. MILLER:

Q. Are you about to testify reasons based on an examination by the microscope?
A. Yes.
Q. And the microscope is here?
A. Yes.
Q. Can you see it by gaslight?
A. Yes, I think so.

Starting with the signature of "George P. Gordon" on the will, take the first letter "G" of the "Geo."—there is nothing very remarkable about it until we note a pause, forming an angle in the second upward curve of the "G," if I may use this cartoon of "G" as an example at this point here—at the bottom of the "1" form of the first member of the first "G." There is a pause, forming a sharp angle in making the upward curve of the letter, and in the paper there is a minute hole there, which can be shown under the microscope (the witness shows the hole referred to to the Ordinary.)

I can show under a higher power that this hole was in the paper before the writing was made, be-

cause the ink has gone down into the cavity. Under a power of 30 diameters this is quite apparent.

Now, this peculiar break in the turn of the letter there is a feature of the "G's" of George P. Gordon's. I had better call it an angle, because there is no separation--as the writing is continuous.

Q. As I understand, it is intensified in this case by the spreading of the ink?

A. Yes, badly by the corner, as the writer turns the hole he relinquishes his pressure on the pen.

This peculiar angle is also seen in D 17 in the endorsement, in D 33, in D 37, D 42, D 50, P 54, P 70, and P 73. This pause in P 53 appears in both "G's" of the signature.

In P 53 this pause appears in both "G's" of the signature.

In P 54 it is strongest on the second "G."

In P 53 in the first "G" this appears, and there is a break at this point in P 23.

This same pause is also seen in "Gordon," signature of D 43—that is, in the second "G."

Also in the second "G," and endorsement of D 43.

In P 70 it is in the first "G."

It is also seen in D 125.

The next peculiarity of the "G" in "Geo." of the will is the heavy and downward stroke, without a loop in the formation of the lower stem of the letter.

This is also apparent in Exhibit D 101, in the word "good," fourth line, second page.

Also in P 53, third line, in the word "glad."

Also in P 122, in the signature of both "G's" and in the word "give," fifth line from the end,

Also in D 124, in the word "God," last line. This "G" is, however, a fac simile of "G" of the will. It shows a pause at the formation of the second upward curve, and is even a better fac simile of the second "G."

Passing now to the final curl of the "G" of the "Geo." it appears like an imperfect triangle. This same form of curl is seen in Exhibit P 65 in the letter "Y" of the word "Yes," first line.

Also P 71 in the word "Gents," and P 72, the same word, second line.

Also P 78, in the same word.

In the signature of P 79 in the first "G" we see the same curl as on the will.

Also in the second "G" in the signature of P 88.

Also in the "Y" of the "Yesterday," line 8, P 14.

Also in the "P" of the Exhibit P 92—the letter "P" of the signature.

D 123, the "G" of "Geo" has the same curl on the stem as of the will P 1.

At this point a recess is taken until 7 o'clock p. m.

RECESS.

Examination resumed at 7 P. M.

BY MR. COLLINS:

Q. Proceed and let us get on as quickly as possible?

A. Now we take the letter "e." This is a Greek e, that is not always made in the writings of Geo. P. Gordon, sometimes he uses an ordinary "e," but it is perfectly characteristic of his signatures. The same form as like the will "e" as a man would usually repeat such a letter in his signature are seen in Exhibits P 12 and P 16, which is a very close one to that of the will, it is an "e" very close to that of the will. Also in Exhibits P 23, P 25, P 28, P 29, P 55 and P 56—now these are all of the same type of letter as the will "e" and a good feature of the Geo. P. Gordon signature.

Now the "o" in "Geo.," this is a peculiarity to the Geo. P. Gordon signature, it is a closed "o" with a small curl at the top, tending to connect with some other letter. This same type of "o" is seen in the word "over" in the fourth line of Exhibit P 49; also in the "on" of the same Exhibit, also in the word

"worn" in line 13, also in the word "son" line 15 of the same Exhibit. This same form of letter is found in the word "want" line 1 of Exhibit P 60 and in the word "on" line 4 from the end of the same Exhibit.

The same form of letter is found in Exhibit P 51 in the words "too" line 7, "roller" line 9, "roller" line 11, and "over" line 3 from the end, and in Exhibit P 52 it is found in the word "post" line 8, "rollers" line 21 and "order" line 8 from the end.

In most of the signatures of Mr. Gordon as they appear in his checks we note a connection between the "o" in "Geo." and staff of the letter "P." This is apparent in Exhibits D 18, D 19, D 20, D 21, D 22, D 23, D 24, D 25, D 26, D 27, D 28, D 29, D 30, D 31, D 32, D 33, D 34, D 37, D 38, D 39, D 40 D 41, D 42, D 44, D 46, D 47, D 48, D 49, D 50, D 52, D 53, D 54, D 57, D 58, D 59 and D 60, these are in all Exhibits D.

But this connection is not always complete and is sometimes very faint as appears in Exhibits D 16, D 17, D 35, D 36, D 50, D 51 and D 45.

In Exhibit D 43 we have one signature with no connection between the "o" of "Geo." and the letter "P," and two signatures with such a connection.

In this same Exhibit D 43 the order signature of the check is of the same character as that on the will. In that it has no connection between the "o" of "Geo." and the letter "P," it is of the same type as signatures of Mr. Gordon in letters generally.

In Exhibit D 56 in the order signature we note the same want of connection between the "o" of "Geo." and the letter "P," but there is a hook at the top of the stem of the letter "P" precisely as in the will showing a mental connection between the two letters.

Taking up the Exhibits marked P, we note the connection between the "o" and the letter following it in Exhibits P 72, P 73, P 75, P 89 and P 93, but in Exhibits P 36, P 53, P 55, P 56, P 63, P 65, P 13, P 17, P 18, P 24, P 26, P 80, P 70, P 83, this connection is absent or is only faintly indicated.

In Exhibits P 80 and P 83 the connection is very faint indeed—there is more a tendency to omit the connection than to make it especially in the letter signatures.

Now taking the letter "P" of the signature of Geo. P. Gordon—I am now talking of the signature of Geo. P. Gordon to Exhibit P 1 or the contested signature to the will in each case.

The letter "P" of the will has a hook at the top of the stem. This same hook is seen in Exhibit D 45, also in exhibit P 53, P 55, P 13, P 17, P 18, P 24, P 26, P 80 and P 83.

Some of these hooks are identically the same as that seen on the stem of the letter "P" in the will. This hook has the visible evidence of the mental connection of the letter "P" with the "o" of "Geo." that precedes it.

With regard to the "G" of "Gordon" we note the same tendency to form a short angle that I noted in the first "G" but it is a little better defined perhaps. It is the same characteristic letter in the Gordon signature as of the "Geo," that is to say, a tendency to form a sharp angle in turning the corner of the second upward curve of the "G."

Q. Tell us at this point, Professor, whether you observe under the microscope any removal of the pen at that angle in the second "G?"

A. No, sir; the writing is continuous in the first or the second "G."

Q. The second "G?"

MR. —— Please put that under the microscope at about fifteen power.

WITNESS I don't think I can manage that, I have an ordinary hand glass of ten power.

Q. Cannot you give it on the microscope at fifteen power?

A. No, sir; because the lowest objective I have is an inch—yes, I have an inch objective.

Q. Put that on?

A. Yes I can put that on and another eye piece on.

Q. Why not use the same?

A. Because the eye piece is a Zeiss eye piece and goes with the Zeiss objective, that eye piece corrects the color of the particular objective I am using. Now this is a low eye piece and I use an inch objective made by Busch & Lomb of Rochester and this will give ten or twelve diamters, I never measured it in this combination exactly. 1C

MR. COLLINS;

Q. Now please tell us whether you observe under the microscope any removal of the pen at that angle of the second "G"?

A. No, sir; the writing is continuous throughout the blot. 2C

MR. MILLER:

Q. What is that break?

A. A mere sharpness in the angle it is not a removal of the pen, there is nothing to show that the line is broken at all. If the pen was removed you would see a sharp line at the joint, but the color of the ink is continuous throughout, there is no change in the blackness and if the pen had been removed there would have been a line where the pen started again. 3Q

MR. MILLER:

Q. How do you account for that break?

A. A little hesitation in the writing perhaps as the pressure is taken off the pen and the paper is very rough.

Q. There is a change of pressure?

A. Yes, sir; a change of pressure.

Q. Is it well adjusted there under the microscope? 4Q

A. Yes, sir; I do not think that could be adjusted better.

Q. Would what appears there be explained by what you have called a tendency to be a slight break in the ordinary Gordon signature or not?

A. As you find it in many signatures, you find a tendency to break at that point in forming his "G"—that is not to break but to make a slight angle that makes it appear like a break?

Q. Makes it appear like a break?

A. On rough paper.

MR. COLLINS:

Q. Now go on?

A. Now taking the first "o" of the Gordon signature, it is a class of "o" of a good form and of the same type as in the signature of Exhibit P 17, as in the signature of Exhibit P 20 the signature of Exhibit P 21, the signature of Exhibit P 49 the signature of Exhibit P 53 which is very much like the "o" of the will of Exhibit P 1—the "o" in the signature of Exhibit P 53.

It is also found in Exhibit P 54, also in Exhibit D 54 in the "o" of the word "inclose" also in the "o" of "thousand" in the same exhibit. In Exhibit D 45 we note the same type of letter in "o" of the signature. In Exhibit D 43 in the "o" of the order signature, also in the check signature of the same Exhibit.

In Exhibit D 39, D 29 and D 27 we see the same form of "o" in each of the signatures.

Now the letter "r" of the "Gordon" in the will signature Exhibit P 1 is a well marked feature. It is also seen of the same type in Exhibit D 21 in the terminal "r" of the word "bearer" being almost identical in form to that of the will.

This is also true of the letter "r" in Exhibits D 26, D 29, D 46, D 48, D 68 and D 60 and in Exhibits P 74 and P 76 in the signatures.

The same type of "r" is also found in the word "throw" in Exhibit P 52 the last line of the first page. Also in Exhibit P 74 in the word "never" on line 6, also in Exhibit P 75 in the word "presses" line 8,

also in Exhibit P 70 in the word "desire" line 8 from the end. Also in the word "throw" line 7 from the end of the same Exhibit P 70. Also in the word "answer" line 3 from the end in the same Exhibit. Also in the word "for" line 3 from the end of the same Exhibit.

In Exhibit P 75 in the word "orders" line 8 from the end of the first page. This same type of "r" is also found in the word "or" line 5 from the end on the first page of the same Exhibit. Also in the same Exhibit in the word "drag" on the first page line 4 from the end.

In Exhibit P 78 we find the same type of "r" in the word "presses" line 5 from the end.

Also in Exhibit 87 in the word "rotten" line 3 from the end of page one. All these "r's" are of the same character as that letter in the will and if written with a thick pen and thick ink would look like the "r" of that signature.

Taking up the letter "d" of the Gordon signature to the will, we notice that the final curve to the "d" has a definite character and you might almost call it a Gordon curve. This same feature of the signature is seen in Exhibits P 50, P 22, P 25 and P 14, also in Exhibits D 38 and D 50 there is a curve of the letter that is very like Exhibit P 1. It is also found in Exhibits D 53 and D 58—this last, Exhibit D 58 is also very close te the form of the letter to the will of Exhibit P 1.

Now the second "o" of the Gordon. This is an open "o" with a curl to it. Such an "o" occurs in Exhibit P 49, in the word "no," third line from the end. Also in Exhibit P 50, in the word "lower" in the second line, this is very like the second "o" of the Gordon signature, as it is found in the will, in the will signature—that is in Exhibit P 50, also in the "o" of the word "roller" line 10 of that Exhibit, also in Exhibit D 51 in the word "covering," line 7, and the word "nought," line 13 of that Exhibit.

Now taking the letter "n" of the word "Gordon." In this letter we note that the top of the second

downward stroke is lower than the first. This same type of "n" is found in Exhibit P 49 in the word "on," line 7, in Exhibit P 50 in the word "on," line 7, and in the same Exhibit in the word "on," line 11, from the end; and also the word "on" in line 3 from the end of the same Exhibit.

In Exhibit P 55 the same form of letter is found in the word "in," line 6 from the end.

The heavy terminal flourish to the letter "n" is also a prominent feature of the will signature of Geo. P. Gordon.

It varies considerably in his other signatures yet it is constantly presented. It is faintly seen in Exhibits D 16, D 20, D 28, D 29 and D 46, and on the endorsement of Exhibit D 58.

In Exhibit P 16 we note a good example of this heavy terminal flourish.

It is also seen in Exhibits P 18, P 26, P 29, P 50, P 35, P 36, P 55, P 38, P 39, P 62, P 63, P 65, P 68, P 74, P 75, P 83, P 76, P 88, P 89, P 90 and P 92.

Now, comparing these various similarities, the Gordon signature on the will with the admitted signatures in the Exhibits, I am compelled to believe that the man that wrote the signature "Geo. P. Gordon" to the various Exhibits I have mentioned, and also to the body of the writings is the man that wrote the signature to the will, Exhibit P 1.

Q. Have you also examined the signatures of the attesting witnesses to this Exhibit P 1 and have you compared them with the Exhibits and standards of the genuine writing of the respective persons whose names there appear?

A. Yes, sir.

Q. After such comparison what is your opinion as to the genuineness of those signatures?

A. I believe they were written by the man who wrote the exhibits that are standards respectively.

Q. Why do you think so?

A. From an examination of certain peculiarities of

the admitted signature and comparison of the signature with those on the will Exhibit P 1.

Q. Proceed?

A. In the will signature of "Henry Adams" the curved top of the second stroke of the letter "H" is a feature of the signature. Comparing this with the "Henry Adams" in the Exhibits it is found in nearly all of them, but it is stronger in Exhibits P 131, P 132, P 133, P 152, P 159 and P 167.

It is also seen in the trust deed I have forgotten the number of that Exhibit.

In the letter "A" of the Adams signature, there is a pressure at the initial stroke—this is found in Exhibits P 139, P 146 and P 153.

The curve of the staff of the letter "d" of the word "Adams" in the "Henry Adams" signature is also a prominent feature, the stem of the "d" or staff of the "d." This is found in Exhibit P 174, also in the trust deed and also in Exhibits P 173.

Then again in the trust deed the small "a" of "Adams" is like the will and the "e" of the "Henry" is almost a fac simile of the will. Those are very perfect letters in the trust deed and they are very perfect letters in the will and they compare very well.

In the will signature of "Alonzo C. P. Adams" a characteristic feature is the letter "C" which is found to be the same in Exhibits P 133, and P 162.

Now taking the letter "P" as another feature of the signature of "Alonzo C. P. Adams," we note that the top of the letter is broken, it is seen in Exhibits P 174, P 177 and P 183.

Another feature of this letter "P" is that it inclines towards the first upward curve of the letter "A" in front of it, that is the letter "A" of Adams, it inclines towards the first upward curve of the letter "A" that is in front of it. This is seen in Exhibit P 131, in the endorsement in Exhibit P 179 and P 133 in the endorsements and in P 174.

In the signature of "John Q. Adams" on the will the character of the "J" in the word "John," also the

connecting line of "o" and "h," also the curve of the base of the letter "d" are features of the signature aud they are seen in Exhibit P 185.

Another feature of this signature is the letter "m" in "Adams," it is a rounding of the upper curve of the letter. This is seen in Exhibit P 186, which is the same type of "m."

The same Exhibits show "A" of the same type as in the will—this is in the name of "John Q. Adams."

Comparing the "Adams" signatures with one another, we see a broad similarity, the same as is seen in the firm signatures of men that are in business together.

These peculiarities of the signatures on the will, that is the signature of "Henry Adams," Alonzo C. P. Adams and John Q. Adams," and comparing all these peculiarities with the admitted signatures, leads me to believe that the parties who wrote the admitted signatures wrote those.

Q. What have you to say as to the hypothesis that the writer of the body of the will Exhibit P 1 could have written the four signatures?

A. Taking the body of the will, it is in a running open hand with underhand curves that turn towards the left a little in such letters as "u," "a" and the smaller letters "m," the lower part of "h's" and so on, these tend to curve towards the left and form small curves.

Now the signatures to the will "Geo. P. Gordon, Henry Adams, A. C. P. Adams and John Q. Adams" are all varied in these particulars.

The "Geo. P. Gordon" signature is easy but there is a tendency to overhand curves.

"Henry Adams" has sharp close angles both above and below.

Alonzo C. P. Adams is also angular but a little more open, the writing is a little more spread out, not so cramped.

"John Q. Adams" is open and bolder and has overhand curves very similar to those of "Geo. P. Gor-

don," but they are bolder and the writing is more spread out.

Q. Have you covered all your notes?

A. Yes, sir.

Q. You were requested I noticed by counsel for the other side to put your microscope upon the bottom of the staff of the letter "H" and I think the first member of the letter "n" in "John Q. Adams" signature in the will, that is the contested signature, did you do so?

A. I did not quite understand your question.

Q. I understood as I came in that you were putting your microscope on the bottom of the stem of the letter "H" and the first member of the letter "n?"

A. No, sir; I did not look at "n," I looked at the letter "H."

Q. With what purpose?

A. With a view of seeing whether the pen had been removed from the paper.

Q. Counsel states to me that the purpose was to see whether that staff had been done over, or as Professor McClellen has told us that the down stroke and up stroke of the secoud "h'? began by a separate movement, what do you think about that?

A. At the lower part of the first member of the "H" the pen has come down, and there is apparently a separation of the nibs of the pen at the end of the stroke, and then on the release of the pressure the pen is passed upward to form the other stroke; but there is no evidence in my mind to show that the pen had been removed.

Q Have you examined all these four signatures under the microscope thoroughly?

A. Yes, sir.

Q? Do you find evidence of painting or retouching in any of them?

A. No, sir.

By The Ordinary:

Q. The question is whether there is a patching or putting on of ink just at that point?

A. I cannot conceive that the pen has left the paper, the pen does not seem to have left the paper, to my eye it would be much more marked than that if it had.

MR. MILLER:

Q. Look at the second stroke of that "H," put the whole second stroke in the field of view, is there not a straight vertical mark over the whole length of that "H"?

A. No, sir, I do not see it.

Q. What is that straight whole mark which constitutes a second stroke?

A. That is made—the pen has not been removed from the paper.

Q. Has it not been removed from the paper once and drawn down and then brought down again.

A. No, sir; I do not think so, the ink is very thick that was used on these signatures, and it makes it look that way somewhat.

Q. Makes it look somewhat as if it had been done over?

A. Yes, sir; but if it had been done over in that way there would have been a more marked outline of the stroke. The ink used was very dirty or thick, but there is not any break in the continuity of the line, of course the upward lines where there is no pressure are finer and thinner and more transparent.

MR. COLLINS:

Q. Put the microscope on the letter "m" in the word "Adams" in the signature of "John Q. Adams" and say whether there is any such mark apparent in the prongs of the "m" as appears to be in the prongs of the "n" in "John"?

A. There is not a particle of evidence that those lines were touched a second time with the pen after the signature was written.

Q. That is the letter "m"?

A. Yes, sir.

Q. Do you see any such marks in the letter "m" under the microscope as we appear to see in the prongs of the letter "n" in "John," did you see any such marks?

A. I do not see any writing in that case as the writing of the stem in the letter "H."

Q. Do you see any difference in the "m" in the word "Adams" and the "n" in the word "John" in that regard—is there any difference in the "m" of "Adams" and the "n" of "John" to your eye?

A. No, sir; it is precisely the same kind of staff?

CROSS-EXAMINATION BY MR. MILLER:

Q. You use a pair of glasses to look through the microscope?

A. Yes, sir.

Q. Do you think the effect is the same as to one who uses the microscope without glasses?

A. Yes, because I have compared and saw the same things—take for instance diatoms, which are small things to see. I was making a comparison of a lens and using it on diatoms, with another microscopist some weeks ago, and we both saw precisely the same things.

Q. Did he wear glasses?

A. No, sir.

Q. And that is the reason you say you see the same as a person who does not wear glasses?

A. Yes, the glasses cannot make me see any differently; they simply make my sight longer, my sight naturally is abnormal.

Q. Practically for the examination of letters a lens that magnifies ten diameters is sufficient to disclose the shading and the fact whether or not the pen has been removed or not, and whether the signature has been painted or touched up or not?

A. I think not, I think it would require between twenty and thirty diameters to see the retracing if there was any.

Q. Can you adjust that instrument so that you

can show us the whole of the prong of the letter "n" in "John" with twenty or thirty diameters?

A. No, sir, I do not think I can, but you can trace the lines. I do think the field is sufficiently large.

Q. Adjust it for a minute and let us notice what we can see—that is as to the first prong of the letter "m" in the name of "John Q. Adams," when adjusted at that diameter by moving the object you can carry the whole stem of the letter into the field of view?

A. Yes you can remove the object into the field of view.

Q. What diameter are you using now?

A, About thirty diameters or very close to it. I have not made an absolute measurement on this particular combination.

Q. Now take the first prong of the letter "m?"

A. Now there is the top of the letter—I might call the attention of the Court to the fact that the paper was wet before it was written on.

MR. COLLINS:

Q. That is your jndgment?

A. Yes, sir.

Q. Go on.

A. That would make the writing spread a little on the edges and make it appear rough, more especially when magnified to this large diameter. This diameter only covers about one-half the length of the letter, and you can move it around to get the whole of the letter.

MR. MILLER:

Q. Now will you please point out the letter "m." of the word "Adams" under the microscope at that power?

(Witness does, and the Court and counsel examine it.)

Q. Now put the second letter "G" of the name "Geo. P. Gordon," the first prong put under the microscope at that power?

(Witness does as requested, and the Court and counsel examine it.)

Q. Have you done much work in the way of producing artotypes of handwritings?

A. No, sir; none whatever.

Q. Is a dallmeyer rapid rectilinear lens a proper one for reproducing photographs of signatures?

A. It is generally considered so by the best photographers in the country.

Q. I call your attention to Exhibit D 63, at the bottom, which is the photograph to the signature to the will, and above which are the photographs to the check signatures?

A. Yes, sir.

Q. How do you assume that that one photograph Exhibit D 63, was made?

A. Judging from the appearance of this paper, I should think that the five checks were photographed at the same time.

Q. As one negative?

A. I think so; yes sir.

Q. And the others?

A. And that the lower one from the will signature was photographed on another negative, that is the way it appears to me.

Q. Did you understand from what has transpired in this case that the photographer who took this artotype from the signature of the will was not allowed to remove it to a photographing establishment, but was compelled to make the photograph in this room?

A. No, sir; I did not know anything about it.

Q. Assuming that that photograph was made in this room without the full conveniences of a photographic gallery, do you not consider that the photo-

graph of Exhibit D 63, being the signature of the will is well made?

A. No, sir; I do not think so.

Q. In what respect do you think it poorly made?

A. As I understand this Exhibit, it was to be a fac simile of the will signature, and it is ten per cent. longer or pretty near ten per cent.

Q. If the whole signature is ten per cent longer than every letter in the signature is ten per cent. larger in every proportion, is it not?

A. Yes, sir.

Q. And as s signature, the photograph of this signature maintains a true proportion and is in every respect like the signature to the will in its true proportions, is it not?

A. Yes.

Q. Is it not distinctly focussed and well photographed?

A. Yes, it is well focussed.

Q. And considering that it is a photograph made in this room, with such conveniences as could be brought here, is that enlargement of ten per cent. an improper enlargement?

A. I should think that the photographer could come very much closer to it.

Q. Do you think you could do it?

A. Yes, it is a question of measurment, the measuring of the image on the ground glass.

Q. When you want to make a photograph of a signature and produce it so as to be as nearly as possible a fac simile you focus it and adjust it at such a length from the lens that the image is exactly the size of the name you wish to photograph?

A. Yes; or as close to it as you can get within a small fraction of an inch.

Q. This signature differs how much from the genuine according to your measurements?

A. I gave you the figures, it was a difference of six-fortieths of an inch.

Q. Do you call that a very bad photograph?

A. Well, it is a difference that can be readily seen on the focussing glass in the camera.

Q. The effect which the signature has to the eye is not appreciable, is not affected?

A. It does affect it if compared with other signatures placed along side it.

Q. If you compare the relative length of others, but comparing the characteristics of others set along side it, the size of it does not matter?

A. No, sir; not if you are comparing the characteristics only.

Q. Tell us what you assume to be the process by which the largest cartoons now before us, Exhibits D 72, D 73 and D 74 were made?

A. I assume that the negative was put into an enlarging camera somewhat similar to a magic lantern although it is not generally known to photographers as an enlarging camera, and the light was projected through negative and the image in the negative which is clear glass, are thrown upon these pieces of paper, put upon an easel or wall in front of the negative or camera and the light from the negative having passed through the lens—interrupted.

Q. In what condition did you assume the sheets of papers were at the time the negative was projected on the paper?

A. Dry.

Q. Tell us your assumption as to how the rest of the process was completed?

A. The effect of the light on the bromide paper is to decompose the bromide silver, but that there is no apparent change on the paper after the light is projected on it until after development. That is to say, these papers after the image is projected on them, then these papers are put into a developer generally this developer is what is called a ferras oxalate developer and that brings out the image that was originally upon the paper, the rest of the paper remaining white.

The picture is then after development washed and then fixed in a tray of hypo-sulphite of soda that in general terms is a protection to the picture, finally it is thoroughly washed in hypo-sulphite of soda so as

to prevent it fading and in a wet condition it is stretched on these wooden frames.

Q. That assumption is wrong, that artotype is not a bromide print, it is a silver print—now assuming that it was made in this way; by putting the lens up to an open window and bringing the sunlight through it and casting it on the paper in order to get a focus; and then, when it is focussed by completing the picture in this way—the room was then darkened and the paper taken away and wet and prepared, by the use of chemicals for photographing, and then put back in the dark room in exactly the same position it occupied for the purpose of focussing; and after it had been so prepared with chemicals and the room darkened, and the paper then placed in the same position in which it had before occupied when focussed, the light was turned in through the lens in the window, and the picture made in that way; that then the paper was, immediately while wet, pasted upon canvas, would there be, under such circumstances, any distortion in any part of the signature?

A. The paper if wet will stretch in the direction of its length, and it is immaterial what you do with it, it is bound to stretch if wet and that would make a distortion of the picture.

Q. Assuming that the paper is wet and receives whatever stretching it undergoes before the light coming through the negative is cast upon it, in that event will there be any distortion of the figure?

A. I do not understand your question—do you mean to say that the paper that this image was projected on was wet when the image was projected on it?

Q. Wet and stretched and after the projection was made upon it of the image it was then, in its wet condition as when it received the image pasted on the canvas, still whilst wet?

A. Then the drying would distort it.

Q. In drying would it distort it?

A. Yes, sir.

Q. How much?

A. I cannot tell you, it is a common practice in draughtsmen's offices to wet the drawing paper and paste it on their drawing boards and when it dries it contracts and it is a good deal smaller.

Q. Cannot you in that way by pasting a wet paper upon muslin after the image is cast upon it, cannot you in that way get the best results obtainable in an enlargement?

A. I never heard it being done in that way; I never understood it in that way.

Q. You never heard of it being done in that way?

A. No, sir.

Q. That was done in that way—did you understand that the largest cartoons were prepared by admitting the light through the window, focussing the enlarged image on a dry paper and then darkening the room, wetting the paper and preparing it chemically, and then letting the light go through the lens and being cast on the paper?

A. I did not know how it was done.

Q. Assuming it was done in that way, would not that give the best results in enlarging photographs?

A. There is one objection to that process, a wet process of photography and it is well known to all photographers that such are the slowest methods that he could use and assuming that the paper was prepared by chemicals and not prepared with a bromide emulsion such as is used on modern photographic dry plates, the operation of projecting the picture would take a great deal of time and the picture projected upon the paper owing to the vibration of the buildings in any large city would make a blurred outline if it was done by time and if it were done by the bromide process, bromide paper, that takes a certain amount of time to project the pictures, but even that would cause a blurring.

Q. Suppose that large cartoon was what you call a wet exposure and that it took an exposure of three seconds, then would the best result be obtained?

A. I do not quite understand your question.

Q. You know what a developed print is?

A. Yes.

Q. What is it?

A. I presume this to be a developed print.

Q. What, the lower ones?

A. The lower ones, the same as far as I can see, possibly the middle one of the group may have been otherwise, but I believe all the others to be developed print.

Q. Are the lower cartoons Exhibits D 67, D 68 and D 66 produced by the same process as the upper ones Exhibits D 72, D 73 and D 74 and Exhibits D 69, D 70 and D 75?

A. I cannot tell from an examination of this kind, I cannot tell from an examination made now.

Q. Are not the three lower ones smoothed and polished, the cartoons produced by the bromide process?

A. I cannot say as to that, I cannot swear to that, they might possibly be solar prints.

Q. You claim to be an expert, cannot you tell whether they have a gelatine surface or not?

A. If I can wet the surface I can tell.

Q. Look at it now and wet it?

A. Yes, I think these are gelatine bromide prints.

Q. Do the same thing to the six upper ones, above the three lower ones?

A. (Witness wets the cartoons and says) No sir, I do not think these are.

Q. Are they not done by what is called a developing process?

A. If solar prints they do not need development.

Q. Are they not done by what is called a developing process?

A. Yes, they must have been developed I think.

Q. What with?

A. I cannot say from an inspection of them what they are developed with, because there is quite a number of developers can be used for the purpose.

Q. Have you ever used large cartoons which have been developed by iron?

A. Yes, ferrous iron sulphate.

Q. Were not these cartoons developed in that way?

A. Yes, I think so.

Q. Have you ever done that work?

A. I have never developed cartoons, but I have negatives; I have developed prints in books and charts and such things of that kind.

Q. You never were called upon to do any of this kind of work?

A. No, sir.

Q. And you have no practical experience in judging of the effects produced by developing cartoons by this process only as you say; you havn't had any practical experience that is?

A. I know how they come out, I have developed similar things, printing and writing are the same.

Q. Question repeated?

A. Not with developed solar prints.

Q. You argue because the picture and cartoon is produced in an enlarged form, the light being thrown through the lens that the edges must be irregular and not appear as well as they are in an ordinary natural sized print, that is your argument?

A. Yes, sir.

Q. That is merely a matter of reasoning?

A. Yes, sir; they cannot produce by that method sharp outlines.

Q. We know that. you don't know it any better from your experience than we do?

A. Oh, yes; I do.

Q. You said you have not produced them?

A. I have produced prints.

Q. You don't know any better about them than we do from your own experience do you?

A. No, sir.

RE-DIRECT BY MR. COLLINS:

Q. You said in your judgment the paper was wet when the four signatures were written, how wet?

A. Moist or damp I perhaps should not have said wet

FURTHER CROSS-EXAMINATION BY MR. MILLER:

Q. Why do you say that?

A. Because the ink has spread.

Q. Why do you say the ink has spread?

A. It looks as if it has spread in the microscope.

Q. Don't some inks spread, without the paper being wet, on any paper?

A. Not a sized paper.

Q. (Question repeated)?

A. I never saw any.

Q. You never saw any?

A. Unless the paper is not sized—interrupted.

Q. You do not profess to be an expert in inks do you?

A. No, sir.

Q. Do you know anything about the use of kosmian inks?

A. I never heard it under that name, it might be a trade name. I might know the ink though.

Q. Look at this piece of paper which I show you, is that a sized piece of paper?

A. Yes, sir.

Q. That was written in the court room yesterday, has that spread any?

A. No, sir; it has not spread.

Q. Not at all?

A. No, sir.

Q. Has it soaked through?

A. Yes, sir.

Q. Can it soak through without spreading somewhat?

A. I have only examined it just casually, if I had had time to examine it I should have noticed that broad spot where it passes through.

Q. Well examine it (handing paper to witness)?

A. It is a very thin paper (witness examines the paper very closely and says) it has not spread but there was an enormous amount of ink on it.

Q. It is sized paper?

A. Yes.

Q. And it appears to be dry?

A. Yes.

Q. That is simply a possible explanation on your part of how the ink comes to be spread in the signature of Exhibit P 1?

A. Yes, sir.

FURTHER RE-DIRECT BY MR. COLLINS:

Q. Is it a fact that the photograph of the signature Exhibit P 1, which appears at the bottom of Exhibit D 63 is enlarged vertically as well as horizontally, are the letters larger?

A. I supposed it would be enlarged in both ways I have not examined it.

Q. In stretching?

A. In stretching it might shorten it, it entirely depends upon how the paper was put on.

Q. The stretching of the paper would lengthen the signature?

A. Yes.

Q. You have not measured the heigth?

A. No, sir.

FURTHER CROSS-EXAMINATION BY MR. MILLER:

Q. The last signature in Exhibit D 63, the reproduction of the photograph of the signature of the will Exhibit P 1 is not printed on wet paper, but is an ordinary photograph, but it is done by the artotype process and printed on dry paper, a process in which there is no stretching whatever?

A. If it is printed from a gelatine surface on dry paper.

Q. And then there is no stretching?

A. No, sir.

FURTHER RE-DIRECT BY MR. COLLINS:

Q. Does the paper in Exhibit P 1 where the signatures are give any evidence to your mind that the paper has been damp.

A. I believe the paper to have been damp owing to its wrinkled condition, that is another reason, it

looks as though it had been in a damp place, I do not say it was dampened, but that it had been kept in a damp place, it looks just as paper would look if kept in a damp place.

Q. As if it had been in a man's pocket and he had prespired a good deal.

A. Precisely, yes sir.

FURTHER CROSS-EXAMINATION BY MR. MILLER:

Q. But not if he kept it in an envelope?

A. If only an ordinary envelope it would make no difference, even postage stamps will stick together when kept in the pocket from prespiration.

Q; Suppose it was in a thick brown paper envelope, it would not affect the interior would it?

A. That depends on how long he carried it in his pocket, I cannot say.

Q. We are just as capable of forming a judgment on that point as you are.

A. Yes, it is a common sense matter.

Q. You are not an expert on wet paper.

A. No, sir.

MR. COLLINS—I ask counsel for the other side for the letter written by A. Sidney Doane to Nichols & Langworthy, dated July 25th, 1868, and I also offer in evidence a certified copy of the deed from Willlam N. Cornish and wife to Henry G. Cullen, Jr., and Josiah Porter, dated ——— 1890, acknowledged March 21st, 1880, and recorded March 24th, 1890, in Book 13, page 354 of Deeds for Bergen County. Marked Exhibit P 238.

MR. MILLER:

Q. Did you say the one case in which you appeared as an expert was the Monroe case in New York?

A. Yes, sir.

Q. And that was decided adversely to your testimony?

A. No, sir, they agreed that I was right. They admitted that the writing was genuine, the Monroe case was decided against the will, but they admitted that I was right on the writing.

MR. COLLINS:

Q. It was on the ground of undue influence, was it not?

A. Yes, I believe so.

Q. And you were the expert adverse on the question of the genuineness, that is adverse to Messrs. Booraem & Beckett's side?

A. Yes, I was, at that time.

Proponents announce their side of the case closed.

Adjourned to September 25th, 1891, at 10 A. M.

Pursuant to adjournment the parties met at the Chancery Chambers, in Jersey City, September 25th, 1891, at 10 A. M., and the following evidence was taken before his honor Alexander P. McGill Ordinary of the State of New Jersey, in presence of counsel for the respective parties.

DAVID N. CARVALHO being recalled in behalf of the contestants, saith:

EXAMINED BY Mr. MILLER:

Q. The two witnesses for the proponents in this cause testified respecting the artotypes made by you, Exhibit D 63 being photographs of certain check signatures, and also of the disputed signature, that the photographs there appearing did not correspond in size with the originals, that in one case there was a variance of sixteen one-hundredths of an inch, or some fraction of an inch, you have been informed of that testimony?

A. Yes, sir.

Q. Please state exactly how D 63 was made?

MR. COLLINS—I object to any further evidence in that line, and my impression is that the witness did state in his direct testimony exactly how these photographs were made, and I object to this evidence as immaterial.

MR. MILLER—This is only introductory.

MR. COLLINS—The fact that it is only introductory does not make it material, if it tends to show that the signatures are not relatively longer or shorter—the importance of that evidence was in the fact that the witnesses who were brought here and who testified that the signatures were not genuine had only those photographs to go by.

THE ORDINARY—I will allow the examination to proceed for the present on counsel's statement, that this question is merely introductory.

A. Exhibit D 63, April 22, 1891, is made from two negatives, the five first signatures of "Geo. P. Gordon" were taken from the checks and the name of "Geo. P. Gordon" being the lowest one on the sheet was made from the disputed signature, the will signature, they are made from two different negatives.

Q. Where was the negative of the lowest signature that of "Geo. P. Gordon" the one made from the will, where was it made?

MR. COLLINS—I object to the question as being cumulative.

A. It was made in this room.

Q. Assuming that was made in this room what difficulties or limitations did you have to contend with in working in this room?

Objection by Mr. Collins as immaterial and irrelevant.

THE ORDINARY—I shall admit this evidence because if the cartoon was purposely distorted it would affect the credibility of Mr. Carvalho's testimony and it is only just to him to allow him to explain that he made it in good faith.

A. We were compelled to use such materials as were here and the subject matter we arranged by taking books and piling the books up and laying the original on them, and I believe that they are not exactly of the same size as the originals.

Q. You mean Exhibit P 1 in that photograph is not exactly the same size as the original?

A. Yes, but to all intents and purposes as I stated in my direct examination they are reproductions and fac similes in that sense. If the first signature of "Geo. P. Gordon" in Exhibit D 63 is sixteen one-hundredths of an inch longer than relatively the same proportion exists throughout.

Q. As to the others, are the others correspondingly as large?

A. Yes, sir.

Q. In that photograph is there any distortion?

A. Positively not.

Q. And the variation as it exists there in the complete enlargements leaves the proportions the same as the picture from which they were taken?

A. Yes, sir; whether reduced or enlarged, then they are all reduced or enlarged to the same extent and in the same proportion.

Q. You have testified before in this case that you examined the names of the subscribing witnesses as they appear on Exhibit P 1?

A. Yes, sir.

Q. Are you familiar with them?

A. Yes.

Q. Have you examined the standards introduced by proponents of the name of "Henry Adams" Exhibits P 131, P 172, P 173, P 174, P 175, P 176 and P 177?

A. I have seen some of them.

Q. You have seen most of them?

A. Probably most of them, I have examined them.

Q. Did you prepare a photograph or artotype containing the signature of "Henry Adams" as it appeared in Exhibit P 1 and certain standards of "Henry Adams"?

A. Yes, sir.

Q. How did you select the standards?

A. I took what there were here.

Q. You did not take them all did you, you took the trust deed did you not?

A. These were selected from a number in the possession of the Master in Chancery, Mr. Carrick.

Q. Those containing the name of "Henry Adams" how were they taken, by the lot?

A. I think we took them as they came, and put as many as we could on the plate at one time.

Q. Took them at random?

A. Yes.

Q. And you placed them all in such a position that they were all taken on one plate?

A. The disputed signature is made on one negative and whatever appears below is also made on one negative.

Q. So there is two negatives used?

A. Yes, sir.

Q. Is that the same negative as appears in the evidence on the hearing in chief?

A. Yes, you have the artotype with these three signatures on it.

MR. MILLER– I offer that artotype in evidence to be used.

Marked Exhibit D 131.

Q. That photograph shows the Exhibit numbers of the original standards of the name of "Henry Adams"?

A. Yes, sir.

Q. Did you adopt the same course in the name of "Alonzo C. P. Adams" as it appears in Exhibit P 1 and then by placing the standards of "Alonzo C. P. Adams" in juxtaposition with the Exhibit marks opposite, make a photograph on one plate of the standards selected from those offered in evidence?

A. Yes, sir.

Q. And that was made in the same way by two negatives?

A. Yes, sir.

Q. And all the other names were taken on another negative?

A. Yes.

Q. And this was all done by the artotype process?

A. Yes, sir.

Q. And there is no distortion?

A. That is correct.

Artotype offered in evidence and marked Exhibit D 132.

Q. That list contains the Exhibit where "Alonzo C. P. Adams'" name is written out in full?

A. Yes, it is Exhibit P 183.

Q. Did you prepare a similar photograph showing the name of "John Q. Adams" as taken on the original negative by you from Exhibit P 1, and also the standards of "John Q. Adams" which have been offered in evidence Exhibits P 185, P 186 and P 187?

A. That is correct.

Offered in evidence and marked Exhibit D 133.

Q. That is the same exactly, done in the same way?

A. Yes, sir.

Q. Have you examined the standards of the name of "Alonzo C. P. Adams" marked Exhibits P 177, P 173, P 179, P 180, P 181, P 182, P 183 and P 184,

from some of which you made the photograph you referred to?

A. If these are the ones from which the photographs were made then I have examined them.

Q. Look through them now, the photographs were made upwards of a month ago?

A. Yes, more than that, it was before I went West.

Q. You have examined those standards of "Alonzo C. P. Adams?"

A. Yes.

Q. Have you also examined the standards of the name of "John Q. Adams," marked Exhibits P 185, P 186 and P 187?

A. Yes, sir.

Q. After having examined the signature of "Henry Adams" as shown in Exhibit P 1, and the standards of that name which have been shown you, have you formed an opinion of the genuineness of the signature of "Henry Adams" as shown on Exhibit P 1?

MR. COLLINS—I object to the question and to this line of evidence as being a re-opening of the case and also incompetent.

Objection overruled.

Q. After comparing these addititional standards which have been introduced by proponents since you compared them with the signature of "Henry Adams" as it appears in Exhibit P 1, please state if you have formed an opinion as to the genuineness of the signature of "Henry Adams" as shown in that Exhibit P 1?

MR. COLLINS—I still object: all he can do is to testify as to whether these new standards modify his opinion in any way.

THE ORDINARY—I will allow the witness to make a comparison of the standards introduced by the other side with the disputed signature.

A. My opinion remains the same and in fact it is strengthened.

Q. State in the briefest way how, give your reason?

Same objection by MR. COLLINS.
Objection overruled.

A. Calling attention to Exhibit D 131 in which is a photograph containing the trust-deed signature and Exhibits P 208, P 176, P 175, P 135 and P 164, making a comparison with the disputed signature of "Henry Adams" on Exhibit P 1, I have to say, that other than there is a certain resemblance between some of the letters in the sense of being made of a kind that they are utterly different both as respect to character, quality, way of putting together and general make up, there is no more resemblance between the signature of "Henry Adams" in Exhibit P 1, as I take it and the other signatures or standards which I have enumerated. than if I wrote the name "Henry Adams" myself and tacked it on to the same Exhibit, it would have just the same resemblance to it. But, going into detail in a general way and as tersely as possible, I would state that taking the word "Adams" of the character that is evidenced in the disputed signature, and the same word in those signatures which are admitted I say, they bear no resemblance other than in the mere fact, as I before stated, that they are made of the same kind of letters.

Referring to Exhibit D 133, which contains the name of "John Q. Adams"—interrupted.

Q. Have you compared the standard Exhibits of the name of "Alonzo C. P. Adams" which have been put in by proponents after the contestants rested and compared them with the disputed signature of "Alonzo C. P. Adams" in the will?

A. I have.

Q. Give us your opinion in respect to that name?

Same objection by MR. COLLINS.
Same ruling.

A. I have to make the same remarks as to that name as I did with the other, and comparing the disputed signature which appears on the top of said photographs with the admitted signatures of "Alonzo C. P. Adams," Exhibits P 133, P 131, P 179, P 178, P 183 and P 181, which follow on said photograph, one is written as an angular hand, referring now to the disputed signature—the other by what might be termed a free hand movement, and there is no resemblance at all when we come down to an analysis of the handwriting—of course they all read "A. C. P. Adams" or "Alonzo C. P. Adams," but that is all there is to it.

Q. You are looking now at the photographs?

A. Yes.

Q. Does your testimony apply to the original?

A. Yes.

Q. Now make the same comparison of the standard Exhibits of the name "John Q. Adams," which have been put in by proponents after contestants rested, with the disputed signature of "John Q. Adams" in the will, Exhibit P 1; and after making such comparison, give us your opinion in respect to that name.

Same objection.
Same ruling.

A. Referring to Exhibit D 133, in which is contained the disputed signature of "John Q. Adams;" and also to Exhibits P 185, and P 186 and P 187, I have to say that my former opinion is thereby strengthened, because in the one case (referring now to the disputed signature) the handwrting is totally different in the sense of pen pressure, in the sense of make up, in the sense of size, quality and line, and one written with a slow cramped movement, and the other is written with a free hand and quick movement, one with a swinging hand, and the other not so. I do not find any resemblance at all between the name of "John Q. Adams," as it appears in the dis-

puted signature and the standards which have been offered. Now calling attention to the letter "Q" —the "Q's" of the admittedly genuine signature are made after the likeness of the figure "2" and the one in the disputed signature is that of a cipher with a twirl to it.

Q. After seeing the "Q" that was made by Henry C. Adams in his copy of the draft of the will, now marked Exhibit P 236, and comparing it with the handwriting of the disputed signature in the will, what have you to say?

A. It is of the same character of "Q" a cipher with a twirl to it.

Q. You have been in your examination this morning making comparisons between disputed signatures of Exhibit P 1 and the standards to which you have referred—you testify from the photographs—you have seen the originals?

A. I have.

Q. Is there anything in the originals that changes your opinion?

A. There is not.

Q. And the photographs were fair samples of the standards?

A. These photographs are, taking the admitted signatures which appear thereon harmonious with all the admitted genuine signatures written in the genuine handwriting.

No Cross-Examination.

Harry B. Hodges, a witness produced in behalf of contestants, being duly sworn according to law, on oath saith;

Examined by Mr. Miller:

Q. Where do you reside?

A. Boston.

Q. What is your profession?

A. Chemistry; I am a chemist.

Q. Where were you educated?

A. In Germany.

Q. What universities?

A. In the University of Leipsic, Heidelberg and Bonn.

Q. Have you ever held any position in a college?

A. I was instructor in chemistry in Harvard College for five years from 1875 to 1880.

Q. What is your present occupation?

A. I am a consulting general chemist.

Q. In connection with any railroad are you connected with any corporation?

A. Not at present, I have no connection with any one railroad at present, but for five years I was chief chemist and engineer of tests, and had the superintendency of that branch in the University of Omaha; I had charge of all the chemicals and made the chemical and physical tests of that institution, and made all the tests with reference to the water supplies of the whole system for the Union Pacific Railroad.

Q. Have you had any experience in the manufacture of inks?

A. I was for the last three years of my connection as instructor in Harvard College, I was regularly employed by Carter, Dinsmore & Co., of Boston, to do experimental work on ink for them, and in the fall of 1880 I went to their factory as their chief chemist and remained there with them for five years, during which time I took charge of their laboratory, and had the general scientific supervision of the manufacture and preparation of inks in their factory.

Q. Have you been called as an expert on trials in Court on the question of inks?

A. I have.

Q. What experience have you had in that line?

A. I have appeared as expert for the proponents in the Davis Will case in Butte this summer.

Q. In your experience in the manufacture of Carter Inks did you go into the manufacture of red ink?

A. I did, I experimented very largely on that sub-

ject, and examined many hundreds of samples of kindred colors, and during that time I invented one red ink, which was afterwards put on the market.

Q. Were you at that time acquainted with the history of the manufacture of red ink in 1868?

A. I was.

Q. What inks were known in the market in 1868, or known to the manufacturers of ink?

A. The only red ink which at that time was known to me, and my experience was very wide in the examination of inks on the market, having tested all that I could obtain possession of both American and foreign—interrupted.

MR. COLLINS—I object to this line of evidence, it is not proper, and it is an historical matter which it is not necessary to have evidence of.

Objection overruled.

WITNESS—Having tested as I said all I could obtain possession of, both American and foreign, which were known to me from my experience or from my reading—of course I read all the literature which had any bearing on the subject—the only red inks at that time were carmine ink manufactured from Cochineal Lake, and an old fashioned Brazil wood and tin salt ink which was very little used.

Q. Anything else?

A. That was the only red ink.

Q. And fuchsine?

A. Did I not mention fuchsine; yes fuchsine.

Q. Have you examined P 236, the red ink on that Exhibit with the view to determining what kind of ink it is?

A. I have.

Q. What ink is that in your opinion?

MR. COLLINS—I object to the question unless the witness states the character of his examination.

THE ORDINARY—I will admit the evidence as introductory counsel stating that he will follow it.

A. The ink to the best of my belief is what is known to the arts as "Eosin."

Q. When was eosin discovered?

A. In 1874.

Q. By whom?

A. By Caro, a German chemist.

Q. State what leads you to believe that the red ink in that paper is "eosin"?

A. The color of the ink and still more strongly the very characteristic gold bronze appearance to be seen by reflected light—this color can best be observed by holding it against the light and moving it with the hand so as to get the reflected light upon it.

Q. What is the chemical formula for "eosin" how is it made and what is it made of?

A. It is made of phthalic and anhydride-resorcinol bromine and sodium of potassium.

Q. Now please give us the formula?

A. Structural formula—

$$C_6H_4 \left\{ \begin{matrix} CO.\ C_6H.\ Br_2\ OK \\ CO.\ C_6H.\ Br_2\ OK \end{matrix} \right\} O$$

Empirical formula.

$$C_{20}\ H_6\ O_5\ Br_4\ K_2$$

Q. You have spoken of this as an aniline or a coal tar product?

A. I used the word aniline in a generic sense as comprising in a popular way all coal-tar colors, except those made from picric acid and its allies aurin Indigo and others.

Q. Have you had any European experience with aniline colors?

A. Yes, sir; in the winter of 1874-1875 I studied in the university of Bonn in the Laboratory of Kekeloe, the inventor of the Benzol-ring.

Q. What does that mean?

A. It shows the groupings of the atoms of carbon and comprises among other classes of chemical substances all the coal-tar discoveries and this discovery and other works based on it, rendering possible the synthesis, that is the manufacture and preparation of colors, aniline colors from coal-tar.

Q. That comes under what is termed organic chemistry?

A. Yes, sir. While with Kekeloe I was interested in aniline colors and made a number of experiments in aniline colors and in that connection experimented with such coal-tar and aniline colors as were then known, namely, fuchsine, aniline violets and also manufactured on a small scale artificial alizarin from the anthracene—alizarin was quite a new substance at that time.

Q. Have you recently made a preparation of "eosin" ink—that is recently?

A. I have. When I was connected with the Union Pacific I also manufactured their aniline or red inks all that were used on their eight thousand or ten thousand miles of their system.

Q. You did make up a sample of eosin?

A. Yes, sir.

Q. When?

A. Yesterday.

Q. Where did you obtain your eosin?

A. From the firm of Pickhardt & Kuttroff.

Q. They are the leading importers of such goods in this country?

A. Yes, sir.

Q? Did you at the same time compare other red inks to show any comparison with the eosin you say you prepared?

A. Yes, sir.

Q. What is this paper I now show you?

A. That paper contains writing made with samples of four different colors of red; I made it up yesterday.

MR. COLLINS:

Q. Made by whom?

A. By myself personally; these samples contain the names of the color with which they are written and the date and my initials.

MR. MILLER:

Q. There are four—now tell us what the differences are?

A. I wrote in the first place with each of these four different colored solutions. I wrote first two lines and allowed them to dry; I then wrote two more lines of the same color and blotted them immediately so as to show the difference between the color that dries in a thick layer and that which is thin.

Q. To show us the difference between the blotted and the unblotted example?

A. Yes, sir.

Q. You did that with fuchsine carmine, eosin and safranine?

A. Yes, sir.

Q. And each of which has a blotted and unblotted example?

A. Yes, sir.

Q. Please show to the Court what you claim to be a distinct characteristic of eosin?

Witness exhibits the samples and writing to the Court.

Q. Are there any chemical tests or re-agents for this ink or these inks so as to demonstrate beyond question what they are?

A. There are.

MR. MILLER—I offer that sheet of examples in evidence marked Exhibit D 134.

Q. That paper was prepared by you yesterday you say?

A. Yes, sir.

Q. And each example was written on with what sort of pen?

A. I took a new pen for each sample.

Q. What kind, steel or gold?

A. A steel pen.

Q. Have you made up samples of ink which you have prepared?

A. I have.

Q. Please produce them?

Witness produces four bottles with red colored fluid in each.

Q. What is the reagent which shows eosin?

A. The best test in my opinion is that made with a strong ammonical acid, or a sulphurate acid of about half strength or a strong hydrochloric acid; all these acids will decompose to eosin, or chemically it will decompose the potash salt or tetrabromfluorescein, the ammonical acid removing the potassium of sodium and leaving the tetrabromfluorescein, which is of a pale orange yellow substance.

Q. In short, if you should apply hydrochloric acid to any part of the writing there, what effect would it have?

A. It would turn it yellow.

Q. What effect would it have on the carmine?

A. No effect.

Q. What effect would it have on the fuchsine?

A. The effect varies; it sometimes will discolor it, but the coloring will return as the acid evaporates.

Q. Fuchsine is of a purplish hue?

A. The difference in the color between fuchsine and eosin are so marked, that is in the colors, that it is not necessary to apply any chemical test, for

any man that has had any experience whatever with the different colors, or even any layman that has once been shown these different colors would have no difficulty in deciding which is obtained from fuchsine or eosin.

Q. Has either or any of these colors the golden bronze look or appearance which is seen in the eosin?

A. It has not that characteristic bronze look.

Q. My question was any of these colors—do any of these other colors have this bronze look?

A. No, sir.

Q. What would be the effect if you applied hydrochloric acid to safranine?

A. It will turn it blue.

Q. Have you any hydrochloric acid with you?

A. No, sir, I have not.

(A small bottle of hydrochloric acid obtained from Mr. Stebbins handed to counsel.)

Q. I now hand you this bottle of hydrochloric acid; please mark it so as to identify it?

A. I have marked it "H. C. L.," being the chemical formula for hydrochloric acid.

Q. Is that hydrochloric acid?

A. I can verify it on this writing—interrupted.

Objection by Mr. Collins.

THE ORDINARY—The bottle being marked can now be placed in the hands of the Master, Mr. Carrick, and we will assume for the present that it is hydrochloric acid.

Q. Apply that test upon the bars of red ink appearing on Exhibit D 134—are those bars in the margin made of the same ink as the name opposite which they appear?

A. Yes, sir; this acid does not appear to be very strong.

Q. That is said to be half and half—half water and half hydrochloric acid, try it with that?

(Witness makes a test.)

(The Sergeant-at-Arms having been sent to a druggist's returned with a bottle marked with a label with the cross bones and skull and the word "poison" and then in manuscript below the words "Muriatic acid crude."

Q. Muriatic and hydrochloric acid are the same thing?

A. Yes, sir.

Q. Apply that acid, make the test?

(Witness drops the acid on the initial letter of the chemicals named in the paper and says) I would like to call attention to another point about the chemicals here, and that is that the fumes of the acid affect the color of fuchsine for the space of an inch in the vicinity of the spot and turns it to a very different color than that of eosin, which is even more marked than the effect of the drop.

Q. Are you willing to apply this test of the hydrochloric acid to any part of the red ink in Exhibit P 236 which the Court may permit or direct?

A. I am.

MR. MILLER—I offer to make the test—I offer to have the experiment made upon any place in that exhibit the Court may indicate on the red ink.

THE COURT—Directs the test to be made upon the words in red ink on Exhibit P 236 opposite the words "put this above" of article 3—interrupted.

MR. COLLINS—Before Professor Hodges does this I think he should be called upon to state in advance to the Court what the various effects he anticipates will be produced.

THE COURT—He may state them.

MR. MILLER:

Q. What in your opinion will be the effect of applying the hydrochloric acid at that point indicated by the Ordinary in Exhibit P 236?

MR. COLLINS—It having been proved that the paper which was written by the witness and which has been offered and marked Exhibit D 134 and to which he has applied this acid and which is composed of these different inks he has described and tests having been applied to them, the record will not show the result of these tests or what they were or what they may become, and it is possible that time will change them, and I think it ought to be placed on the record what has happened to this point.

THE COURT—I think it proper, and the professor may state now the condition of the tests and he may also state their condition after the evaporation of the acid.

MR. MILLER:

Q. State the appearance of Exhibit D 134 as closely as you can in language so that it may go upon the record of each of these colors as they appear after the application of the hydrochloric acid?

THE COURT:

Q. The acid is not yet dry?

A. No, sir. First, in the word "fuchsine" in the upper left hand part of the paper the color was solely discharged, first turning to a lemon shade of yellow, and finally being obliterated or entirely removed. The fumes from the acid acting upon the adjoining letters in the word "fuchsine" turn them to a dull pale purplish and greenish tint, according to the distance from the spot, the greenish tint being nearest the spot of acid.

These remarks apply also to the second "fuchsine" as well as to the first, which had been blotted after it was written.

Second, carmine. The acid did not change the color of the carmine, but weakening its intensity on account of the dilution of the liquid, and the consequent spreading to a slight extent.

The acid applied to the word "carmine" below which had been blotted immediately after the word was written owing to the very small amount of ink left on the paper in consequence of the blotting, weakened the color, but which could still be seen in the moist spot.

Third, the test of the eosin. The acid applied to the first "e" of the first word "eosin" on which the ink was allowed to dry and was in consequence thick showing the characteristic bronze color, owing to the thickness of the ink, did not appreciably change the lower half of the "e" but turned the upper half where there was less ink and orange color.

The acid applied to the "E" of the word "Eosin" below that which had been blotted directly after it was written turned the ink a dull orange shade of yellow.

Fourth test. The acid applied to the "S" in the two words "Safranine" turned each of them a distinct blue.

Q. You have described it all, have you?

A. Yes, sir. It would, I think, be a better test to make the test where the ink is not so thick and the bronze color so apparent. I think it would be best to make a test where the ink is not so thick.

THE COURT:

I will allow you to test the red ink appearing in Exhibit P 236 at the end of the word "improvements" next to the last red line of the first page; also over the words "put this above," opposite the article III; on the word "decease" at the end of the

words "prior to my decease," in the proviso at the end of article 5; and upon the word "therefrom."

MR. COLLINS—I ask that I may be permitted to cross-examine the witness at this point before he makes these tests.

THE ORDINARY—The experiment may be postponed until after the examination and cross-examination are both finished.

MR. MILLER:

What literature is there as to the date of the discovery of the eosin?

A. Schultz and Julius.

Q. Have you the books here?

A. I have only one book here, the others will be here directly.

The title of the book is "C. Schultz und P. Julius Tabellarische Ubersicht der Kunstichen Organischen Farbstoffe. It is really data in regard to aniline colors arranged in tables giving their chemical formula, their general method of manufacture, dates when discovered or patented and refers to other literature on the same subject or kindred subjects. That book states that eosin was discovered in 1874 by Caro.

Q. What other book?

A. A book by Alfred H. Allen in his work called "Commercial Organic Analysis," and which book is well known to all chemists as a standard work, and the best on that subject. That book states on page 131 of volume 3, part 1, second edition, being the last edition "that in 1874 Tetrabromfluorescein was introduced as a dye by Caro under the name of eosin."

Q. What else?

A. Friedlander, in a German work on the progress in the coal-tar colors—Mr. Stebbins has that book in court—I haven't the date of it, but I discovered in that book a statement to the effect that eosin was discovered in 1874.

Q. What else?

A. Wagner, in his Jaresberecht or Annual of Chemical Technology, which is published every year, giving all the discoveries or progress made in applied science during that year, states in his annual for 1874, or rather describes in his annual for 1874 this color eosin. This is the first mention made in any of the annuals of Wagner of eosin or of Tetrabromfluorescein.

CROSS-EXAMINATION BY MR. COLLINS:

Q. What is your age?

A. Thirty-eight.

Q. When did you study in Germany?

A. I went to Germany in the fall of 1872 and remained until 1875.

Q. Where were you in 1868?

A. In 1868 I was at the Boston Latin School.

Q. When was it you were with this ink firm you have mentioned?

A. I devoted my whole time to their services in the fall of 1880, but I had previously for three years from the fall of 1877 done special work for them while I was still connected with Harvard College as instructor.

Q. Between what years?

A. Between the fall of 1880 to June, 1885, not quite five years.

Q. What year was it you said you gave some special attention to aniline colors?

A. That was when I was studying at Bonn and in the Laboratory of Kekeloe in the winter of 1874-1875.

Q. Did you know eosin then?

A. No, sir.

Q. Give the formula or formulæ—you gave two, I think, one for eosin and one for fuchsine—now give the formula for hydrochloric acid?

A. H, C, I, is the formula for hydrochloric acid.

Q. Now give the formula for fuchsine?

A. $C_{20} H_{21} N_3 O$—it must be the hydrochloric or an acetate or nitrate of Roasniline and its formula is $H N_{21} O_3$ or properly C—interrupted.

Q. Which is the acetate?

A. Rosaniline is formed of two molecules or toluidine and of aniline.

Q. Fuchsine is an aniline color?

A. Yes.

Q. And has been used in red ink so called prior to 1868?

A. I do not know positively that there were red inks on the market made of fuchsine, although in my direct examination I stated that I have possibly used it myself, I had some idea that I had had it made up on a small scale.

Q. What are the aniline inks that are now known as red inks?

A. I will say here that of course during the last six years I have not been in the ink business, and my only personal experience with inks during that time has been in the manufacture of inks for the railroad.

Q. I am content for you to state the kind in use when you did know of them?

A. The only aniline inks, so far as I know when in that business were eosin, the only red ink was eosin.

Q. What do you call this fuchsine?

A. I did not know at that time of any fuchsine ink on the market.

Q. But you do now?

A. That was a solution of fuchsine and water made by myself.

Q. You limit yourself to the market, now I do not limit myself to the market at all.

A. Well, of course it is possible for any body to make up for himself any ink by dissolving any aniline inks, any aniline colors in water, and put it on the market and it would be a fuchsine ink.

Q. What aniline colors were on the market down to the present time?

A. Down to the present time, there are a great many red colors made up and used, there is Safranine, Crocein, fast reds and doubtless others that could be used.

Q. Are you familiar with the report of Dr. Hoffman of the coloring matters derived from coal-tar shown at the French exhibition in 1867?

A. No, sir; I am not.

Q. You know Dr. Hoffman?

A. Yes, sir; A. W. Hoffman, Professor of Berlin?

Q. This book was published in 1868 by John Woolley & Son and when he speaks of certain colors on page 152 from solutions of Rosaniline and methyl he refers to what you have spoken of as fuchsine?

A. By Rosaniline he does, but methyl rosaniline results in a violet.

Q. So that in 1868 you have no doubt there were red inks made from fuchsine?

A. Yes, sir.

Q. And in 1867?

A. Yes, sir.

Q. Might there not have been other inks that could be produced from aniline colors at that time?

A. No, sir; no reds, because I am convinced from my having given attention in Kekeloe's Laboratory to aniline colors and I should have known of any other red colors on the market and the literature does not show that there were other red aniline colors on the market at that time.

Q. Would you know the constituents of the red inks on the market in 1868?

A. No, sir.

Q. Are not the constituents of inks trade-secrets?

A. They are very largely.

MR. MILLER:

Q. What kind of inks?

A. Any inks including red inks.

MR. COLLINS:

Q. Does not that answer apply to red ink?

A. It does to the best of my belief, but at the present day they do not conceal the fact that they use eosin.

Q. Is eosin a manufactured substance?

A. Yes.

Q. Made for what uses?

A. Made originally as a dye for dye-stuff.

Q. You say Caro discovered it, what do you mean by that?

A. Well, I mean that he first formed a synthesis of it, that is to say he obtained the color by the reaction of different organic substances one upon the other.

Q. Would it not have been possible for practical ink manufacturers to have produced the component parts of this ink and they not have given it to the world?

A. It is possible, but I do not think it probable, because ink manufacturers do not possess the necessary scientific knowledge to perform such experiments as to obtain such results and in fact it was not until the 1860's or 1870's that any work was done at all on aniline colors and for a long time it was a very complicated work and field.

Q. What part of eosin is derived from coal-tar?

A. All except the bromine or potassium or sodium which is used that is the salt.

Q. Are not there other inks that are not red that have a bronze appearance?

A. Fuchsine in very thick layers has a green appearance by reflected light. but it is very greatly different from the gold bronze color of the eosin which is characteristic of that color alone.

Q. Is there any other colors that have the bronze effect?

A. Not to my knowledge.

Q. Where did you learn that the application of Muriatic of hydrochloric acid would turn the color in eosin ink yellow?

A. When I was working with Carter, Dinsmore & Co., I made several tests with all these different colors, so as to ascertain as to their fastness.

Q. Can you find the information as to the various reagents or are they not in a published form?

A. Yes, sir; they are presented in Allen's Commercial Organic Analysis, also Post in his recent work on Technological Chemical Analysis which I have in Court.

Q. Do these books state that the application of hydrochloric acid will have that effect?

A. I believe they do.

Q. Refer to them now?

A. I refer to page 399 of Allen's Commercial Organic Analysis.

Q. This table states that in effect hydrochloric acid applied to a red color in which the coloring matter is eosin will turn it yellow?

A. Yes, sir.

Q. Does the table state what is the effect on fuchsine?

A. Not on fuchsine, these are the reactions on the dyed fibre, but where it is on the surface of a paper the reaction is various, but it is materially the same, it says here, Magenta is termed yellow and Magenta is fuchsine——interrupted.

Q. Is carmine there in that table?

A. No, sir; that is on the fibre, ammonial cochineal has on the fibre a less effect than ordinary cochineal which first turns to an orange red, and then the solution turns to a bright pink.

Q. So that cochineal in the fibre will turn to an orange color?

A. Yes, sir.

Q. And ammonial cochineal is less effected than ordinary cochineal?

A. Yes, sir.

Q. But nevertheless it is effected?

A. Yes, on the fibre or cloth.

Q. And this whole table is as to the effect on the fibre?

A. Yes; it is, but I base my own experience on the effect on paper.

Q. Can you refer us to any scientific work as to the effect of inks on paper?

A. No, sir.

Q, They are the result of your own experiments?

A. Yes.

Q. What was your occasion of applying hydrochloric acid to these various inks?

A. It was with the object of seeing or to obtain as far as possible colors which would be fast, not only to an exposure to the air and light, but to resist acid, and when I was with Carter & Co; I made many hundreds of tests for that purpose, tests which might be used by forgers or others to remove the color or ink.

Q. Have you ever analyzed any red ink on the market the coloring basis of which is fuchsine?

A. I do not recollect having done so.

Q. Then the fuchsine ink with which you wrote the words "fuchsine" on Exhibit P 134 is simply a solution of fuchsine obtained from a dealer in water made by yourself?

A. No, sir; it is a sample which Professor Doremus handed to me yesterday of the crystals which I recognized by the peculiar green color.

Q. You took that fuchsine and applied water to it yourself?

A. I dissolved it in boiling water.

Q. Is there not some difference in the ink in the rough and ready way of making this and the ink that is made by manufacturers?

A. No, sir; it has no effect as to the writing on the paper or the testing of the ink by means of acids.

Q. Which Professor Doremus did you refer to?

A. Charles.

Q. Is there no other red coloring matter in which hydrochloric acid when applied will give a yellow cast?

A. None which has the color and the bronze reflection of eosin.

Q. Please answer the question—Is there no other red coloring matter in which hydrochloric acid when applied wiil give a yellow cast?

A. I think there are very likely. I do not think at

this moment of any, and I do not think of any other color on the market which will do that.

Q. Do you think of any, whether on the market or not?

A. No, sir; I do not.

Q. Your belief, if this writing on Exhibit P 136 should turn yellow, is that thereby it would indicate that the so-called red color, red ink, was made from eosin, is partly founded on the fact that you think you detect the bronze lustre to the writing?

A. It is of course based on a combination of the very characteristic color than the bronze reflex of the ink and the chemical test if it turns out so.

Q. If you did not perceive the bronze effect which you think you see by holding it to the light, and it turns yellow, that alone would not be sufficient to make you think it was made from eosin?

A. If the ink did not have that color and appearance I would not testify to it on that alone.

Q. You testified in the Davis will case, now in Butte, didn't you?

A. Yes, sir.

Q. And did you not there testify that it was impossible to tell the constituents of ink without a chemical analysis?

A. I was asked to testify as to black ink, and I said I would not express a final opinion on ink that is black without a final test.

Q. You do not think that is true as to colored inks?

A. No, sir; I think eosin is so characteristic that I personally should be willing to hazard my opinion on simple observation, without any chemical test.

Q. Is there any other test can be made?

A. Yes, there is a complete test for eosin in bulk and by dissolving that ink off in sufficient quantity to get a moderate amount of solution then I could absolutely prove it by an absolute test.

Q. What would that test be?

A. The test would be to shake up the solution with sodium amalgam, that is a combination of mer-

cury with sodium, the sodium will take out the bromine and leave a colorless solution.

Q. What sort of solution do you start with?

A. Aquis.

Q. Proceed?

A. I would then add to one part of that a few drops of permangate of potash, that would form a very pronounced and remarkable snake like green body of what appears to be a green snake like body through a mass of paper having a very strong fluorescence to the other portion I would add nitrate of silver and that would give me a bromide of silver.

Q. How much scraping of the red ink, how much in quantity would be needed to make a successful experiment such as you have described?

A. I never tried removing ink from paper for that purpose, and I would not want to hazard a statement of how much was necessary. I made the experiment such as I have described for colors where I was not limited in quantity—it might be necessary to dissolve out nearly all the ink on the whole instrument in order to have enough to make that particular test.

Q. Have you ever tested in that way ink on documents at all?

A. No, sir; not the test I have just described, but I know that is the test for eosin, and eosin on paper does not undergo any chemical change.

Q. You never tested it on documents?

A. No, sir.

Q. Have you ever applied the tests that you are now about to use?

A. I have not.

Q. On documents?

A. I have had samples of writing which Carter Dinsmore & Co. had received and which he wanted to know if there was eosin or not and I satisfied him by making the test.

Q. He could not feel very sure?

A. Where there was no bronze appearance I should not feel sure myself, but where it is like this,

where the red ink had evaporated in the ink-stand and become thick, then I should not need to make such a test, but where it is blotted then I should want to make the test to satisfy myself.

Q. When analine colors were first introduced there were a good many impurities in them were there not—that is when first introduced in any of the arts as you say it took a long time to get the use of aniline colors successfully?

A. I perhaps should not have said fully that, although undoubtedly they did contain traces of impurities.

Q. It is pretty hard to judge of early aniline colors as distinguished from the more modern ones, is it not?

A. How do you mean?

Q. By having various substances in the fluid or the colors used?

A. I cannot see that the particular characteristics of the colors would undergo any change.

Q. Not of the colors, but of the substance which was used as the vehicle of the colors or in connection with the colors, would it not be difficult to judge of aniline colors that were used early from the present perfected processes?

A. If you mean by judging, to identify them, then I should say, no, they would have their characteristics sufficient for any person to be able to identify them whether they contained impurities or not.

Q. What is it in eosin that gives it its color?

A. Well, the potash salt, the addition of potash or sodium is what gives that red ink, but it is very hard to say I would not wait to give any scientific reason why—certain substances contain colors and it varies in different substances.

Q. The coloring of eosin is derived from a mixture of substances?

A. Yes, sir.

Q. Now you cannot point to any one of the substances that would be responsible for this peculiar color?

A. No, sir; I can detail how this particular red color is obtained, it might be due to the alkili and before that it had this brick red color, and was insoluble and that color is a bromine of fluorescein.

Q. Is that coal-tar?

A. It is, but if you want to be very exact you would not speak of it as an aniline color as you would of a Rosaniline color?

Q. What part of this color of which this Exhibit D 134 is written is derived from coal-tar?

A. Resorcinol and phthalic acid contain the benzol-ring and can be made from coal-tar products, the potash and bromine are not.

Q. Do not these substances derived from coal-tar exist in other aniline colors?

A. Yes.

Q. Then if the other substances that you speak of should have been mingled with the other aniline products would not the same shade of red be produced?

A. Red?

Q. What I call red, the same color be produced?

A. If you bring together all these different ingredients and in proper proportions and under proper conditions you undoubtedly would get eosin.

Q. You said the others were composed of phthalic acid and resorcinel, you have said that?

A. Yes, sir.

Q. If to this product were added the bromine and potassium would you not get the same color that eosin is?

A. I don't know, I never performed the experiment.

Q. What gives the bronze appearance, as you call it, to eosin ink?

A. What gives it?

Q. Yes?

A. That is simply an optical effect on the rays of light.

Q. It must be due to the existence of some substance in the ink?

A. No, sir; I should not say it was due to any one substance, it is an essential characteristic of the finished compound of the eosin.

Q. It is a surface result?

A. Yes.

Q. Something like an iridescence? like iridescent glass?

A. No, sir, in that case you get that by the passing of the light through a transparent medium, but here it is a reflection on the surface.

Q. It is a surface effect?

A. Yes, sir.

Q. We might look for that, even though we did not have the chemical compounds that goes into eosin might expect to find it?

A. I can simply say that in my experience I never saw any other substance that would give that peculiar effect or color, it might be that there are other substances that would do it.

Q Here is a report of the canator lectures on the aniline of coal-tar colors delivered by W. H. Bacon before the society for the encouragement of arts manufacturing Commerce in England and published in 1869?

A. He is an authority.

Q. Does it not say here on page 11 of this book "when speaking of aniline purple I showed you that by reducing agents it became colorless or nearly so, but that the original color was again developed when exposed to the action of the air as well as of rosaniline or magenta, which are also discolorized by the reducing agent, but unlike aniline color the color is not restored by exposure to the air," does it say so?

A. Yes.

Q. That does not agree with your testimony, you say it is restored?

A. I am not conscious of having made any such remark; I alluded to the use of hydrochloric acid, no chemist would call that a reducing agent, I call a reducing agent a zinc with an acid which generates

HOI; which is a reducing agent and stannous chloride are wellknown reducing agents.

Q. What sort of agent would you call hydrochloric acid if you object to the participle adjective "reducing?"

A. I do not think you can apply the word agent to it at all. Hydrochloric acid is a well known laboratory reagent and it is a member of a very marked class of chemical substances known as acids.

Q. What do you mean by reagent?

A. Any chemical substances used in the laboratory to obtain or bring about such reactions with substances under examination as to show their character or composition.

Q. What do you mean by reducing agent?

A. A reducing agent is one that removes oxygen or introduces hydrogen into the molecule.

Q. You say magenta is the same as funchsine?

A. Yes, practically; there may be a difference commercially or a difference in the shades may be made with it by different dealers.

Q. Magentais a commercial substance?

A. Yes.

Q. Does not Dr. Bacon in the same pamphlet on page 11 say, "magenta is now more used as a source of other colors than as a dye, this has caused its manufacture to be conducted on a very extensive scale and it is now looked upon by manufacturers as a raw material just in the same way as aniline was regarded as an aniline purple," It says that?

A. Yes.

Q. If that is true might you not expect to find this fuchsine entering into other colors?

A. Yes, it forms the bases of greens and violents.

Q. What would you say would be the effects of rep fuchsine if it were written on Exhibit D 134 after the application of the acid you applied there?

A. I expect when the acid entirely decomposes that the color would be restored, that has been my experience with some fuchsine; I cannot say as to that particular sample; that may not be the common

result of all fuchsine, but it may be peculiar to some commercial brands.

Q. Is not the effect of hydrochloric acid applied to the paper to give it a slightly yellowish tinge?

A. Yes, it decomposes the ultra-marine, which is in it to give it the dead white appearance and restore it to the creamy condition of the original pulp.

Q. Will that effect continue?

A. Yes, ultra-marine once destroyed never recovers its color.

Q. What is the foundation of carmine ink?

A. It is a color derived from an insect called cochineal, the ink used by ink makers contains alumina and lime.

Q. In the application of acid to red carmine as written on Exhibit D 134, which was blotted directly after writing the letter "C," it seems to be obliterated now?

A. Almost, yet you can still see the red letter.

Q. Do you anticipate the restoration as the acid evaporates?

A. No, sir. I think when the acid evaporates it will become more distinct, but not quite distinct. I attribute that to the action of the water in the hydrochloric acid in slightly spreading and diffusing the color.

Q. What effect do you anticipate the time to have upon the capital "E" in the two words "eosin" to which you have applied acid in Exhibit D 134?

A. If this paper is exposed to the air containing any ammonia fluids it is possible that in the course of a long time the ammonia will form a salt with the tetra-bromine, which will obliterate, or nearly so, the writing, but this, if moistened again with potash or a potassium salt will obtain its original color again.

Q. I see you speak of eosin with a capital "E" and yet there is no difference in the final "e," is there?

A. No, sir.

Q. You add the letter "y," why is that?

A. It is a commercial brand.

Q. That is a peculiar variety of eosin?

A. Yes, sir.

Q. Have you the package with you with which you made the inks?

A. I have.

Q. The one is marked from William Pickhardt & Co., 98 Liberty street, New York, "E. O. C & Y." and the other is marked "Safranine, N. Y.," are these the packages from which you got the material respectively?

A. Yes, sir, they are. Mr. Pickhardt wrote those himself.

Q. Do you object to their being left with the Court?

A. I do not.

MR. COLLINS—I ask that they be marked for identification.

Marked for identification D 135 and D 136.

Q. You have told us you got the fuchsine from Professor Doremus, where did you get the carmine?

A. I also got that from Doremus, it was in the form of a lake.

Q. Did you test any of the substances you procured from Professor Doremus. or Mr. Pickhardt?

A. Only in this way—by writing and getting the blue color from the safranine, and I then tried the fuchsine.

Q. I show you one bottle marked with a paper label "Fuchsine"?

A. Yes, sir.

Q. Does that contain the fluid with which you wrote the fuchsine on Exhibit D 134?

A. Yes, sir.

Q. And the one marked "Carmine," does that contain the fluid with which you wrote the word "carmine" on Exhibit D 134?

A. Yes, sir.

Q. And the one marked "eosen," does that contain the fluid with which you wrote the word "eosen" on Exhibit D 134?

A. Yes, sir.

Q. And the one marked "safranine," does that contain the fluid with which you wrote the word "safranine" on Exhibit D 134?

A. It does.

MR. COLLINS—I ask that these be marked for identification.

Marked Exhibits D 137 to D 140 for identification?

Q. What did you use as a solvent in making the fluids that are in the four small bottles?

A. I used distilled water for all except the carmine, and there I had to use ammonia as carmine is insolvent in water.

Q. Why did you not procure from some tradesman commercial inks made from the various substances which enter into the inks?

A. I have done so. I have brought into court to-day a bottle of carmine and a bottle of ink made with eosin, a crimson ink.

Q. You haven't any of fuchsine?

A. I don't know of any made of fuchsine.

Q. Why did you use a fluid you made yourself from the crystals and the solvent rather than use a commercial ink?

A. Because if I relied on a commercial ink I would have had to test them to see that they are right, because the ink makers change their formula from time to time.

Q. By introducing other ingredients?

A. It is possible to do so, although I do not know?

Q. I presume you have made in these fluids the simplest form of writing fluid you could, from the fluids you used?

A. I have made these samples from my own experience. These aniline inks are made by simply dissolving the crystals in distilled water, and where necessary using some antiseptic to prevent them from moulding.

Q. Are there any antiseptics in these?

A. No, sir.

Q. These are the crystals, or whatever they are called, which you procured from Mr. Pickhardt and Professor Doremus with distilled water added?

A. Yes, sir.

Q. Is it not a fact that the commercial manufacturers of inks put in other things?

A. Yes, sir; sometimes ink makers put in a perfume to give the ink a pleasant smell and also to destroy the smell of the anticeptic when too conspicuous.

Q. Do they not use other ingredients?

A. None that I have ever discovered in my tests.

Q. You gave us no specimen of ink of fluid composed of Brazil wood as a basis?

A. No, sir.

Q. Why not?

A. Because I do not know any ink made from it and have no ingredients to make it with and besides the color is so very different from that made of eosin and I did not think it would enter into the question at all.

Q. Does not the color of ink made from Brazil wood vary?

A. I never saw—well to tell you the truth I do not think I ever saw a Brazil wood ink on the market or came across one when I was with Carter, I made up samples so as to familiarize myself with the color.

Q. What is the earliest form of red ink of which you read or heard?

A. This Brazil wood ink.

Q. And then carmine?

A. Or carmine I don't know which.

Q. Well, my information is as yours, Brazil wood?

A. I think so.

Q. Presumably there was a time when Brazil wood was not used to make red ink?

A. Of course.

Q. What then made red ink?

A. I don't know.

Q. Do you think there was red ink?

A. I don't know how far back the use of red ink goes.

Q. Do you know a yellow or dye called chrysaniline?

A. I have seen the color, although I am not familiar with its reactions.

Q. That is known as far back as 1868, was it not?

A. I don't know, I doubt very much that it was, because I have looked through the literature of all the dyes and the only red mentioned as being known prior to eosin was safanine and fuchsine,

Q. That was not the question I asked you—I said this yellow colored dye called chrysaniline was known as far back as 1868, was it not?

A. I don't know.

Q. You don't know whether it was or not?

A. No, sir.

Q. And you said you did not know the operation or the effect of it?

A. No, sir; I am not familiar with it.

Q. Then you cannot tell us whether or not a mixture of fuchsine with this chrysaniline would produce a red ink of a similar character to that upon the draft Exhibit P 236?

A. I cannot.

Q. Nor could you tell us whether or not the Chrysaniline mixture with fuchsine would produce a golden or yellow bronze shade on the writing?

A. No, sir; I cannot, the color is a very unusual one and I never saw it in that connection.

Q. What is chrysaniline?

A. I cannot describe it, I am not familiar with it.

Q. Can you tell whether or not it is a by-product of fuchsine?

A. No, sir; I cannot, I am not at all familiar with the color.

Q. If this work of Schultz & Julius to which you have referred tells us that chrysaniline is a by-product of fuchsine and was discovered in 1862 or produced in 1862 you have no doubt of it?

A. I would not doubt it.

Q. The study you have given to inks has been rather of a practical character using the materials known to the art during the period you were connected with it, than it has been of a scientific character for the purpose of acquiring a knowledge of the history of the manufacture?

A. Of course primarily.

Q. You do not know what other makers of inks, other than Carter & Co., used in the years prior to your connection with the ink manufacture?

A. Not in the way of colored inks.

Q. Nor have you had occasion to collect the earlier formula of so-called red ink and analyze or test them?

A. I have not.

Q. When did you first see the draft Exhibit P 236 (handing paper to witness)?

A. I first saw it on Tuesday.

Q. Where?

A. In the office of Mr. Carrick, the Master in Chancery.

Q. How much time did you then give to its examination?

A. A few minutes.

Q. When did you see it again?

A. I saw it the following day in the same place.

Q. Why did you go again?

A. On the second day if I recollect rightly, there were one or two other gentlemen there also to examine it.

Q. Why should you go with them?

A. I don't know, I simply went at the request of Mr. Miller and took no part in the conversation.

Q. When you went the first day who acompanied you?

A. Mr. Miller and Mr. Carvalho.

Q. Who the second day?

A. I think Professors Morton and Leeds were there, or I think I met them there.

Q. Was Professor Doremus there?

A. Doremus—in fact I did not go with Mr. Miller; I went and met Mr. Miller there.

Q. How long did you examine it then?

A. A few moments; I gave it no special examination.

Q. And these other gentlemen looked at it together and talked about it together?

A, Yes, sir.

Q. Of course you heard what was said?

A. Yes, sir.

Q. When next did you see it?

A. I saw it next yesterday afternoon.

Q. Where?

A. At the Stevens Institution.

Q. How did it get there?

A. Mr. Carrick was there and took it.

Q. Why did it go there?

A. It was desired to make an optical examination with instruments that were to be had at the school.

Q. What sort of instruments?

A. Microscopic and photo-metric.

Q. What was the purpose of those examinations?

A. I did not mean photo-metric, I mean spectroscopic.

Q. What were the purposes of this examination?

A. To see whether, I suppose, that would strengthen our other examination by the eye, as to the identity of the ink.

Q. Did you think it needed it?

A. I did not think so; I made no examination.

Q. Why go then?

A. I went because I was asked.

Q. Who were there?

A. Professors Morton, Leeds, Doremus, Mr. Stebbins, myself and Mr. Miller.

Q. When next did you see it?

A. I next saw it here in this room when presented to me.

Q. To-day?

A. Yes, sir.

Q. To what other tests has the paper been sub-

mitted besides this observation with the eye and these optical instruments?

A. No other test.

Q. None that you know of?

A. It was put under different colored glasses, but I suppose that comes under the head of optical examination.

Q. Describe the examination in the spectroscope?

A. I did not make it.

Q. Are you familiar with it?

A. No, sir, I never gave any attention to that branch of the subject.

Q. What do you anticipate will be the effect on the word "improvements" indicated by the Ordinary on the application of muriatic or hydrochlaric acid?

A. I think that they will turn considerably yellower than the other papers.

Q. What do you anticipate will be the result of putting the muriatic or hydrochloric acid upon the words "put this above" that have been selected by the Ordinary?

A. To make it yellow, possibly more the color of a yellow on the thicker writing than on the thiner, I see it is also heavily bronzed.

Q. You think it more the color of the upper part of the "E" in eosin?

A. Yes, simply because it appears to be thick there.

Q. You call that yellow?

A. I call it an orange yellow; I think I have described it.

Q. Does not the letter "Y" after "eosin" written on your paper Exhibit D 134 mean "yellow?"

A. Yes, sir, but it is not the yellowish shade, that is "YY;" Mr. Pickhardt made the solution of it in his laboratory and I told him I would like it a yellow color, and he said "Y" does not mean "yellowish shade" that is "YY" to distinguish it from the bluer shade of yellow or bluish shade.

Q. And what do you anticipate will be the result of the application of the acid to the word "deceased"

where pointed out by the Ordinary in article five near the end?

A. It will be a yellow or orange yellow, it will be a color ranging between that of the lower part of the letter "E" and the upper part of the upper "E" in the word "eosin."

Q. And in all these cases do you anticipate that this change will be permanent?

A. I do, except in those conditions which I have spoken of, unless exposed to the light and atmosphere.

Q. And this would not be found to occur if they remained like this under ordinary conditions?

A. No, sir.

Q. And what do you anticipate will be the result when the acid is applied to the word "therefrom" in article eight?

A. I think that would also turn a yellow or orange color.

Q. Of course, Professor, your testimony as to this test is derived from your experiments made since 1874 on the application of hydrochloric acid to ink in which you knew there was eosin?

A. Yes, since 1877.

Q. You know that so applied to ink in which there is eosin there will be this change that you have attempted to describe?

A. Yes.

Q. What would you say if the same result followed on the application of this acid to so-called "red ink" of an age prior to the discovery of eosin?

A. As I said before I do not consider that test apart from the appearance of the ink as conclusive, I simply consider it confirmatory of the stronger proofs which I spoke of.

Q. Then you do not regard this test of the application of the acid which you are about to make as the strongest proof?

A. I do not.

Q. The strongest proof to your mind is the mere

inspection by the unaided eye which shows you the peculiar color and bronze effect?

A. Yes, sir.

Q. So that this test, the principal virtue of this test you are about to make aside from its dramatic effect is confirmatory only?

A. Yes, with it together it would convince me it was eosin.

Q. This paper Exhibit D 134 shows the effect of the half solution which was produced to you by Mr. Stebbins on the little bars in the margin?

A. It does.

Q. And then shows the strong solution called muriatic acid in the body writing itself?

A. Yes, of course I have not tested this acid for its strength, but I presume that it is strong acid and I am more confirmed in my belief because Mr. Stebbins acid turns the safranine to a violet and this other turns it to a bright blue which is characteristic of the stronger acid.

Q. You have spoken of different shades of eosin, what are they?

A. Well, there is the dibromfluorescein which is of an orange shade, then there is the tetrabromfluorescein which is of a yellow shade, then there is the tetraiodo-fluorescein, which is an iodine, which is of a bluer shade, sometimes known as erythrosin, and then there is another styled dibromo-diantrofluerescein, which is a scarlet or of a scarlet tinge. I will say here that I do not wish to give this impression, that I have determined all these by my own tests, because I have not, it is simply the results of my reading of literature on the subject—they all turn yellow with an application of hydrochloric acid, the bromo series are of a later discovery.

Q. Are they all used in the manufacture of red ink?

A. I do not know of their being so used, in fact as I stated before only a very labored analysis, the determination of the iodine or bromine would show their exact position.

Q. Which did you use for Carter, Dinsmore & Co's. ink?

A. What we used contained bromine, it was undoubtedly tetrabrome as it was of a yellow color, I never determined the exact —— interrupted.

Q. What did you say was the difference between the "Y" and the "YY?"

A. My impression always was that samples marked "Y" would be considered of a sufficiently yellow shade for all purposes and when Mr. Pinkhardt took these samples marked "Y" and dissolved a little in water I immediately commented that it was not of a dark yellow as I understood "Y" to be, and he informed me that the shades had changed and that the yellow was "YY."

Q. Why "YY?"

A. It is more yellow.

Q. You mean that if eosin ink was used, if eosin of any kind was used in ink the ink would turn yellow?

A. Yes.

Q. But as a matter of fact they would not use in ink properly anything but yellow eosin?

A No, sir; on the contrary Mr. Pinkhardt explained to me that the blue shade was more popular.

Q. The bluer tints of eosine go into a red ink?

A. Yes, sir; the bluer tints, that is verging more into a green or crimson and less of a scarlet.

Q. Can you tell what would be the effect of mixing carmine with chrysaniline?

A. I cannot.

Q. You attend here to give your testimony—but first did you hear the testimony of Mr. Stafford?

A. I did.

Q. You heard the testimony of Mr. Stafford?

A. Yes, sir.

Q. You heard him say that fuchsine inks had a bronze lustre?

A. Yes.

Q. You would not question that?

A. He qualified it and I agree with him in that, he said there was a great many different kinds of bronze, and my statement of that would be that it was a brown bronze and not a golden yellow bronze.

Q. So after all it is the color of the bronze and not the bronze?

A. It is the color of the bronze as in the color of the ink.

Q. Is it not true that in aniline colors of the earlier times they had this quality of this bronze ink which is as you tell us a superficial effect?

A. Yes, some of them are.

Q. Are we not driven in the common analysis after all to the color of this so-called red ink on Exhibit P 236?

A. No, sir; it is that very characteristic golden bronze which is peculiar to no other color or substance, to my experience no other, the peculiar bronze sheen which is peculiar to no other substance.

Q. Do you mean to say there is no such thing in nature as yellow bronze except in the product of eosin?

A. I should limit it, I should say where the bronze is different from the color by holding it a different angle—looking at it in one light you do not see the bronze, but in looking at it in other lights you do. I can conceive of substances having that bronze effect in them, but they have it which ever way you hold it, and this golden bronze can only be seen in certain conditions of light.

Q. You see that same kind of bronze in that changeable silk which is made into ladies dresses?

A. I call that a mere fluoresconce, not a bronze.

Q. Do you mean to say that no substance that has a bronze effect which seems to show a different color as you alter the angle is in existence except ink made of eosin?

A. I do not think I quite get your question.

Q. Do you mean to say there is no bronze surface effect that would present a different color according

to the angle at which the light strikes it, except a fluid made from eosin?

A. Yes it might be, but—interrupted.

Q. It might be you think?

A. I do not know.

Q. Then you limit yourself to aniline?

A. Well to colors.

Q. Not aniline?

A. No, sir; to colors which are capable of being put on paper.

Q. No color which could be put on paper in a liquid form and present the appearance of writing which will have a bronze surface effect which would seem to be of a different color according as you held the paper?

A. Yes, fuchsine will, magenta will, it will have a green shade, but not this peculiar golden bronze, the effect is different.

Q. This document is written upon a cream-laid paper with ultra-marine in it you say?

A. Yes.

Q. Which makes it dead white?

A. Yes, sir.

Q. Would the effect that you anticipate will be produced by the application of this acid be the same if the so-called red ink writing was upon paper of another kind?

A. The change in the color would be the same, it might not be so obvious on a paper of a different back ground, on red paper it would not.

Q. How about blue paper?

A. Blue would still have the yellow effect.

Q. You would expect the same result upon blne writing paper?

A. Yes, I never tried it, but I take it for granted.

Q. You are not sure of it?

A. No.

Q. You never tried it notwithstanding?

A. No, sir; but in a scientific stand point I do not see why it should not be the same.

RE-DIRECT BY MR. MILLER:

Q. Do you think it is poor hydrochloric acid?

A. No, I do not think it is poor, I think this yellow color shows that it contains chloride of iron.

MR. COLLINS:

Q. You are satisfied with it?

A. Yes.

MR. MILLER:

Q. Now make the tests?

(Witness applies the tests).

Q. What is the result of the application of the acid upon the word "improvement" on the latter part of the word?

A. It is eosin in my opinion.

Q. Apply the test on the words "put this above" and state the result?

A. That also in my opinion is confirmatory and the color which is produced is of an orange yellow as it appears to me.

Q. Now the word "therefrom" in article eight, and state what it appears to show to you?

A. It turns it orange yellow and gives the characteristic color of eosin treated in the same way.

Q. Now do the same on the words "prior to my decease"?

A. That turns an orange shade.

Q. After having made that experiment please give your opinion as to the red ink which appears in Exhibit P 236?

A. In my opinion this ink consists of or contains eosin, that is my opinion.

FURTHER CROSS-EXAMINATION BY MR. COLLINS:

Q. Do you find the result of your experiments on Exhibit P 236 to correspond with the result of the

like experiments on the word "Eosin" in Exhibit D 134, and if so to which of those two words on Exhibit D 134 do you say the resemblance exists?

A. The color in my opinion—I find the resemblance as I thought it would be from the bronze character as I stated it probably would be ranging between the lower "E" and the upper loop of the upper "E."

Q. That is your judgment?

A. Yes, that is my opinion.

WILLIAM A. H. STAFFORD, a witness produced in behalf of the proponents; being duly sworn according to law on his oath says;

EXAMINED BY MR. MILLER:

Q What is your business?

A. Manufacturer of ink and mucilage, etc.

Q. Where?

A. 603, 605 and 607 Washington street, New York

Q. You manufacture Stafford's inks?

A. Yes, sir.

Q. Do you manufacture red inks?

A. Yes, sir.

Q. Are you familiar with the manufacture of red inks?

A. Yes.

Q. When did you become connected with the business?

A. In 1871.

Q. Do you know of the use of eosin as chemically used as a substance used in the preparation of red inks?

A. Yes, sir; it has been used for many years.

Q. Do you know when you first used it?

A. It was brought to our notice first in 1875 by Pickhardt & Kuttroff, who brought to us the information that it was almost an entirely new product.

Q. Did you use it or had you known of its being used in the manufacture of ink before that time?

New Jersey State Library

A. No, sir; to my knowledge it never was used before that time.

Q. You say it was brought to you by Mr. Pickhardt?

A. Yes.

Q. Which Mr. Pickhardt was that?

A. The senior member of the firm of Pickhardt & Kuttroff; they are the agents in this country of Badische Anilin und Sodafbrik.

Q. At the time you became connected with the business in 1871 what were the various substances used in the manufacture of red ink?

A. Only two at that time that were known to me personally; for one we used fuchsine, and in another a substance which was known as No. 40 carmine.

Q. Were there no others known to you at that time?

A. No, sir.

Q. Are you familiar with the practical appearance of writing made with that red ink or with any red ink?

A. I ought to be, I think; I have personally made experiments for many years in the use and manufacture of red inks.

Q. Is that an eosin ink? (handing witness Exhibit D 134.)

MR. COLLINS—I object to the question, it is not yet in evidence that it is eosin ink, and I also object to the question on the ground that the witness has been in the room while the other expert witness was present in the room.

Question withdrawn.

MR. COLLINS—We withdraw the objection which I made to the witness having been in the room when the other expert was examined; but I insist on the objection that the witness is not an expert so as to testify, nor is it permissible proof.

THE ORDINARY—I understand from the evidence already given that from the appearance it presents, it is determined what substance was used in its manufacture.

MR. MILLER:

Q. Have you manufactured eosin ink?
A. Yes.
Q. Stafford's red ink is mainly eosin, is it not?
A. Yes, we made it from eosin, as well as from other substances.
Q. You make it largely from eosin?
A. Yes, sir.
Q. What is your connection with the business?
A. Well, I have been connected with almost every part and branch of the business, and am still connected with the practical manufacture of ink, I have for a number of years conducted the business in all its departments, and invented all the inks that we have put on the market.
Q. I ask you what that is (handing witness Exhibit P 236)?
A. I should say it was undoubtedly an eosin product.

CROSS-EXAMINATION BY MR. MILLER:

Q. You have seen this document before?
A. Never until five minutes ago.
Q. Were you not at this Mr. Carrick's office?
A. No, sir; I never saw this document until now.
Q. And you have given it no further consideration?
A. Nothing more.
Q. What indicates to you that it is eosin ink?
A. The color and besides that I am confirmed in my opinion by the existence of the bronze lustre in certain portions of the writing.
Q. Don't you see that on other writings?
A. You see it, but not to any measurable degree in inks made or prepared from fuchsine, but it

is a different kind of bronze, it is much darker. You see it also in inks made from violet fuchsine, but the bronze is entirely of a different character.

Q. There is a bronze on fuchsine red ink?

A. Yes, but it is qualified largely by the color.

Q. And the bronze is the same?

A. The bronze is darker, there is almost as much difference between the bronze in an ink made from fuchsine and an ink made from eosin as there is between those I have mentioned and between the bronzes of commercial eosin ink and other red ink about fifty kinds—there is some eosin used in photography.

Q. What medium or vihicle is best to use in the making of red ink from eosin?

A. The original medium used in its production is the best thing to use and that is water.

Q. A man gets his red ink bottle and the ink evaporates and becomes thick, you say water is as good as anything?

A. Yes,

Q. Would not some other matter be better, such as alcohol?

A. No, sir; I do not think that alcohol would be as good as the water, I have never tried it with alcohol, I should not think it would destroy it, but I do not think it would be any improvement upon water, and it would cause it I think to spread on the paper when you wrote with it, I should judge it would spread on the paper and make a very coarse writing, but it would not destroy the ink.

Q. Well, how about vinegar?

A. Well, that would destroy the ink, because it would degenerate the whole thing and result in the destruction of the color and the precipitation of the coloring matter.

Q. When you spoke of the difference between eosin inks and other red inks, you refer to those your firm makes, I take it?

A. Yes, there are other red inks besides those we make, that is they are made from other substances, different from those we use.

Q. You don't know what they are?

A. Yes, I do; there is only one other red ink and that is a product made by the English manufacturers from the base of the Brazil wood.

Q. Is it in the market now?

A. Not in this country I believe.

Q. In former years?

A. Only to a slight extent.

Q. What is the appearance of that ink?

A. It is a rather pale dull red as compared with the coal-tar production and cannot be mistaken for that under any circumstances.

Q. Have you ever had occasion to look at red ink upon documents written upwards of twenty years ago?

A. Yes, I have upon occasions seen such documents.

Q. What is the effect of age upon the ink?

A. The appearance of the document written we would say twenty years ago, that is the appearance of the red ink on that document is very dull indeed, because it must have almost unavoidably been executed with an ink made from cochineal which becomes darker and fades at the same time.

Q. You spoke just now of a carmine ink?

A. Yes.

Q. Can you tell what the effect of age on aniline inks is?

A. Only since 1876 which was the first, that is February, 1876, was the first occasion we made any ink from that product.

Q. You made it from eosin?

A. Yes, sir.

Q. You never made it from fuchsine?

A. Yes; we commenced to use fuchsine in 1869.

Q. Did you ever see any fuchsine inks that you began to make in 1869?

A. Yes, I have occasion to look at writings in my business occasionally.

Q. Did you look to see the effect of age on it?

A. Yes, where it has been kept from the actinia

rays of the sun there has been little or no effect, it maintained its color very well, but where it has been exposed to the air and light the color has faded and to a great extent disappeared.

Q. How about the bronze effect?

A. It does not show because the ink has to be quite dense before the bronze shows on it, that is the solution must be quite densed before the bronze would be produced on the paper.

Q. Then in fuchsine ink that has stood in the bottle for sometime, you would expect to see the bronze effect more than in fresh inks?

A. Yes, naturally that is true of all aniline inks.

RE-DIRECT BY MR. MILLER:

Q. Do you call this on Exhibit D 134 dense or not?

A. I should say it was not very dense.

Q. How would you describe the difference in color between fuchsine and eosin inks?

A. I call eosin a yellowish red and fuchsine a blue red or purplish.

FURTHER CROSS-EXAMINED BY MR COLLINS:

Q. Do you think it is as to this red fuchsine what kind do you call that?

A. A purplish red.

Q. And this other red, eosin you call a yellowish red?

A. Yes, sir.

RECESS.

JAMES H. STEBBINS, JR., a witness produced in behalf of the contestants, being duly sworn according to law on his oath, says.

EXAMINED BY MR. MILLER:

Q. What is your age?

A. Thirty-four.
Q. What is your business?
A. Analytical and consulting chemist.
Q. Where is your business?
A. 104 Pearl street, New York.
Q. Is that where your laboratory is?
A. Yes.
Q. Where were you educated?
A. I was a student of chemistry for three years, 1871 to 1873, in the University of Sorbonne in Paris, and in 1874 I entered the University of ——— and graduated from there in 1878. In the fall of 1878 I went to Berlin and studied there until the spring of 1879 with Professor Hoffman. In that spring I had to come back to this country on account of my health and since that time I have been in business in New York.
Q. What particular branch of chemistry have you studied?
A. Organic chemistry, embodying the principles of coal-tar colors.
Q. Have you ever been a witness in any litigation in the courts of this country?
A. Yes, quite a number of them.
Q, Where?
A. I was an expert in the suit of Pickhardt & Kuttroff in the United States Courts on a revenue case.
Q. All the experts in the country were engaged on those cases?
A. Yes, pretty nearly all.

MR. COLLINS:

Q. What was the subject matter of the suits?
A. Aniline colors.
Q. What other cases have you been acting as expert in?
A. I cannot remember all now; I remember of cases regarding the suppression of butter, the oleomargarine cases, as we called them, and I have also acted as expert in chemical cases.
Q. Have you acted in any capital cases?

A. I had one capital case and I have one on hand now.

Q. For the District Attorney of New York?

A. Yes.

Q. You claim to be familiar with the subject of organic chemistry and aniline dyes and colors?

A. Yes, sir,

Q. Tell us what you know about the substance called eosin?

A. From a chemieal point of view?

Q. From a chemical point of view.

A. Eosin as a chemical is a bromine compound of tetrabromfluorescein. Fluorescein is a derivative or a compound of phthalic anhydride with two molecules of resorcinol and a compound known under that name being usually termed phthalein, owing to their peculiar structure. Now treating this fluorescein with four molecules of bromine, it is converted into a dye stuff known as eosin.

Q. Are you familiar with that color in inks?

A. I am.

Q. Describe the peculiarity?

A. Eosin has a peculiarly bright pink color, I term it "pink" and when written on paper it has a decided golden bronze iridescence and is quite distinct from any other colors that I know of in its appearance.

Q. Are you familiar with aniline colors?

A. Yes, sir.

Q. Have you made a special study of them?

A. Yes.

Q. Please look at Exhibit P 236, and look at the red ink lines of that instrument from the beginning to the end and after such examination state what in your opinion that red ink is?

A. In my opinion that is eosin ink.

Q. You have seen it before?

A. Yes, sir.

Q. How many times?

A. This will be the third time.

Q. Are there any corroborative tests that can be made?

A. Yes, sir.

Q. What?

A. Hydrochloric acid if applied to the writing will produce a yellow change of color from pink to yellow.

Q. Hydrochloric acid will do that?

A. Yes, sir.

Q. Look at the word "improvement" on this first page; was that in the condition you now see it when you first saw it?

A. No, sir.

Q. What is its appearance now?

A. It appears to me as if it had been treated with hydrochloric acid.

Q. Look at the words "put this above" and state whether that was in the same condition you now see it when you first saw it?

A. No, sir.

Q. What is its appearance now?

A. That is as if it had been treated with hydrochloric acid.

Q. And the word "decease" was that in the condition you now see it when you first saw it?

A. No, sir; that has been treated too.

Q. There are other places where it has soaked through, now look at the word "therefrom" in article eight, and say whether that is in the same condition you last saw it?

A. No, sir; that has also been treated with acid.

Q. Have you any doubt as to what that ink is after seeing the results of the application of hydrochloric acid?

A. None whatever.

Q. You are thoroughly familiar with eosin ink?

A. Yes.

Q. Tell us when eosin was first discovered?

A. Eosin was first discovered in 1874 by Caro and as a reference I will refer you to the book of Schultz & Julius—this is the book by Schultz & Julius and the reference to eosin is found on page —interrupted.

Q. Tell us the authorities when giving what they say?

A. Schultz & Julius the book is entitled Tabellarisch Ubersicht der Kunstichen organischen Farbstoffe, that is the German name of it, and it means in English "Table of colors."

Q. Do you know that book (handing witness another book)?

A. I am not familiar with that book.

Q. What experience have you had in the manufacture of colors?

A. I never manufactured them.

Q. Haven't you taken out patents for colors?

A. Yes, sir.

Q. How many?

A. Eighteen or twenty I think.

Q. Aniline colors?

A. Aniline and other coal-tar colors.

Q. Is this the hydrochloric acid marked "H. C. L" used in the small bottle which was handed by you to Professor Hodges, is that the bottle you handed to him?

A. Yes, sir.

Q. What is the contents?

A. About equal parts of strong hydrochloric acid and pure water.

Q. Brought from your laboratory?

A. Yes, I filled the bottle myself.

CROSS-EXAMINATION BY MR. COLLINS:

Q. Would that be the hydrochloric acid you would use to make the tests of which you speak?

A. That is strong enough.

Q. Are you the Professor Stebbins that attended to see this draft with Professor Hodges at various cases within the last week?

A. Yes, sir.

Q. And you and he both are here I take it as paid experts?

A. Yes.

DAVID F. DAVIDS, a witness produced in behalf of the contestants being duly sworn according to law on his oath says:

EXAMINED BY MR. MILLER:

MR. COLLINS—I object to the contestants going into this matter so extensively, and I ask the Court to limit the number of experts.

THE ORDINARY—I will allow it to go a little further, but I shall limit it.

MR. MILLER:

Q. What is yonr business?

A. A manufacturer of writing inks, sealing wax, mucilage, wafers and such like.

Q. What is your firm name?

A. Thaddeus Davids & Co.

Q. How long has that firm been in existence?

A. In its present style since 1883.

Q. As ink manufacturers how long have you been in business?

A. That is the Davids began business in 1825, and it has been carried on under different names, under the name of Thaddeus Davids & Co., Davids & Black and Thaddeus, Davids & Co.

Q. Manufacturing inks?

A. Yes, sir.

Q. What kind of inks did you manufacture, red or black ink?

A. Red and colored inks.

Q. Are you familiar with the red inks of commerce?

A. I am.

THE ORDINARY:

Q. How long have you been connected with that firm?

A. I began working for it in 1845.

MR. MILLER:

Q. Are you familiar with the composition of red inks?

A. Yes, sir.

Q. Do you know of such a thing as eosin red ink?

A. I do.

Q. When was that first manufactured?

A. By me in 1875.

Q. How did you come to manufacture that?

A. I had some of the first samples brought to this country and they were recommended to us for making red ink, and I made up some of it.

Q. Prior to 1875 what red inks were in the market and what red inks were known?

A. Carmine.

Q. What was that?

A. It was made from carmine, which is a product of cochineal and Brazil wood ink which is sometimes made from log wood, it was a red ink.

Q. What else?

A. I don't know of any others.

Q. Do you know of any fuchsine ink in the market prior to 1874?

A. I do not.

Q. You were familiar with the inks that were in the market at that time?

A. Tolerably so.

Q. What do you mean by tolerably so?

A. I know pretty near all.

Q. You know what your own inks were, and you watched those of your neighbors?

A. Yes.

Q. Mr. Stafford was one of the largest manufacturers of inks at that time?

A. He was not so large a manaufcturer at that time.

Q. Carter. Dinsmore & Co., was a large mannfacturer of ink?

A. Yes.

Q. And Thaddeus Davids & Co. were large manufacturers?

A. Yes.

Q. These four firms were the leading manufacturers in the country. were they not?

A. Yes, sir.

Q. Are you familiar with the appearance of red eosin ink?

A. Yes.

Q. Kindly look at Exhibit P 236, at the red ink appearing at various parts of that paper, and state what kind of ink that is in your opinion?

A. That is a scarlet or crimson ink made from eosin, sometimes labeled scarlet or crimson ink.

Q. Why.

A. Well, sir, I know that no other substance known to me will make an ink of that particular color.

Q. What do you mean by color?

A. Well there are of course different colors of red, there is a carmine red which is more of a bluish color aud then there is a bright scarlet.

Q. Other witnesses that have been examined have spoken of a bronze appearance, have you seen that?

A. There is a bronze appearance in this ink which neither the carmine nor the Brazil wood ink would have.

CROSS-EXAMINAED BY MR. COLLINS:

Q. You are not familiar with fuchsine ink?

A. Yes, I am to some extent.

Q. You never made it?

A. Yes; but not previous to 1875, fuchsine is altogether a different color, it is not possible for that to be a fuchsine ink.

Q. You judge that from color?

A. Yes.

Q. How long has your concern made red ink at all?

A. We have made inks since I became connected with the firm, that is since 1845.

Q. Were you ever engaged in the practical part of making inks?

A. Yes, in the manufacturing part.

Q. Tell us when?

A. Well I have been most of the time- I began first by bottling ink, and then step by step to the making of it?

Q. Are you here for a compensation?

A. No, sir; I have had no compensation.

Q. No, I do not suppose that you have had it yet, but you are here for that.

A. Well, I expect to have some compensation.

Q. You say you have bottled ink and that you have been engaged in making ink, now what do you mean by that?

A. I was a boy when I first went to work, and I commenced at filling and labelling bottles and did such work as that at first, and then after that I got along to the manufacturing of the ink.

Q. How long. up to what time did you work at labelling and filling the bottles.

A. For some eight or nine years and then I left that and I went into the manufacture of sealing wax.

Q. So that you have not done anything at the ink proper since then.

A. I have superintended it myself since the 1st of January, 1875, until the present time.

Q. Prior to 1875 for a number of years you had nothing to do with the manufacture of inks?

A. Yes, I had.

Q. I thought you said it was sealing wax?

A. Yes.

Q. Now which was it sealing wax or ink that you manufactnred prior to 1875?

A. Well prior to 1875 I was manufacturing sealing wax.

Q. So that your practical part in the manufacture of inks was away back in the 1840,s or 1850's until you took up the superintending it in 1873?

A. Yes, sir.

RE-DIRECT BY MR. MILLER:

Q. Was there any fuchsine ink known in the market before 1874?

A. That I do not know; I know there was no substance would make an ink of that color (referring to Exhibit P 236) previous to 1874, the nearest that would come to it would be the Brazil wood ink and that would not have the metallic lustre that that ink has.

Q. The nearest to what?

A. The color.

Q. Brazil wood would come nearest in color, but it would not have the metallic effect of lustre?

A. No, sir.

HENRY MORTON, a witness produced in behalf of the contestants being duly sworn according to law, on his oath says.

EXAMINED BY MR. MILLER:

Q. What is your occupation or profession?

A. I am president of the Stevens Institution of Technology in Hoboken.

Q. Are you also a chemist?

A. Yes.

Q. What experience have you had in the profession of chemistry?

A. I have all my life worked in chemistry one way and another and was professor of chemistry in the University of Pennsylvania for twenty years before I came here.

Q. You are familiar with that branch of chemistry termed organic chemistry?

A. Yes, sir.

Q. And familiar with the derivatives of coal-tar?

A. Yes, sir.

Q. And aniline dyes?

A. Yes.

Q. What experience have you had in respect to eosin?

MR. COLLINS—I object to the question on the ground that it is not proper to enter into such an extensive examination on a merely collateral branch of the case as this is. It is unreasonable and an unreasonable use of expert testimony, and puts upon the proponents a greater burden than they ought to have.

MR. MILLER—I propose to call Professors Leeds and Doremus on the question of the discovery and use of eosin in inks.

Question allowed.

A. In 1873, 1874 and 1875 I was engaged in the special study of fluorescent bodies, and having studied several of them was on the look out for any new one that might turn up, and as soon as eosin was discovered and the fact of its discovery published I heard of it and got a specimen of it and prepared some of it and experimented with it, my interest being in regard to its fluorescent property, and so I became familiar with it from that time and have been since, and I have had occasion to testify about it in the United States Courts having reference to duties in relation to other bodies and also in regard to aniline colors and so on.

Q. On what special duty were you engaged in 1873 to 1876?

A. I was engaged in the study of fluorescent bodies and shortly after that I wrote an article on the subject of fluorescence.

Q; The first knowledge you ever had of eosin was in 1873 to 1875 in those years?

A. Yes.

Q. You have looked up the literature since that?

A. Yes.

Q. Are you not confirmed in your statements by the literature on the subject?

A. Yes, decidedly; it was introduced in 1874, it was introduced into the market at that time, and it was invented by Caro in the year 1874.

Q. Please look at Exhibit P 236 and examine the red ink throughout that paper and state in what ink in your opinion it is written with?

MR. COLLINS—I ask the privilege of cross-examining this witness for the purpose of ascertaining the extent of his knowledge on the subject.

Motion granted.

CROSS-EXAMINTION BY MR. COLLINS:

Q. What experience have you had with eosin when used in ink, what occasion have you had to examine this subject when used in ink?

A. Shortly after it came out and I had been told that it was begun to be used as an ink and that it answered very well in all respects; I put up some small samples into a solution in water and made some experiments to know whether it was permanent or not and to ascertain in with regard to its permanency, and as I said, I made some solutions of eosin in water and wrote with it and put it out into the sun to see how soon it would fade, to ascertain the effect of the actinia rays upon it, and whether it would fade or remain permanent, and in that way I became very familiar with it as an ink at that time and several times since then I have had occasion to examine inks to know whether they were eosin inks or inks made from madder; I mean cochineal or carmine.

Q. Are there inks made from madder?

A. No, sir.

Q. You say you have since had occasion to examine inks to see whether made from eosin or carmine, on what occasions have you had to do that?

A. On one occasion our professor of drawing came to ask me whether, in making certain drawings, it would be safe for him to use a red ink which he had, but which he thought might fade, and I told

him that I would examine it to see whether it was a carmine ink or whether it was made from eosin?

Q. How did you examine it?

A. I applied the usual tests of hydrochloric acid and a reduction test.

Q. Anything else, is there any other occasion that you have had to look at eosin in ink?

A. No, sir; that is the only occasion that I now recollect.

MR. COLLINS—I submit that that is not sufficient experience in inks and I do not think he has shown sufficient familiarity with inks to warrant his examination as an expert.

THE ORDINARY—I think your objection is well taken in the form the question is put at present.

Question withdrawn.

RE-DIRECT BY MR. MILLER:

Q. I will amend the question your Honor and put it in this way:—In writing a document with an ink or pigment made of eosin please state, Professor, what peculiar characteristic appears as to color and the appearance generally?

A. It is a peculiar shade of red, and if it is applied heavily on the paper, it will give a golden reflection or oridescence when you look at it across it, in such directions as that (indicating) in the light.

Q. What confirmatory test is there of it?

A. There are various tests.

Q. What is the simplest?

A. The application of hydrochloric acid.

Q. What would be the effect of hydrochloric acid on this ink?

A. It would turn it yellow, of course if it could be taken off the paper, there are a dozen tests that could be applied to it.

Q. From your knowledge of eosin are you enabled to detect its present on any paper in which it is used as an ink?

A. With proper means of applying the test.

Q Kindly look at Exhibit P 236 and say if you see any evidence of eosin on the lines of that paper?

MR. COLLINS—I object to the question on the ground that I think the witness has not shown sufficient means of knowledge.

Question admitted.

A. I should feel quite satisfied that the red coloring matter in that ink was eosin.

Q. Look at the word "improvements" and say whether it has been treated or not?

A. It appears to have been.

Q. With what?

A. I should say hydrochloric acid from color.

Q. Look at the words "put this above" opposite article three and the words "put" and "below" on the page immediately preceding it and state if that has been treated?

A. Yes.

Q. With what?

A. In both these cases it appears to have been treated with hydrochloric acid diluted.

Q. Now the word "decease" please state whether that has been treated or not?

A. It appears to have been treated with hydrochloric acid.

Q. Now look at the word "therefrom" and state whether that has been treated?

A. It appears to have been treated.

Q. These words which I have called your attention to you say have been treated, do they show the customary and proper reaction of eosin when so treated?

A. They do.

CROSS-EXAMINATION BY MR. COLLINS:

Q. When the counsel asked you to look at this paper you took it and held it on an angle and looked at it by the light and occupied about three minutes in doing so?

A. I looked at several pages of it.

Q. Yet you had seen it before and examined it?

A. Certainly.

Q. Why did you need to do it now?

A. To assure myself that it was the same document I had examined before.

Q. Did you need to look at it at that angle?

A. Yes, certainly.

Q. Why?

A. Beeause the document I examined before had that peculiar golden gloss.

Q. That is peculiar to all eosin ink you say?

A. Yes, when written sufficiently thick.

Q. How could you tell from the documents?

A. I can tell you that by that alone.

Q. What did you look at it in that way?

A. That peculiar gloss is an unusual thing to see, and the two together satisfied me I had seen the document before.

Q. It is not unusual in eosin ink?

A. No, sir; not unusual, it is usual to see it when it is written so thickly and not blotted off.

Q. You seen it before?

A. Yes, sir.

Q. How many times?

A. Two or three times.

Q. In company with Professors Doremus, Leeds, Stebbins and Hodges and Mr. Carvalho, didn't you?

A. At one time or another, but not always together,

Q. And talked it over all of you?

A. These gentlemen met on one occasion and I was with them when they met.

Q. And you talked it all over?

A. Yes, certainly, we all looked at it and expressed our opinions.

Q. You have made no specialty of the study of inks?

A. I have analyzed inks on various occasions and made them up.

Q. For general purposes?

A. Not for this case, no, sir?

Q. Have you not done it in order to become conversant with inks?

A. It was in order to know what I could about them.

Q. About a particular ink?

A. No, sir; about a variety of inks as to their properties and compositions.

Q. To what end?

A. To inform people that asked about them.

Q. That is, they would come to you as a general chemist to help them in some particular matter in which ink happened to be connected?

A. Yes.

Q. You never manufactured inks or made inks a special study?

A. No, sir.

Q. Is the application of the hydrochloric acid the main thing with you?

A. I don't know what you mean, it is a simple test.

Q. The main thing?

A. No, sir; the color and the gloss, I cannot explain it or any other assumption than that, it was eosin ink, these two things alone are inexplicable to me unless, that is eosin ink.

Q. Which are the most important of these two things?

A. It is hard to say, the two must exist together—in other words, if it was a totally different color and it had the golden gloss that would not prove it was eosin.

Q. What would it be then?

A. For instance, there are some blue dyes that have a golden gloss.

Q. I am speaking about red inks?

A. I am not.

Q. Which is the more important, we are speaking of red inks?

A. Not when speaking of colors.

Q. I am speaking of the different shades of color, what is the thing or things that chiefly indicates to your mind that this is eosin ink?

A. The two things as I have already stated are the red color a peculiar color—interrupted.

Q. A peculiar shade of red?

A. Yes, of course that is what I mean by color, and then the gloss.

Q. How does it help us any to speak of a gloss on blue?

A. Well, I didn't speak of it with a view of helping anybody.

Q. I still mean red ink, what would be indicated by a gloss without this peculiar shade of red but still being a red ink?

A. It depends on what kind of gloss it was, if it was a green gloss and the red was an entirely different red, it would indicate magenta.

Q. Suppose it was a gloss such as this is, but a different shade of red?

A. That would indicate that it was not eosin.

Q. What would it be?

A. I don't know.

Q. Suppose it had the color and not the gloss, what then?

A. Then it might be a carmine ink, this to the eye is the same color as a carmine ink, that is as regard the shade of color.

Q. Then it is the gloss that must control?

A. No, sir; the two together.

Q. This color and the gloss.

A. Yes, sir; the color and the gloss.

Q. Carmine ink would not turn yellow under the hydrochloric acid test?

A. No, sir.

Q. What would, anything?

A. Nothing that has any approach to this color?

Q. Nothing that has any approach to this color?

A. No, sir; nothing but what it is perfectly easy to distinguish as a different color from this.

Q. Then if eosin was only discovered in 1874 and ink of that general character that was proved to have been in existence long prior, did turn yellow under the conditions of a test by hydrochloric acid, then that would shake your opinion as to this being necessarily eosin ink?

A. Yes, if it was sufficiently proved to my satisfaction.

Q. You says this seems to you to have been treated with a diluted solution of hydrochloric acid, why do you think it was diluted?

A. Because the change of color is not so great as would be with a very strong acid.

RE-DIRECT BY MR. MILLER:

Q. You have been familiar with aniline dyes and colors prior to 1874?

A. Yes, sir; to a greater or less extent.

Q. So far as you know was there known to chemistry any color or dye or pigment which, being diluted and put on paper, would give the tint seen on this paper and give the reaction under the hydrochloric acid test as this does?

A. No, sir; nothing is known as far as I know.

Q. This is hydrochloric acid (handing witness the bottle)?

A. Yes.

Q. The yellow tint in it, what does that indicate?

A. It indicates that there is a little free chloride or something else in it, it does not indicate anything when carefully distilled, it would be perfectly white and chemically pure and then is more likely to be colorless and stronger, but by standing awhile it would lose its perfectly white color.

ALBERT R. LEEDS, a witness produced in behalf of the contestants being duly sworn according to law on his oath says:

EXAMINED BY MR. MILLER:

Q. What is your profession?

A. Chemistry.

Q. Are you connected with any institution?

A. I am connected with Stevens' Institution of Technology.

Q. What chair do you occupy?

A. The chair of chemistry.

Q. How long have you been a chemist?

A. Twenty or twenty-five years.

Q. Are you acquainted with the branch of Chemistry known as Organic Chemistry and the subject of anilines coming under that head?

A. To a certain degree.

Q. What do you know about them, don't be too modest Professor?

A. In some instances I have had occasion to use some of the organic compounds in order to make other substances from them.

Q. Are you familiar with the general subject of aniline colors?

A. In a general way?

Q. Are you familiar with eosin?

A. To a certain degree.

Q. What do you know about it, tell us what you know about it?

A. I know the nature of the body chemically speaking and its composition and its general properties.

Q. Do you know anything about its appearance when used in ink?

A. I do, I have familiarized myself with its appearance as an ink.

Q. When was eosin first discovered?

A. From the authorities I have seen if I recollect the date rightly, it was in 1874.

Q. What is the characteristic or appearance of eosin when used in ink?

A. It makes an ink—interrupted.

MR. COLLINS—I object and I ask the privilage of cross-examining this witness, the witness has not been shown to possess the requisite means of knowledge to testify as an expert.

Question admitted.

A. It is a red color and also has a peculiar reflection.

Q. Describe it?

A. A strong yellow color inclined to a golden yellow tint.

Q. How does that appear?

A. It gives an appearance which is like an iridscence on the surface of the ink when dry.

Q. Is there any other aniline or any other color that you know of that has that appearance?

A. No, sir.

Q. Is there any reagent which can be used to test it or not or what is the regeant, do you know?

A. The color changes on the use of hydrochloric acid.

Q. What does it become then?

A. The red color is changed to yellow.

Q. You see the colors put on Exhibit D 134 and you saw them yesterday at your laboratory?

A. Yes.

Q. By Professor Hodges?

A. Yes.

Q. Will you please look at Exhibit P 236 at the red ink lines in that Exhibit and state whether in your opinion the red ink contains any eosin?

MR. COLLINS—I object to the question on the ground that the witness has not shown

any familiarity whatever with inks or with the use of eosin in a fluid form.

Q. What is your knowledge of this substance, eosin—have you obtained any knowledge from your interviews with these other gentlemen?

MR. COLLINS—He must be shown to have some familiarity with eosin ink as applied to the surface of paper.

Question allowed.

MR. MILLER:

Q. Will you please look at Exhibit P 236, at the red lines in that Exhibit, and state whether in your opinion the red ink contains any eosin?

A. I would state that the red writing had been done with a fluid containing eosin.

Q. Why do you state that?

A. Because of the color of the writing and more especially of the appearance when looked at in a reflected light, the peculiar yellowish iridescence.

Q. Look at the word "improvements" and state whether it appears to you to be as it was or whether it has been treated with anything?

A. It has been treated with some reagent?

Q. What?

A. I should judge hydrochloric acid.

Q. Look at the other places I call your attention to, being the words "put this above" at article three, and the word "decease" in the words "prior to my decease" at the end of article five, and state whether they appear to have been treated by acid or what?

A. The word "decease" I should judge has been treated with hydrochloric acid, and also the words "put this above" and the word "improvements" on the first page, they all appear to have been treated with hydrochloric acid.

Q. What is the reagent applied to eosin to disclose its character, to disclose its existence, what is the common test?

A. The use of hydrochloric acid to effect a change of color.

CROSS-EXAMINATION BY MR. COLLINS:

Q. Did you ever apply that test yourself?

A. Yes.

Q. On what occasion?

A. A long time ago—I do not recollect when—when eosin inks first came into use.

Q. Why?

A. As a matter of interest in chemical points.

Q. You say you saw this paper written by Professor Hodges, Exhibit D 134, in your laboratory yesterday, did he write other documents?

A. Yes, this was written in my laboratory.

Q. Did he also do other writings with red inks there besides that paper?

A. I do not know of my own knowledge that he did.

Q. Were there any others there, any other writings or red ink there?

A. My laboratory consists of three rooms, I was not in the room in which this was written all the time, and this is the only one that I saw written.

Q. Were there not some tests applied to red ink, hydrochloric acid put on red ink there?

A. I do not recall its being done.

Q. I take it that yourself and Professor Morton are here for compensation as paid experts?

A. I suppose, nothing has been said about it, but that is usual and expected.

Q. You are accustomed to be compensated when you testify?

A. Certainly.

Q. You saw this paper Exhibit P 236 over at Stevens' Institute also, did you not.

A. Yes, I saw this paper.

Q. And examined it?

A. Yes.

Q. To what do you attribute the most significance

in deciding it to be eosin, the color, the iredescence or the change of color under the acid?

A. I think that all three points would weigh with pretty nearly equal strength in my mind.

Q. There is an iridescence to other aniline colors is there not?

A. Yes.

Q. And Professor Morton said carmine was about this color, do you agree with him there?

A. My idea of the color of carmine is a different tone of red than that of eosin.

Q. What other substance gives the color of eosin?

A. I do not recall any that is to me precisely the same tone of red.

Q. What color would be produced by a mixture of fuchsine and chrysaniline?

A. I cannot say.

Q. What would be produced by a mixture of carmine and fuchsine?

A. I cannot say, I never made it.

Q. What by a mixture of carmine and chrysaniline?

A. I cannot say, I never made it.

Q. Nor can you tell whether a bronze iridescence would be produced by these mixtures or any of them?

A. I do not know.

Q. There is a bronze to be seen on fuchsine ink?

A. No, sir; I should not call it a bronze—there is a metallic lustre, but you can hardly call it a bronze.

Q. There is an iridescence, is there not?

A. Yes, there is an iridescence.

Q. I suppose your attention with regard to eosin has not been particular as to inks, has it?

A. Particularly, I have used eosin.

Q. For what purpose?

A. As an ink, I have used it for a long time as an ink.

Q. Buying the commercial ink which is made of it?

A. Yes.

Q. Is your familiarity with its appearance in ink derived from its use when purchased in the ordinary way at the stationer's?

A. Very largely, I am more familiar with it in that way than any other.

Q. How do you know that the ink you purchased and used so was eosin ink?

A. From the fact that the ink that I bought had the properties of eosin.

Q. How do you ascertain those properties when existing in a liquid applied to paper as a writing fluid other than that you were using an eosin ink which you bought?

A. This eosin ink observed in the way I have spoken of had the color of eosin and on drying it had this iridescence.

Q. How did you ascertain that it would have these properties?

A. I have not made any particular examination of eosin ink that I used, that is any chemical examination of these particular samples, but I judged them to be eosin ink from their physical properties.

Q. How had you that previous knowledge that the ink you bought and used was eosin ink?

A. The way I spoke of it, it had the certain color which was that of eosin and had that certain iridescence of eosin.

Q. How did you ascertain in that eosin had that color and iridescence?

A. Nothing further than such eosin that I knew and had seen had those properties.

Q. How do you learn that?

A. I had not had occasion to go into an analysis of eosin personally.

Q. Had you any other knowledge of the properties of eosin ink except such as were imparted to you by the use of what you purchased?

A. No, sir, I have not manufactured eosin ink myself.

Q. Then you knew no more of the properties of eosin than I could learn by the use of ink which I knew was eosin ink and became familiar with it and tested for eosin inks of the same character, is that correct?

A. I presume so.

Q. Your knowledge or any ones of the color of eosin and the iridescence when used as a writing fluid would be derived from seeing the eosin ink of commerce, would it not?

A. If I understand the question, you mean have I in any way prepared eosin so as to be aware of the history of the sample and used that and obtained the peculiar color that I spoke of?

Q. Yes.

A. Well, putting it in that shape I say I have not that knowledge.

Q. How do you know that no other red ink would not have the same property that you say you have discovered in the use of the commercial eosin ink?

A. I am not prepared to state directly that it would not have, but I never saw any red ink which had the properties that I speak of, except eosin ink.

Q. Do you know the properties of fuchsine ink?

A. Yes.

Q. What are they, give its properties?

A. It has a certain color and it also has on drying the ink that is where a certain amount is present, a certain iridescence.

MR. MILLER:

Q. Describe the colors?

A. It has a red color which impresses me as having a purplish shade and when dry has an iridescence more of a bottle green character.

MR. COLLINS:

Q. How do you know that the inks you bought as eosin inks were eosin.

A. I have answered that by simply stating that the

color of the ink and the appearance was that of eosin.

Q. But you only knew that by the appearance, by the comparison with other eosin inks that you had bought and used, as I understand you, am I right there?

A. Yes.

Q. How do you know that your basis of comparison was an eosin ink?

A. Not having prepared the ink I am not able to say, but the various inks that I have bought as eosin inks agreed together as having the properties I spoke of, if they were something else than eosin, I did not ascertain it by any further examination.

CHARLES A. DOREMUS, a witness produced in behalf of the consestants, being duly sworn according to law, on his oath says.

EXAMINED BY MR. MILLER:

Q. What is your profession?

A. Chemist.

Q. How long have you been such?

A. Since 1873.

Q. Where have you studied?

A. In New York, Heidelberg and Leipsic.

Q. What course of chemistry did you pass in Heidelberg?

A. A University course for the degree of Doctor of Philosophy, the Leipsic course was part of that same course of study.

Q. Under what Professors?

A. Under Professors Bunsen, Kirchhoff, Kopp and Kuhue at Heidelberg, aud Kolbe, Ludwig and Dreschel at Leipsic.

Q. Since the time you studied chemistry what practice have you had in the branch of chemistry known as organic chemistry especially?

A. By professing chemistry, literature and in analysis.

Q. And also as teacher?

A. Yes, in New York and Buffalo.

Q. What institutions?

A. The College of the City of New York I am engaged there as an assistant and professor, at the American Veterinary Soeiety, Professor at Bellevue Medical College and was assistant at the Buffalo Medical College.

Q. Have you given any particular attention to aniline and aniline colors?

A. Among others.

Q. Are you familiar with the substance known as eosin?

A. Yes, sir.

Q. Do you know when it was discovered?

A. About 1874.

Q. What has been your experience about eosin where have you seen it, what have you done about it, and what do know about it?

A. I have seen it used as a pigment in cosmetics and inks, staining fluids and in dyes.

Q. When was your attention first called to it?

A. Half a dozen years ago, perhaps.

Q. Did you have occasion to make an examination so as to acquire a knowledge of the characteristics of eosin?

A. Not at that time; I have seen it off and on in the course of teaching and in analytical work.

Q. Are you familiar with its appearance when used in fluids?

A. Yes.

Q. In inks?

A. I think I am.

Q. Describe its peculiarities and characteristics?

A. It dissolves readily in water, and the watery solution has a peculiar reddish color with a good deal of yellow; the watery solution is fluorescent, and when the watery solution is allowed to dry as in writing and it is thick, it leaves a shine upon the surface, a sort of iridescence which is of a different color from the ink being more yellow.

The eosin gets it same from the peculiar roseate hue it has, it is not to be mistaken for such a red as vermilion carmine or the red of madder.

Q. Is there any known test applied in distinguishing it from other reds?

A. A very simple test is by looking at it in different colored lights.

Q. Take the simplest you have there?

A. If you look at it across this way (indicating) it is a very decided yellow shine to it, and if you use a greenish glass or a greenish glass is held so that you get a reflected light from the surface; this yellow tint is a little more observable and in the carmine it is absent. 1C

That is not seen in another colored glass; it wants the strongest light you can get.

Now if you look at it through a blue glass you do not get the effect, you do not get it in blue as you did in the green.

Q. By using a blue glass over it, what effect do you get? 2C

A. The yellow color is not so pronounced and the carmine assumes a color which is quite characteristic of that dye.

Q. Of carmine.

A. Yes, sir. Now the method is a simple one and it leads to distinguishing between the different colors of approximately the same hue, because although the two reds appear to the eye alike yet they are not necessarily alike. You look at them with the sunlight and they appear to be pretty nearly alike, but if you look at them through a blue glass then you see they are not alike. 3C

Where the eosin ink is thick there is a decided yellow bronze on the surface, looking through the glass. Where the ink is thin that yellow color is not so apparent. Where the sunlight is used if you hold the eosin surface directly to the eye, there is little or no bronze, but if the ink is thick, as would be the case say in writing where the pen has at first been dipped into the ink and without blotting it of course 4C

the ink would be thicker than at the end where the ink has run out of the pen, or where a blotter has been applied; of course there is a difference in the same ink, between the yellow appearance of one and the rosy appearance of the other.

Q. What is a practical chemical test?

A. Solubility in water and solubility in alcohol staining fibre or silk—interrupted.

Q. What acid?

A. Hydrochloric and sulphurate acids.

Q. Please look at Exhibit P 236, at the red ink there appearing and state whether in your opinion that red ink contains eosin?

A. The ink appears to have the characteristic of eosin, where it is thick it has a yellow bronze upon the surface and where it is thin it has a red appearance similar to eosin; the bronze appearance makes it distinguished from carmine and brings it into the category of the new inks; it is a modern ink.

Q. To your knowledge was any ink or pigment known before 1873 that would give the same appearance that that does to the eye?

A. Not to my knowledge.

Q. Are you acquainted with the appearance of fuchsine?

A. Yes.

Q. With safranine?

A. Yes.

Q. And with carmine?

A. Yes.

Q. What do you say as comparing them with this color, this ink?

A. Fuchsine is very red and has a purple shade and the bronze is of a very bottle green bronze without the other. Carmine has little or no bronze in, but has a good deal of blue in it and the safranine is between the two, that is, it is a color which is a little yellow and yet not quite so yellow as eosin.

Q. The effect of hydrochloric acid on safranine has a different effect than that on eosin?

A. Yes.

Q. What difference?

A. It turns it blue.

Q. You have seen that paper before (Exhibit P 236?)

A. Yes.

Q. When?

A. Yesterday and the day before.

Q. Have you seen it to-day?

A. I have not until I came into the room a moment ago.

Q. Was the words "Improvements" in the same condition when you saw it yesterday, as it is to-day?

A. No, sir.

Q. What appears to be the difference?

A. It appears to have been acted on by some chemical.

Q. What from its appearance has been done with it?

A. I should say hydrochloric acid has been put on it.

Q. I call your attention to the word "decease" in article five and the words "put this above" and the words "put this below" and the word "therefrom" and state whether in your opinion those words have been acted upon or treated with some acid?

A. I should say they were all acted upon by some acid.

Q. What does that reacting show you?

A. The characteristics of eosin.

CROSS-EXAMINATION BY MR. COLLINS:

Q. Do you consider these places that are indicated and where you think an acid has been applied have turned yellow; do you call it yellow?

A. It is not red, it is not orange and it is not green and there is only yellow between them.

Q. You understand it to be yellow, because you think it is not something else?

A. No, sir; it is almost impossible to say where the orange stops and the yellow begins; I have seen orange very red and I have seen it very yellow.

Q. What color do you say that is?

A. It seems to be more a yellow than an orange; it is between the two on the line of that part of the colors.

Q. You are a paid expert in this case?

A. Yes.

Q. And you have met the other experts?

A. I did.

Q. Did you meet at Mr. Carrick's office and on how many occasions?

A. Once.

Q. And you were over to Stevens' Institute?

A. Once.

Q. And examined this paper both times?

A. Yes.

Q. Other experts all there?

A. Yes.

Q. Were you the first one applied to or don't you know?

A. I haven't the slightest idea.

Q. Did you recommend either of the others?

A. I did not.

Q. You furnished to Professor Hodges the samples of fuchsine and carmine?

A. I did.

Q. How did that come about?

A. I happened to know Professor Hodges since our student days in Leipsic and I offered him the facilities of my laboratory to make any experiments he desired and he wanted a little fuchsine to experiment with and one of my assistants gave it to him.

Q. Mr. Pickhardt said that it was a poor sample of fuchsine?

A. My assistant furnished him the sample solution and it was made whilst I was absent.

Q. Professor Hodges said that he got it in a crystal state?

A. Then it was my assistant that furnished him that; I really do not know much about it.

Q. The bronze is not a peculiar color to aniline colors, is it?

A. No, sir.

Q. You never experimented as to the mixing of other aniline colors with other substances as to the color that is produced, have you?

A. In what way?

Q. Any way?

A. I have made a good many experiments with anilines and other colors, I don't know as I have mixed any two togethor, because there is a difference between colors that act as a pigment and those that act as dyes.

Q. What is a pigment?

A. Something that you can distribute through a solid substance, such as brick dust and lime and putty—you often see contractors using mortar that has been dyed to a brick red—that is a pigment.

Q. You haven't mixed other colors with aniline dyes to see what other colors could have been produced?

A. I won't say that I have not, nor that I have not seen them, we have a large number of students, and they do in their work make some of the most extraordinary mixtures that it is possible to imagine sometimes.

Q. You do not know anything about the trade secrets of the ink manufacturers, do you?

A I do in some cases.

Q. You do?

A. Yes, sir.

Q. Do you know what kind of red inks the various manufacturers made prior to 1874?

A. I do not know that I know some of the other trade secrets.

Q. Is it not a fact that a great many men not chemists experimented in their own factories and discovered things that they kept to themselves.

A. Yes.

Q. What is the chief thing that leads you to think that that is eosin in the paper, Exhibit P 236 before you?

A. Well I think if I should say the thing or the things in their order I should say first, where it is thick it has a bronze appearance, where it is thin it has not, which brings it into the category of aniline colors. Secondly, that as soon as it changes from red to yellow with hydrochloric I should say that it is eosin.

Q. How do you know that that ink on that paper changes from a red to a yellow under hydrochloric acid?

A. Unless I should try it actually I cannot say.

Q. You do not know what was put on there?

A. No, sir; but I should judge the change in color is the same as it would be if I put on what I would use, and I should say that there had been hydrochloric acid used on it.

Q. If the writing in red ink, so called, if it were proved that it was written prior to the discovery of eosin and that it changed from a red to a yellow on the application of hydrochloric acid, it would shake your opinion that only eosin red ink would so change?

A. Yes, I should then fall back on other reactions.

Q. Which you have not tried in this case?

A. Not on this paper, I have not tried any reactions on this paper, I was not allowed to do so.

RE-DIRECT BY MR. MILLER:

Q. These subjects can be treated when they come up, I suppose?

A. Yes.

CARL PICKHARDT, a witness produced in behalf of contestants, being duly sworn according to law on his oath says:

EXAMINED BY MR. MILLER:

Q. What is your business?

A. An importer of dye stuffs.

Q. How long have you been in that business?

A. From 22 to 25 years.

Q. Have you imported aniline dyes?

A. Yes.

Q. Your concern is one of the largest importers in the country?

A. Yes.

Q. Are you familiar with aniline dyes and colors?

A. Yes, sir.

Q. Do you know a color known as eosin?

A. Yes, sir.

Q. What do you know about it?

A. I know eosin since it was first brought out, we were the first to bring it out.

Q. When was that?

A. In 1874.

Q. Have you any entry in your books showing when eosin was first brought to this country?

A. Yes, sir.

Q. Are they here?

A. I have a book here; an invoice book.

Q. Who discovered eosin?

A. Mr. Caro, he was the head chemist of Badische Anilin und Sodawbrik, in Germany, at that time, and he invented eosin in 1874; we were the agents then and are the agents now.

Q. When was the first importation to this country?

A. In 1874.

Q, It was sent to your concern?

A. Yes, sir.

Q. Did you have any dealings with ink makers?

A. Yes.

Q. What concerns?

A. Davids & Co., S. S. Stafford and some Boston Houses, a number of them.

Q. When you first came to this country what did you do with this eosin in the manufacture of ink?

A. First we thought it not suitable for ink because it was so immensely costly, it was a costly affair I can tell you, the first two pounds we sold it was at $125 a pound.

Q. And what is it to-day?
A. $1.60 or $1.50.

MR. COLLINS:

Q. All due to the tariff?
A. No, sir; not quite, McKinley did not trouble it.

MR. MILLER:

Q. What did you do with ink manufacturers?
A. When the price got down we went to the ink manufacturers to see if we could interest them to use this in place of what was being used then which was carmine and fuchsine, those are the two articles that were then in use for making red ink, and this being so much more handsomer and beautiful, we thought we could prevail upon them to use it for inks.
Q. You took samples to Thaddeus, Davids & Co.
A. Yes.
Q. The first was in 1874?
A. Yes, sir; and Mr. Stafford bought it first and used it for ink making.
Q. You are perfectly familiar with appearance of the substance?
A. Yes.
Q. And acquainted with aniline colors?
A. It is one of my functions that I have to compare dyes every day.
Q. You furnished Professor Hodges with a sample of eosin which was marked "Y"?
A. Yes.
Q. Is that genuine eosin?
A. (After testing the sample) Yes, sir.
Q. What is the peculiar appearance of eosin?
A. Eosin has got a beautiful pink or red color which in a diluted solution fluorescent, and if you put it on the paper as I did, it shows a bronze cast where it is thick and where it is thin of course you don't see that, it is taken up by the paper.
Q. Is that the characteristic of eosin as distinguishing it from other inks?

A. There are some other inks that have a bronze cast, but not this shade or color.

Q. That peculiar color being coupled with the bronze makes its peculiar characteristic?

A. Yes, sir.

Q. You are familiar with eosin ink?

A. Yes, sir.

Q. Can tell a sample when you see it?

A. Yes, sir.

Q. And you claim to be an expert in that?

A. I do not claim to be an expert in inks?

Q. But so far as eosin is concerned?

A. Yes.

Q. Now look at Exhibit P 236 the red ink lines on that Exhibit as they appear in that paper and state whether in your opinion the ink contains eosin?

A. I should say that was eosin, yes,sir.

Q. Have you any doubt about it?

A. No.

Q. Are you positive of it?

A. Yes, I am satisfied it is.

Q. Look at the different pages—what is the reagent for eosin?

A. We generally use acid.

Q. What acid?

A. Any acid, sulphurite, muriatic or hydrochloric acids.

Q. That point you see there (indicating) does that look as if it was treated by acid?

A. It seems to have been done some time ago.

Q. No, it was done here to-day—does that appear to have been treated by acid (indicating)?

A. Yes, I should say it was.

Q. Every one of the acids you named would give that result?

A. Yes.

Q. Is that one of the practical tests you use in your business?

A. Yes.

Q. Please refer to the point where you said it appears to have been treated by acid at the words "put

this below" in Article IV, and the words "put this above" in Article III—why did you say it was done sometime?

A. The first reaction is stronger, this shows like an after reaction. I put acid there, and it destroys the color, and this seems to have come back again.

Q. Do you know anything about chrysaniline.

A. Yes.

Q. Can that color be confounded with this color?

A. Chrysaniline is an article you hear so little of, it is hardly in my remembrance what the action is.

Q. You do not remember exactly about that?

A. No, sir; I do not.

Q. What did you mean when you said you had forgotten about chrysaniline, did you mean you had forgotten about the reaction, or that you had forgotten that color?

A. About the reaction.

Q. Was there anything prior to 1874 in colors that resembled the kind of red ink that is found on that paper?

A. No, sir.

Q. What color is there that nearly resembles it?

A. There was a fuchsine ink.

Q. Where is that shown?

A. At the name "fuchsine."

Q. Do you know when safranine was first imported to this country!

A. In 1871 I believe.

Q. You say you know of no color that resembles in appearance and sheen the eosin when used as a pigment in ink?

A. No, sir.

Q. You are perfectly familiar with aniline colors?

A. Yes, sir.

CROSS-EXEMINATION BY MR. COLLINS.

Q. What other aniline colors you say has the bronze sheen or gloss or iridescence?

A. Methyl-violet is known as a substance for use

on children's shoes, that has that bronze appearance, and they are covered with that?

Q. What other?

A. Take cottonblue, that has that appearance.

Q. Some people have said that fuchsine has a bronze appearance?

A. It has the crystals which holds this bronze appearance

Q. Suppose there is a mixture with some aniline color that is not like eosin, would not a mixture with some other substanee perhaps produce that color, mixing some other substance with the aniline color which was of a red tint, the peculiar red of eosin would not that produce that color?

A. You cannot do it.

Q. What is the effect of mixing fuchsine and carmine?

A. It is utterly different; it is entirely a different shade of red.

Q. Did you ever do it?

A. I do not remember that I did.

Q. Then you cannot tell what would be the result?

A. No, sir, I do not know from my own knowledge, but from the nature of fuchsine and carmine, I should say it would be a blue red.

Q. The two combined?

A. Yes.

Q. How about mixing fuchsine and chrysaniline, you didn't try that?

A. We mixed fuchsine with all kinds of yellow, but you cannot get anything like this.

Q. You did not try it?

A. I do not think I did.

Q. Did you ever mix carmine with chrysaniline?

A. No, sir.

Q. Do you know anything about the manufacture of inks?

A. No, sir, I am not a practical ink man.

Q. You do not know what kind of inks were made before 1874?

A. No, sir.

Q. Are you here for compensation?

A. No, sir.

Q. Has there any arrangement been made for your compensation?

A. No, sir.

Q. Do you expect it?

A. No, sir.

FURTHER RE-DIRECT BY MR. MILLER:

Q. You know what ink manufacturers bought before 1874?

A. Yes, sir.

Q. What?

A. Carmine and fuchsine, those were the only two things they could buy.

Q. Anything else?

A. Not as far as I know.

Q. This sample you have given Professor Hodges marked "Y" please explain what that means?

A. At the time eosin was first brought out there was only one shade of eosin, and there was only one mark given to it, but since that there has been a number of shades brought out—"Y" stands for yellowish, "YY" stands for extra yellowish and "B" for bluish; and there are hundreds of them.

Q. Describe the bronze or iridiscence appearing on fuschine?

A. It looks altogether a different thing.

Q. Does that first name show an example of it?

A. I do not see much bronze there. It is a poor fuschine, anyway.

Q. Describe what is the peculiar bronze of fuchsine?

A. I do not know really how to describe that bronze.

Q. Greenish, yellowish, or what?

A. No, it is a bluish, greenish bronze?

A. And entirely different from the eosin bronze?

A. They cannot be mistaken one for the other.

FURTHER CROSS-EXAMINED BY MR. COLLINS:

Q. You sell chrysaniline to any one that wants it?

A. Well, if a man came in to-day to purchase chrysaniline I would have to look it up to see what he wanted.
It is years ago since we did sell any.

Q. In former times you sold it considerably?
A. No, sir, not considerably; but we did sell it more or less, but not considerably.
Q. You did not take pains to find out who bought it?
A. Yes; we usually want to know what things are to be used for.
Q. If a man wanted it for a secret purpose he would not come himself for it, would he?
A. Oh, well; I don't know.
Q. You have sold much more than you are selling now, years ago?
A. Well, chrysaniline never was sold to any great extent.

RE-RIRECT BY MR. MILLER:

Q. Who were the customers to whom you did sell it?
A. I don't remember that. I would have to look that up.
Q. You keep a wholesale place?
A. Yes.
Q. You have the original invoices of the first importation of eosin?
A. Yes, sir.

Contestants announce their testimony closed.
Adjourned to Wednesday, October 7, at 10 A. M.
Further adjourned to Friday, October 23, 1891, at 10 A. M.

INDEX TO VOLUME IV.

WITNESSES FOR PROPONENTS.

Morrell, Daniel S.—
Direct (Mr. Collins), - - 1221
Cross (Mr. Miller), - - - 1223
Re-direct, - - - - 1226–1228
Re-cross, - - - - 1227–1228
Dunkel, Harvey —
Direct, - - - - - 1229
Cross, - - - - - 1230
Wheeler, Charles W.—
Direct, - - - - - 1233
Finehout, John —
Direct, - - - - - 1234
Cross, - - - - - 1235
Rudd, William T.—
Direct, - - - - - 1236
Cross, - - - - - 1237
Dalley, Charles C.—
Direct, - - - - - 1239
Cross, - - - - - 1240
Brewster, Robert C.—
Direct, - - - - - 1241
Cross, - - - - - 1246
Re-direct, - - - - 1247
Re-cross, - - - - - 1249
Vanderburgh, Alexander —
Direct, - - - - - 1250
Cross, - - - - - 1252
Day, John —
Direct, - - - - - 1252
Cross, - - - - - 1255
Chitty, John —
Direct, - - - - - 1257
Cross, - - - - - 1259
Re-direct, - - - - 1260
Re-cross, - - - - 1261
Moore, Julia D.—
Direct, - - - - - 1261

Mulvaney, Thomas —
Direct, - - - - - 1266
Cross, - - - - - 1278
Re-dirict, - - - - 1294
Hankins, Michael —
Direct, - - - - - 1296
Cross, - - - - - 1299
Re-direct, - - - - - 1302
Re-Cross, - - - - 1303
McLaughlin, Owen —
Direct, - - - - - 1303
Cross, - - - - - 1311
Jaques, Mortimer —
Direct, - - - - - 1314
Cross, - - - - - 1318
Diellenbeck, Edward A.—
Direct, - - - - - 1322
Cross, - - - - - 1323
Moore, Julia D.
Direct, - - - - - 1324
Cross, - - - - - 1329
Re-direct, - - - - 1332
Bogert, Elsie —
Direct, - - - - - 1334
Cross, - - . - - 1336
Doane, Eva Medora —
Direct, - - - - - 1337
Cross, - - - - - 1341
Re-direct, - - - - 1345
McClelland, William W.
Direct, - - - - - 1345
Cross, - - - - - 1374
Re-direct, - - - - 1401
Re-cross, - - - - 1406
Woodruff, Jonathan —
Direct, - - - - - 1406
Cross, - - - - - 1409
Williams, Ezra C.—
Direct, - - - - - 1416
Cross, - - - - - 1418

Tingue, William J.—
Direct, - - - - - 1418
Cross, - - - - - 1419
Jones, Frank-
Direct, - - - - - 1420
Cross, - - - - - 1421
Williams, Charles G.—
Direct, - - - - - 1421
Dodd, Charles E.—
Direct, - - - - - 1422
Cross, - - - - - 1423
Morton, Solomon A.—
Direct, - - - - - 1423
Cross, - - - - - 1424
Bloodgood, William B.—
Direct, - - - - - 1425
Cross, - - - - - 1427
Lain, Eden—
Direct, - - - - - 1428
Cross, - - - - - 1431
Re-direct, - - - 1433
Re-cross, - - - - - 1433
Winslow, William E.—
Direct, - - - - - 1433
Cross, - - - - - 1437
Re-direct, - - - - 1439
Hicks, William B.—
Direct, - - - - - 1440
Cross, - - - - - 1442
Case, Jerusha C.—
Direct, - - - - - 1445
Cross, - - - - - 1448
Baumann, Camille E.—
Direct, - - - - - 1449
Burlinghame, Elizabeth—
Direct, - - - - - 1451
Cross, - - - - - 1453
Adams, Henry C.—
De-direct, - - - - 1454
Re-cross, - - - - - 1460

Elliott, Arthur H.—
Direct, - - - - - - 1462
Cross, - - - - - - 1485
Re-direct, - - - 1493–1495
Re-cross, - - - 1494-1495-1496

WITNESSES FOR CONTESTANTS.

Carvalho, David N.—
Re-direct. - - - - 1497
Hodges, Harry B.—
Direct (Mr. Miller) - - - 1505
Cross, - - - - - - 1517
Re-direct, - - - - 1542
Re-cross, - - - - - 1542

WITNESS FOR PROPONENTS.

Stafford, William A.—
Direct, - - - - - 1543
Cross, - - - - - 1545
Re-direct, - - - - 1548
Re-cross, - - - - - 1548

WITNESSES FOR CONTESTANTS.

Stebbins, James H.—
Direct, - - - - - 1548
Cross, - - - - - 1552
Davids, David F.—
Direct, - - - - - 1553
Cross, - - - - - 1555
Re-direct, - - - - - 1557
Morton Henry —
Direct, - - - - - 1557
Cross, - - - - - 1559
Re-direct, - - - - 1560–1565
Re-cross, - - - - - 1562
Leeds, Albert R.—
Re-direct - - - - - 1566
Cross, - - - - - 1569
Doremus, Charles A.
Direct, - - - - - 1573
Cross, - - - - - 1577
Re-direct - - - - 1580

Pickhardt, Carl —
Direct, - - - - - 1580
Cross, - - - - - 1584
Re-direct, - - - - 1586–1587
Re-cross, - - - - - 1586

The Prerogative Court.

OF THE STATE OF NEW JERSEY.

In the Matter of the Probate in solemn form of the last Will and Testament

of

GEORGE P. GORDON, Dec'd.

Pursuant to adjournment the parties and counsel met at the Chancery Chambers October 23rd, 1891, at 10 a. m, and the following evidence was produced.

MR. GUMMERE—In behalf of the contestants I would ask your Honor to permit us to open the case to allow us to put in some newly discovered testimony on the question of eosin ink. Professor Stebbens, a witness who has been heretofore sworn in this case between the last session and to-day has discovered some new tests and we ask permission to put that evidence before the Court. This is an entirely new discovery and a new process of testing eosin ink.

MR. COLLINS—The whole matter is of such minor importance that I think the Court ought not to permit it to go any further.

THE ORDINARY—I will allow counsel to put in this evidence.

MR. GUMMERE—I put this evidence in now at this point so as to enable the other side to meet the evidence before the close of their case.

JAMES H. STEBBINS, being re-called in behalf of the contestants.

EXAMINED BY MR. GUMMERE:

Q. You are the James H. Stebbins, Jr., examined heretofore in this case?

A. I am, yes, sir.

Q. And you are an expert and practical chemist?

A. Yes, sir.

Q. Since the last meeting before the Court, which was some fortnight since, have you made any discovery of any additional tests in the detection of the composition of red ink?

A. I have.

Q. How did you make them?

A. By actual experiment.

Q. How many tests have you discovered by actual experiments?

A. Well, I have made two or three tests since the last hearing of the case.

Q. One you call the diazo test?

A. Yes, sir, one I call the diazo test.

Q. And the other Fluorescent test?

A. Yes, sir.

Q. Did you know of these tests at the time you were examined before?

A. I knew the principle of them, but I never applied them to the testing of ink on paper before.

Q. These experiments you made since the last meeting of the Court were the first experiments that you made?

A. Of this kind, yes, sir.

Q. You spoke first of the diazo test?

A. Yes, sir.

Q. Please explain what that test is, state to the

Court the different steps which you take in the test?

A. The diazo test is based upon a principle known in organic chemistry, and that is that when nitrous acid reacts, upon primary arromatic amines that it turns then into diazo compounds. This diazo compound is either colorless or may be slightly colored, and they have the further property of uniting with phenoles in alkaline solutions; therefore, in applying this test to paper on which is written in a colored ink, if the ink is composed of a primary amine on adding a mixture of nitrite of soda and sulphuric acid to the ink, the primary amine will be converted into a diazo compound, which will be characterized either by a big change of color or by a slight change of color.

If afterwards we add a drop of phenole to this spot converted into a diazo compound, a new color will be produced characteristic of the primary amine which is originally presented. For instance, if I apply first a drop of nitrate of soda to fuchsine ink no change of color will be observed.

By now adding a drop of hydrochloric acid to this same spot, the original same color of the fuchsine will be immediately bleached out.

If the moistened spot be now allowed to dry and then touched afterwards with a drop of phenole, a red spot will occur, owing to the formation of red coloring matter due to the uniting of the diazo compound with the phenole.

If, on the other hand we take safranine ink for instance, which is also a red coloring matter and a primary amine, and treat that with nitrate of soda, no change of color will be observed.

Now, adding a drop of hydrochloric acid to this safranine spot, the color will immediately change to a blue, owing to the formation of a blue diazo compound, as the dichloride of the diazo compound is blue.

Applying phenole to that same spot, no particular change is observed.

If for instance, we apply the same test to chrysaniline, the addition of nitrite of soda will not produce any change.

First, on adding the hydrochloric acid to it afterwards, the spot will remain yellow, but much lighter in color, it will be a sort of a washed out yellow.

And now letting that spot dry and applying the phenole, a purplish red color is obtained, which is characteristic of a combination of diazo compound and phenole of chrysaniline.

If on the other hand we touch a spot which has been written with eosin ink with nitrite of soda, no change of color will be observed.

Now if we put a drop of hydrochloric acid to this same spot the eosin is simply changed to its characteristic orange yellow color.

Now, adding a drop of alkaline solution of phenole to this same spot, the original color of this eosin is restored again; simply owing to the alkali which is in the phenole. The comon alkali alone will do that. In as much as it is only the potash or soda salt that produces the red color, for eosin itself is a yellow compound which has no red signs at all. Eosin being an acid compound and not an amido compound is incapable of forming a diazo compound when treated with nitrous acid; therefore it will be seen that this test is quite characteristic when applied to the various red dyestuffs in question.

Q. You say that these results were obtained from actual experiments made by you?

A. Yes, sir.

Q. And by the application of these principles which were of characteristic effect of the compound of different substances known to the arts, that none of which have been applied to inks—have you ever known any of these—you said the orignal principle was known to organic chemistry, that this amido compound would be formed by the treatment of anilines with nitrite of soda?

A. That is, the effects have been known for years.

Q. Was there to your knowledge any experiment made, or have there any been made with this compound with the results you described in your tests of ink on paper?

A. No, sir.

Q. It is as far as you know your experiment, you are the first that has made it?

A. Yes, sir.

Q. Are you ready now to demonstrate to the Court that your statement of the effects to be produced by these tests are true?

A. I am.

Q. Have you the different inks known to commerce and the arts, red inks, with you in Court?

A. I have.

Q. You have the Brazil Wood ink?

A. Yes, sir.

Q. You have the carmine?

A. Yes, sir.

Q. Carmine I take it to be the same as cochineal?

A. Yes, sir.

Q. And you have fuchsine?

A. Yes, sir.

Q. And you have chrysaniline?

A. Yes, sir.

Q. Do you know of any other inks known to the arts or commerce other than those you have now produced in Court and to which you will apply your tests?

A. No, sir, I think I have all in Court that can possibly refer to the present case.

Q. By permission of the Court, I will proceed now to ask the witness to make these tests and demonstrate the results of these applications and show how he detects the different inks, how an eosin ink differentiates from any other inks.

THE ORDINARY:

Do you desire to cross-examine the witness at this point, Mr. Collins?

WITNESS:—Coralline; I did not mention coralline—I had a reason for not mentioning it, as it is practically excluded from the list, for the reason that I find coralline in alkaline solutions will not retain its color for more than twenty-four to forty-eight hours.

MR. GUMMERE:

Q. Have you made a chart or whatever I may call it of the effect of these diazo tests on the different inks which you have just now stated?

A. Yes, sir.

Q. I notice you have something in your hand?

A. I have here merely a set of colors on the paper, they have not yet been treated, they are already to be treated. The coralline has almost faded out, you will observe and I only wrote it yesterday.

MR. GUMMERE:—I offer that chart in evidence—it shows the colors of the original inks of these descriptions.

THE ORDINARY:

You have written the names opposite each one?

A. Yes, sir

MR. COLLINS:

Q. Put on that paper, "Applied such and such a date?"

A. I will write on paper, "Applied October 22d, 1891," with my name on it.

Marked, Exhibit D 141.

MR. GUMMERE:

Q. What is the first ink you had on that paper at the top?

A. The one that heads the list is "eosin."

Q. When you apply in the Court or make the ap-

plication of the diazo tests you will make it here now on these inks on these colors?

A. Yes, sir.

Q. When you apply the first reagent which is soda nitrate what effect will it have on the first ink?

A. Practically no effect whatever.

Q. When you apply the hydrochloric acid what effect will it have?

A. That will turn it orange yellow.

Q. About the same effect it would have on eosin with the acid alone?

A. The same effect on eosin with the acid alone.

Q. Now, if you touch the same spot with a drop of alkaline solution—is that the next step, or what is your next step—you have got it now to an orange yellow?

A. If I apply to that a drop of alkaline Beta-naphthol it will restore its color back to the same color it was before, owing to the formation of the soda salt of eosin again.

Q. Will you proceed to apply that test now to satisfy the Court of the correctness of your statement of the application of these tests?

A. Yes, sir.

WITNES: I have a solution here of nitrate of soda—(interrupted).

MR. GUMMERE: You had better cut a portion of the color off from the other and send it out of the room so that any chemical fumes there may be will not affect the other portion of the Exhibit.

THE ORDINARY: You had better divide the color and apply your test to a portion of it.

WITNESS: (After cutting out about a half inch square of the Exhibit containing the color) I have a solution of nitrate of soda which I will apply to that color (dipping a

glass rod into a bottle containing a liquid) that of course washes the color a little.

I next apply some diluted hydrochloric acid to it —you see that it turns it to the orange yellow color —you can smell the nitrous acid quite plainly. By rights that ought to dry before the next test is applied.

This (indicating a bottle before the witness with a yellowish liquid in it) is an alkaline solution of Beta-naphthol. By applying that solution it will bring it back to the red color. (Witness applies this in the same manner as in the last test and says) there is a little too much acid in it and it has precipitated the naphthol, there is a yellow precipitate due to the application of the naphthol.

MR. GUMMERE:

Q. What ink is that?

A. Eosin ink.

By adding a little more of the acid you will restore it to the original color (witness applies the acid in the same manner as before and says) You see that is the original color obtained again.

The paper which has been submitted to the tests being offered in evidence is marked Exhibit D 142.

Q. That is the eosin ink which you have now tested?

A. Yes, sir.

Q. When you are ready to have it inspected by the Court and counsel please say so?

A. That is ready for inspection now.

Q. Take up the next one on the chart and tell the Court first what it is?

A. The next one on the list is Coralline. When this was originally applied it was of a crimson red color—the alkaline solution of Coralline was a crim-

son red, but, as I said before, it fades out very quickly; and, as your Honor will see, it has almost faded out to an almost white color now—it has been applied since yesterday afternoon.

If I applied this test to the color on there now and first being the nitrate of soda the Coralline will turn red again owing to a slight alkalinity in the nitrate of soda, it will first turn red; and then applying the hydrochloric acid to this it would turn yellowish; and then by adding the phenol or rather the Beta-naphthol alkaline solution, that ought to turn it red again, if it has not been washed out too much.

Q. Same as eosin?

A. It is practically the same test with this difference—on the application of the nitrate of soda it will be turned red first thing and the eosin is not changed by the application of nitrate of soda: this will turn red.

Q. But the practical result is the same?

A. Yes, sir; the practical result is the same.

Q. Now proceed?

Witness cuts the sample into two portions as before, and applies the test to the portion cut from the Exhibit, and says:

I apply nitrate of soda and it turns it crimson or red, and I apply hydrochloric acid and that turns it yellowish.

Q. Same as eosin?

A. Yes, but not the same shade of red; it is a much lighter shade.

Now I will blot that and I now apply the Beta-naphtol (the alkaline solution) that ought to turn it red again. (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit), and it does round the edges where there is any red. It will in the centre also when you get the acid all out of it.

Now I apply the nitrate of soda on the red spot, that will not show so well on the bleached out spot

and I will try the edge which has retained its original color more or less (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit), that makes it redder yet.

Now apply the acid to that and it turns that yellow again.

You will observe that where I first touched it it is getting red all over now.

MR. GUMMERE: The sample which has been operated on offered in evidence.

Marked Exhibit D 143.

Q. What is the next color, you have done the eosin and Coralline?

A. The next on the list is safranine.

Q. Proceed to apply the diazo test to that?

A. Yes; I will first state that on applying the nitrate of soda to safranine practically no change of color will be observed, but on adding hydrochloric acid to it it will turn blue right off.

Witness here divides the sample as in the other cases, one portion of which is operated on as follows:

I now apply the nitrate of soda (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit), you will observe there is practically no change of color.

I now apply the hydrochloric acid (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and you will see that it turns blue right off.

It is hardly worth while to treat that with betanaphtol, because there is hardly any change of color afterwards.

Q. Apply it?

Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit. It forms a bluish precipitate, that is about all in the blue, on the application of beta-naphthol.

Now on standing a few hours that blue spot will turn purplish. 10

Q. On being exposed to the air?
A. Yes, sir.

The sample which has been operated on offered in evidence.

Marked Exhibit D 144.

Q. What is the next?
A. The next on the list is chrysaniline. That on being treated with nitrate of soda will show no appreciable change, and the application of hydrochloric acid will turn it to a yellowish color, but it will gradually diminish in intensity and will wash out, and when I apply the phenol or beta-naphthol to that it will form a purplish red spot. 20

Witness here divides the sample as in the other cases, one portion of which is operated on as follows:

I apply the nitrate of soda (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit). You cannot observe any appreciable change. 30

I apply the hydrochloric acid (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit); you will see the yellow color is very materially reduced in intensity.

Now, that ought to be thoroughly dry to apply the phenol or betha-naphthol to it, to get the full 40

benefit of the reaction. If I blot it I am afraid I shall wipe off what I have here—(interrupted).

Q. If you put it on the radiator, would that do?

A. That I am afraid will decompose the diazo compound.

Diazo componnds are decomposed by heat. I will try blotting it and take my chances on it (blots the sample); of course the tests made in my office were all done after the paper was actually dried.

I now touch it with the beta-naphthol (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit), and I get this purplish red color.

The sample which has been operated on offered in evidence.

Marked Exhibit D 145.

Q. What next?

A. The next on the list is carmine.

Carmine on being treated with nitrate of soda will not undergo any change. The hydrochloric acid added to it will reduce the intensity of the color slightly; it may reduce it or not, and the addition of beta-naphthol solution on it afterwards will not have any effect on it whatever.

(Witness here divides the sample as in other cases, one portion of which is operated on as follows):

I now apply the nitrite of soda (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit), you will observe that there is no change of color.

I now apply the hydrochloric acid that will either leave the color about as it is or bleach it out considerably; it depends sometimes upon the thickness of the ink (Witness dips a glass rod into the bottle containing the solution, and applies it to the sample

cut from the Exhibit). You will observe that it has reduced the color some—the red still shows.

Q. Now you say the Beta-naphthol will have practically no action upon it?

A. The Beta-naphthol will practically have no action on it, it ought not anyway. This not being a Diazo compound, ought not to form a compound with Beta-naphthol.

On being treated with nitrite of soda (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit). There is a precipitate formed there of Beta-naphthol which you cannot help.

The sample which has been operated on offered in evidence.

Marked D 146.

Q. What is the next?

A. The next on the list is Fuchsine.

On treating Fuchsine with nitrite of sodo there will be no change of color whatever. On applying hydrochloric acid to this, the red color will be completely bleached out immediately; and then on the addition of Beta-naphthol to that afterwards when dry I should get a red spot, owing to the formation of the coloring matter with the Diazo fuchsine as you might call it.

Witness here divides the sample as in other cases, one portion of which is operated on as follows:

I now apply the Nitrite of soda (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) you will see there is no change of the color.

I now apply the hydrochloric acid and it should be bleached out (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit, and it is.

Now before I apply the Beta-naphthol that should

be thoroughly dry to show the next step thoroughly; but I will blot it and see if I can get the result without drying (blots the sample).

I now apply the beta-naphthol (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit). Yes, sir, that shows a distinct red where I touched it—it shows very plainly. You will observe that I took off a great deal of the substance when I dried it.

The sample which has been operated on offered in evidence.

Marked Exhibit D 147.

Q. Now the next?

A. The next I have on the list is the Brazil wood.

Brazil wood on being treated with nitrite of soda will turn a much darker red and the hydrochloric acid will leave it about the same color and the phenol or alkaline solution of beta-naphthol will turn it a reddish purple.

Witness here divides the sample as in the other cases one portion of which is operated on as follows:

I now apply the nitrite of soda (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit). You will observe that darkens the red color or purplish color, whatever it is.

I now apply the hydrochloric acid (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) that leaves it about the same. Perhaps I had better blot that before applying the next test. (Does so).

I now apply the beta-naphthol the alkaline solution (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut

from the Exhibit), that turns it purple again or whatever color you would call it, purplish I call it.

The sample which has been operated on offered in evidence.

Marked Exhibit D 148.

Q. Now the last is what?

A. Logwood. I put that down, although it is a purple color in itself.

Witness here divides the sample as in the other cases, one portion of which is operated on as follows:

Logwood will act just about the same as Brazil wood did, there will be no very marked difference between the two.

I first apply the nitrite of soda, that will probably turn it a little more purple if anything (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit). Yes, it does I think, or perhaps bluer, it is hard to distinguish these colors exactly.

I now apply the hydrochloric acid (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut on Exhibit); that seems to bleach it out.

I will now blot that and apply the beta-naphthol, and I think that ought to bring it back to the purple color again, if I have not blotted off two much of the solution (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit). I am afraid I have blotted off two much of the solution; any way that is very characteristic of it.

The sample which has been operated on offered in evidence.

Marked Exhibit D 149.

Q. That completes the list?

A. Yes, sir.

Q. Do you know of any other inks than those you have there—of red inks?

A. No, sir; I do not.

Q. You said you had another test, the fluorescent test?

A. Yes, sir; that is probably one of the most characteristic features of eosin ink that I can think of.

Q. Tell the Court what the fluorescent test is, and what effect it will have?

A. The fluorescent test is very characteristic of eosin. It, for instance, a small quantity of eosin being dissolved in water and it is diluted enough, a very deep green fluorescence will be obtained. It is from this wonderful fluorescence that the substance from which eosin ink is derived is named, fluorescein is the basis of it.

Fluorescein is a substance of tetrabromfluorescein and it still retains this wonderful green fluorescence and even if a minute particle of paper be taken, on which is writing with eosin ink, and that paper placed in a test tube and water poured on it and shaken up, even in such small quantities as that, this green fluorescence will be very perceptible.

Q. Will you cut a small piece out of the sample marked "Eosin" on Exhibit D 142?

A. Yes, sir (Witness here cuts a very small portion of the sample and putting it into a test tube, pours a small quantity of water into the tube and says), I apply that test and you will see the fluorescence from my point of view.

THE ORDINARY:

Q. How does that differ from the result obtained from fuchsine?

A. Fuchsine will not give that result at all.

Q. Suppose you try the fuchsine?

Witness applies the same test to a small portion out from the sample marked "Fuch-

sine" on Exhibit D 142 and says. there is none whatever; put them side by side and you will not observe any green shade to this one where it is very perceptible in the other.

MR. GUMMERE: We now offer with the permission of the Court to apply the Diazo test to the writing in red ink on the draft of the will Exhibit D 236.

MR. COLLINS: No objection.

THE ORDINARY: Proceed. I will designate on the first page the word "deem" in red ink in Exhibit D 236 and on the third page the words "of them" in red ink between the second third lines from the bottom of that page.

MR. COLLINS: I think it a good suggestion that the experiment be tried on some ordinary writing, written with eosin ink, before trying it on the Draft D 236.

THE ORDINARY: Yes, take a sample of eosin ink and do some writing with it, with an entirely clean pen, and then apply the test to that before applying it to the words mentioned.

MR. COLLINS: Why not write the sample writing with the bottle of eosin ink which was produced by Prof. Hodges?

THE ORDINARY: Yes, write a sample with Prof. Hodges ink, and then another sample with this eosin ink produced by Prof. Stebbins to-day—that is use both.

Q. Did you make this ink yourself?
A. Yes, sir; it is my own ink.

MR. COLLINS:

Q. When?

A. Prior to the last hearing in this case.

Q. About when?

A. I think the case was to be heard on the eighth of October; it was made shortly before the eighth.

Q. About the first of October say?

A. Yes, about that; I cannot recollect exactly the date.

MR. GUMMERE:

Q. The witness being shown a paper on which is written the following: "This is written with eosin ink made by Prof. Stebbins and produced by him this twenty-third day of October, 1891, made about October 1st, 1891," and underneath is written the following words, "This is written with eosin ink made by Prof. Hodges', marked Exhibit D 139," is asked; was the ink with which the upper one was written made by you and produced here in Court by you?

A. Yes, sir, it was.

Counsel admit that the other ink from which the second writing was made was from that ink contained in the bottle Exhibit D 139.

THE ORDINARY:

Q. Prof. Stebbins, will you apply the same fluorescent test, and in the same manner, to the eosin ink which was prepared by Prof. Hodges?

A. I will do so.

Witness here cuts a small portion of the sample writing, and putting it into a test tube, pours a small quantity of water on to it in the test tube and says: You will observe the same fluorescence.

Witness proceeds to apply the same Diazo tests in the same manner to the sample of the writing, written with the ink produced by Prof. Stebbins, and says:

I will apply the nitrate of soda to the word "Stebbins" (Witness dips a glass rod into the bottle containing the solution and applies it to the sample 1C
cut from the Exhibit) that simply washes the color out, that is all, it don't change the color at all, it spreads it.

I now apply the hydrochloric acid to it (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) that turns it orange yellow.

I now apply the Beta-naphthol in alkaline solution, and that ought to turn it red again (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and it does. You will observe that the acid 2C
precipitates the beta-naphthol in the solution.

I now apply the same tests to the writing done by the ink produced by Prof. Hodges.

I will apply it to the word "Hodges".

I now apply the nitrate of soda (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) that makes the ink spread in the same way as the other. You will see it does not change the color at all.

I now apply the hydrochloric acid (Witness dips 3C
a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and that turns it orange yellow.

I now apply the alkaline solution of beta-naphthol and that should turn it back to the red color (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and it does. That precipitate of beta-naphthol hides it considerably, but take off that with the blotter and apply a little more alkali and you will ob- 4C
serve it brings back the color.

The sample which has been operated on offered in evidence.

Marked Exhibit D 150.

THE ORDINARY:

Q. Now apply the test to the word "deem" designated by me in the draft of the will Exhibit D, 139.

I will apply the nitrate of soda (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and you will see that the color merely spreads and does not change, the color does not change, that is an older ink and it don't spread as much as the other.

MR. COLLINS asks permission to cross-examine the witness before going any further with the experiments.

Motion granted.

CROSS-EXAMINATION BY MR. COLLINS:

Q. Is not the color of the word "deem" after the nitrate of soda has been applied somewhat changed from the color of the dry writing?

A. Not to my eye, sir.

Q. Is it not a little deeper red?

A. I cannot see it, sir.

MR. COLLINS: Well, the Chancellor can see that for himself—to me it looks a little deeper red.

THE ORDINARY,

Q. Proceed?

A. I now apply the hydrochloric acid (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and that turns it orange yellow.

I now apply the alkaline solution of Beta-naphthol—interrupted.

THE ORDINARY: Do you wish to ask any questions, Mr. Collins?

MR. COLLINS: No sir.

THE ORDINARY: Proceed with the other tests.

WITNESS: I would like to leave it until it dries. In the case of the other writings I made the tests all at once without drying, and I think this test ought to be applied perhaps in the same manner, but I would prefer to have it dry.

THE ORDINARY:—Proceed and if the result is different you may try it on a second word.

WITNESS:—I now apply the Beta-naphthol, the alkaline solution (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the exhibit), that is coming back to its original color again and (waiting a little while, says) that shows the same result as the others.

CROSS-EXAMINED BY MR. COLLINS:

Q. Do you think that the red writing has come back to that red (indicating)?

A. Yes, sir, I think it has most decidedly, especially in the first spot where I touched it.

Q. The letter "d"?

A. The letter "d" and the next letter "e."

Q. Was not the letter "d" remaining red, even after the hydrochloric acid test and didn't I call your attention to the fact that the red seemed to be coming back?

A. You did, but in my opinion it was not red, it was orange yellow.

Q. It was at that point that I indicated to you that the word seemed to be coming back?

A. Yes, sir.

Q. And that is the point that now shows "Red," as you say?

A. Yes, sir.

Q. How do you account for the rest of it not showing red?

A. Simply for the reason that there was so much soda there that it has not been fully neutralized by applying the acid.

Q. Do you think it will come back same as before?

A. No, sir; I do not think so.

Q. Then it does not come up to your expectations?

A. Yes, it does.

Q. Do you think it is coming back as much as the samples on Exhibit D 150.

A. No, sir; for a very good reason.

THE ORDINARY:

Q. Well, give the reason?

A. The age.

WITNESS—Shall I proceed with the other spot?

Q. Yes, proceed with the tests, on the words "of them" between the second and third lines on third page, from the bottom?

A. I now apply the nitrite of soda which will sort of spread the color without changing the color (Witness dips a glass rod into the bottle containing the solution and applies it).

MR. COLLINS:

Q. Don't you think that brings a somewhat deeper red?

A. No, sir; I do not, I cannot see it.

MR. GUMMERE:

Q. It brings a fresher red?
A. Yes, sir.

THE ORDINARY:

Q. Proceed?
A. I now apply the hydrochloric acid which will turn it orange yellow (witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit), which it does.

MR. COLLINS:

Q. Do you not see the red coming back through that acid?
A. I do not see it coming back, I think it is probable, I did not thoroughly touch this.
Q. Do you see the red?
A. On the top of the "t"?
Q. Don't you in the "f," the top of the "t" and the top of the staff of "h"?
A. I do in the "f" and the top of the "t."
Q. And tn the staff of "h"?
A. I cannot perceive it there.
Q. Don't you see it in the "t" first at the latter staff?
A. I mean here (indicating).
Q. There is the top of the "t" and top of "h" and the cross curve?
A. Yes.
Q. It is red, is it not?
A. When I first looked at it, it was decidedly red, but it is now decidedly orange.
Q. It has changed while looking at it?
A. Yes, sir.

THE ORDINARY—Now let that dry and proceed with the fluorescent test.

MR. GUMMERE—We ask the Court to designate what portion of the Exhibit can be

taken out to be submitted to the test in the same manner as the other inks were.

MR. COLLINS:

Q. Is it not possible to get this effect without mutilating the document?

A. No, sir; I do not think it is.

THE ORDINARY—It need not be mutilated very much—you can cut out the caret near the end of the fourth line between the words "be required to" in the proviso, at the end of Article 5.

Witness cuts out the portion designated by the Court and putting it into a test tube, pours a little water into the tube and shaking it, says:

The fluorescent test being applied to this sample, you can see the green fluorescence quite plainly. It is not so strong of course as the other. but if you put it to a black or dark back ground you will see it very easily.

MR. COLLINS—These I presume you intend to cork up and mark. I suppose they ought to be preserved.

WITNESS—They ought to be kept in the dark.

MR. GUMMERE—Now if your honor please how will you preserve these last two Exhibits. We think we are entitled to ask that the Court take possession of them into its own custody.

THE ORDINARY—I shall leave them in the hands of the Master, if necessary they can be produced hereafter, as the other Exhibits.

MR. GUMMERE—I hope your Honor will instruct the Exhibit Master to keep it in a dark drawer and not to be taken out except in your Honor's presence.

THE ORDINARY—It can be kept with the other Exhibits in the custody of the Master. Counsel may proceed with the cross-examination while the last test dries.

CROSS-EXAMINATION BY MR. COLLINS:

Q. What is the meaning of the word "Diazo;" is it a proper name?

A. Yes, sir.

Q. Or the name of a scientific man?

A. No, sir; its name is derived from the French word "azote" which stands for nitrogen and a characteristic feature of the diazo group, where two nitrogen atoms are bound together by two bonds.

Q. It signifies them to the scientific mind, what is meant by the operation?

A. Yes, sir.

Q. You say that is very old?

A. Yes, sir; the first diazo compound dated back I should say twenty-five years.

Q. They are not applied together to anilines?

A. No, sir; the diazo compounds constitute a group of their own, although they are all coal-tar products.

Q. For the purpose of this test, the diazo test the use of the nitrite of soda was only necessary because while it did not have any perceptible effect as you thought on eosin, it did have on some other substances, am I right?

A. No, sir.

Q. Did you need nitrite of soda for this test at all on eosin?

A. I did.

Q. If you had first applied the hydrochloric acid

and then applied the Beta-naphthol, would not the result have been the same?

A. Substantially the same.

Q. Why then was it necessary to use the nitrite of soda?

A. Simply for the sake of comparison.

Q. I said so—then you misunderstood my question—comparison with the others?

A. Yes, sir; I misunderstood the question.

Q. The only reason for using nitrite of soda was because—would not the nitrite of soda test applied by itself to eosin and other inks have all the value for the purpose of comparison you claimed for it?

A. Substantially yes, although I would like to qualify that answer by stating that nitrite of soda itself per se, has no action whatever on either eosin or fuchsine or most of the others, no chemical action and the nitrite of soda was used instead of nitrous acid because I could not bring that into Court.

Q. The nitrous acid did not enter into your tests here to-day, except for the purpose of comparison on eosin and other writings?

A. Certainly that was the very essence of the test, nitrous acid.

Q. And for that purpose nitrous acid would alone have answered your ends?

A. Yes, well, substantially.

Q. You have included in your—what you call the chart, numbered D 141—you have included in that coralline, no one had heretofore mentioned coralline as a possible basis of red ink, why include it?

A. Simply for the sake of comparison with eosin —with coralline an alkaline solution gives a color approximating closely to an eosin ink.

Q. Was it not because you had heard that coralline had been used in the manufacture of red ink?

A. No, sir; the experiment was entirely voluntarily on my part.

Q. What made you think of coralline?

A. I was in search of all substances that could possibly approach to the shade of eosin in color.

Q. You think that does approach it?
A. Yes, not exactly, but very closely.
Q. There are varieties in the shades of eosin?
A. Yes, sir.
Q. Look at Exhibit D 150, is there not quite a marked difference between the two shades of eosin made by yourself and Professor Hodges, in the tint?
A. Well, I do not see very much difference between them.
Q. You do see a difference?
A. The only difference I do see, one is a little thicker than the other.
Q. You see a difference in color?
A. No, sir, I do not.
Q. Is not the lower one considerably darker than the other one?
A. It is darker. but that is not a difference in the shade.
Q. What is a difference of shade?
A. Hues or color.
Q. Don't we speak of a darker hue?
A. Yes, I dare say you do, but in this case the darker shade is due to the thicker ink.
Q. That is the reason you give for it, but the fact remains apart from the reason that it is darker?
A. Yes sir, it is darker.
Q. Coralline, you say, approaches very closely to eosin?
A. When fresh.
Q. Eosin fresh or coralline fresh?
A. Coralline fresh.
Q. When coralline is fresh and eosin is fresh?
A. Yes, sir, when fresh.
Q. You say coralline fades out?
A. Yes sir.
Q. This coralline on Exhibit D 141 was a very much brighter red when you wrote it yesterday?
A. Yes, it was.
Q. Something like the fine lines around the edges?
A. Very similar to that.
Q. Even brighter than that?

A. Yes; I could show you what it looks like, I have some solution here.

Q. All these so-called inks which you have put in square patches on Exhibit D 141 were made by yourself?

A. Yes, sir.

Q. And none of them are commercial inks bought on the market, but are all the product of your laboratory?

A. Yes, sir.

Q. Do they contain anything more than the crystals or basis element, whatever it may be, and water?

A. Yes, one or two.

Q. Which one?

A. Carmine contains a little ammonia, which is necessary in order to dissolve it in water. Fuchsine contains a little alcohol to assist its solution, and the Brazil wood which is obtained, is obtained by the addition of alum to a decoction of Brazil wood in water; and the logwood is a decoction of logwood and water.

Q. And eosin?

A. A solution in water.

Q. And coralline?

A. A solution in caustic soda and water.

Q. In what proportions?

A. I cannot tell you, I just made a guess, jumped at it.

Q. What is coralline?

A. A coal tar product obtained by the action of sulphuric acid and oxalic acid upon phenol or carbolic acid.

Q. Where did you get the coralline you used?

A. I think I bought it originally in Boston fifteen or sixteen years ago.

Q. Does age have any effect upon the original substances contained?

A. No, sir.

Q. Do you know what sort of coralline this was, yellow or red, sold as such, called a "red" or "yellow" coralline?

A. I really don't remember, I cannot say; it is some, as I say, I have had in my possession some fifteen or sixteen years.

Q. In your laboratory?

A. Yes, sir.

Q. If the coralline had not faded so that it appeared originally applied to that paper, if I understand your testimony correctly, the effect of the Diazo test would have been about the same on the coralline as on the eosin?

A. Yes, substantially the same with a slight difference in color.

Q. You mean the color caused by the hydrochloric acid?

A. Yes, sir.

Q. That might result from a variety of causes peculiar to the particular specimens used, may not it?

A. No, sir, hardly; it is characteristic of the substance itself.

Q. It is a mere difference in shade?

A. That is all.

Q. That perhaps is the uneducated eye, you would hardly see?

A. Perhaps.

Q. As to this fluorescent test that you have mentioned, other substances are fluorescent besides eosin?

A. Yes, quite a large number of them.

Q. And others have a green fluorescence?

A. Yes sir.

Q. Name some of them?

A. Well, it is pretty hard to name them, off-hand —I think chrysaniline for instance; the free base of chrysaniline in etherial solution has a green fluorescence, the izomer of chrysaniline of benzo flavine the free base of that compound also has a green fluorescence in etherial solutions.

Q. Name some?

A. Magdalla red has a fine fluorescence also.

Q. What is it made from?

A. By the action of nitrate of soda and nitrous acid upon naphthylamine.

Q. What color?

A. Red.

Q. A very natural thing to be put in red ink?

A. Yes, except for the enormous price of it.

Q. But it would not need very much?

A. No, sir; but besides that it is not on the market.

Q. How old are you, did you say?

A. I don't know that I ever told you.

Q. Well how old are you now?

A. Thirty-four.

Q. In 1868 you were only about eleven years old?

A. That is about it.

Q. So you do not know much about the market then?

A. I know something about it.

Q. From tradition?

A. Yes, sir.

Q. I find in this book a compilation of Schultz & Julius that the date of the discovery of magdalla red is given as 1868?

A. I have the book.

Q. It is so (handing witness the book)?

A. Yes, sir; I will take your word for it.

Q. It is so?

A. Yes, sir.

Q. If a little of fluorescent substance be mixed with another substance the fluorescent effect will be obtained?

A. Undoubtedly; but the fluorescence will be characteristic of the substance from which it is derived.

Q. Tell us some others?

A. Naphthol, for instance, the fluorescene is blue; napthaline dissolved in benzol the fluorescence is blue.

Q. I do not think we would go to a different color than this; how about common turmeric?

A. I am not aware of its fluorescing.

Q. Prof. Morton, who testified, is a good authority in that case?

A. I do not know.

Q. Quite eminent on fluorescence?

A. I cannot say.

Q. If you should find an article of his written, say for Johnson's Encyclopædia, some years ago, in which he told of fluorescent substance, you would not doubt it?

A. I do not know that I would.

Q. If he gave turmeric, you would be disposed to believe it?

A. Yes, sir.

Q. That is a very common substance?

A. Yes, sir.

Q. And used in substances for color very commonly?

A. Yes, sir.

Q. And fustic?

A. I never heard it.

Q. If you heard Prof. Morton speak of it, you would believe it?

A. Yes, sir.

Q. Both are used in dye-stuffs?

A. I do not think they are used to any great extent.

Q. They are very cheap?

A. That might be, but there are some substances they cannot use.

Q. There are some other substances that show a greenish yellow fluorescence?

A. No, sir; I do not think so; I think I have named them all.

Q. But you would not be disposed to say you have named them all?

A. No, sir.

Q. What would effect the fluorescence of these substances?

A. A drop of acid.

Q. What would be the effect?

A. It will instantly arrest fluorescence.

Q. What do you mean?

A. Destroy it.

Q. What be the effect of amonia?

A. That would heighten it if anything.

Q. You say the contents of the best tubes should be kept in the dark, why?

A. For the reason that this compound fades quite readily when exposed to the light.

Q. Will that effect the fluorescence?

A. It will affect the fluorescence and the color too.

Q. And the color too?

A. Yes, sir.

Q. You have applied the "diazo" to substances, comparatively pure substances; suppose there was a mingling of two or more of these substances in the ink applied what would be the effect upon the "diazo test?"

A. Well, I think I would still get colors characteristic of the two substances.

Q. Which would you get, suppose you mixed eosin and fuchsine for example; which would you look for, the fuchsine result or the eosin result, and why?

A. I should look for the eosin result for the reason that fuchsine is bleached out by the action of nitrate of soda.

Q. That happens to be with fuchsine; but is it not a fact that the mixture of any two substances that you have been experimenting upon, that it would confuse the test so that it cannot be surely fore-cast?

A. I hardly think so with the substances in question.

Q. You never tried it ?

A. I have tried, I have tried it on all.

Q. Tried to mix them?

A. Yes, sir.

Q. What mixture did you make?

A. May I refer you to my notes, your Honor?

THE ORDINARY: Yes.

WITNESS: (Referring to memorandum book says) Well, I made a mixture of martius yellow and carmine, coralline and carmine, fuchsine and chrysaniline, picric acid and carmine, martius yellow and carmine—Oh, I am just repeating the same thing there.

Then I tried a mixture of chrysaniline and carmine, and found that they would not mix, they would precipitate. These mixtures that I have mentioned are the ones that give colors more closely approximating the color of eosin than anything else. These mixtures were made in the presence of Prof. Hodges at the same time, but we found none of them would compare to the color of eosin and did not approach it.

Q. Well, that mixing was done before you testified the other time, was it not?

A. No, sir, after.

Q. Well, I was not asking you about tints, but about applying the so-called tests to the mixture?

A. No, sir, I have not applied the "Diazo tests" to the mixture.

Q. The mixtures you made were for the purpose of seeing if the tint could be imitated?

A. Yes, the tests were applied to it to.

Q. But you did not apply the "Diazo tests" to these mixtures?

A. No, sir; the Diazo tests, I might say, were not discovered until after these first tests were made.

RE-DIRECT BY MR. GUMMERE:

Q. Is this dry now (handing witness Exhibit D 139)?

A. I think it is dry enough to proceed with. I now apply the Beta-naphthol (Witness dips a glass rod into the bottle containing the solution and applies it to the sample cut from the Exhibit) and it turns red immediately you will observe.

This application was made to the words "of them" in Exhibit D 139 at the foot of page 3).

Q. You said in answer to a question of Mr. Collins you thought the darker shade of ink in the hue of the eosin was due to an excess of deposit or precipitate?

A. Yes.

Q. You have the two inks before you?

A. I have my own here, I have not got Prof. Hodges. Yes, I have; I have them both here.

Q. You say the difference there in the shade is a precipitate being formed there—now by simply running the wet finger over the ink will that reduce the precipitate, and will it become the same color?

A. Yes, sir, the bronze lustre is there on both of them, and it will disappear if the precipitate is wet.

Q. Will you demonstrate to the Court by running your wet finger over them and seeing if there is not the same color produced?

(Witness wets his finger and runs his wet finger over the words "Stebbins" and "Hodges" on Exhibit D 150) and says: It turns them both the same shade or tint.

Q. If the red ink writing on the draft had been written in coralline in 1868 would it have been there now?

A. No, sir.

Q. Are you sure of that?

A. I am positive.

Q. Have you any coralline ink here?

A. I have, yes, sir.

Q. Is there any other basis?

A. Nothing but a solution of coralline in caustic soda.

Q. What effect has caustic soda on it?

A. It dissolves it and turns it red, the caustic soda forming a soda salt that is red, that is the color in solution you will see.

Q. Please write now at the end of the Exhibit D
150 the words "This was written in coralline in Court;" how long would that tint endure?

A. That shade of color would be lost in from twenty-four to thirty-six hours—perhaps forty-eight hours I will say.

Q. After forty-eight hours what would be the effect produced upon it by the light? 10

A. It will bleach out, become much lighter in shade, almost white.

Q. Must you mix either caustic soda or some other alkali with coralline in order to produce red ink?

A. Yes, sir.

FURTHER CROSS-EXAMINED BY MR. COLLINS:

Q. When you say that if the red ink on the draft Exhibit P 236 had been written with coralline it would have faded out long since, I take it you mean 20 that if it had been written with pure coralline dissolved in caustic soda?

A. Yes sir.

Q. That is what you mean?

A. Yes sir.

Q. You do not undertake to say what would be the result of writing with the ink that had other ingredients in it that would fix the color, not having tested it.

A. Yes, but knowing the character of coralline I 30 do not know of anything that would fix the color.

Q. The coralline you spoke of is the coralline you have treated I take it—that is to say you speak by reason of the experiments made with some particular coralline that you have experimented with?

A. This is the same sample of coralline I have had in my possession fifteen or sixteen years.

Q. That is the only coralline you have experimented with in this regard to see whether it would fade or not? 40

A. Yes.

The two vials of color and water the result of the fluorescent test in the examination of this witness offered and marked.

Exhibits D 151 and D 152.

CONTESTANTS REST.

HENRY C. ADAMS being called in behalf of proponents saith:

EXAMINED BY MR. COLLINS:

Q. You have informed me that you desired to qualify your testimony with respect to Exhibit P 236 is that the fact?

A. Yes, sir.

Q. In what respect?

A. I am not certain as stated on the former examination that this was the original draft. I am not certain whether this was the original draft used in 1868, from which the will was drawn or whether it was a copy made at a subsequent date for another purpose.

Q. Have you any recollection of making a copy of the original draft?

A. I have none.

Q. Is there any appearance about the document itself that suggests to your mind that it might not be the original draft?

A. Yes, sir.

Q. What is it?

A. The paper. Well, since this matter begun and before I was examined before, I called Mr. Beckett's attention to the fact that I was puzzled about this latter, or what we call this original draft, I was puzzled by it because it was on white paper, and my recollection or impression was, that I used nothing but blue paper in 1868, and I told Mr. Beckett that there was a link or two in the chain of circumstances gone and I could not reconcile it and it troubled me considerably.

Mr. Beckett said to me that that could easily have happened, because, "if you had had no white paper you might have got some from Mr. Gordon or you might have got some from your father's stationery." Well, that was so plausible that I was rather disposed to accept that as the true solution of the uncertainty that I had and from that time on I have treated this paper as the original draft.

Q. As a matter of fact you do not recall having any white paper of your own?

A. No, sir.

Q. Do you remember any circumstances which might give you occasion to make a copy of the draft No. 2 as we have called it?

A. Oh, yes, my mind was running off in another channel when I spoke to Mr. Beckett—that was this. Mr. Gordon after the death of my father spoke to me about the will and wanted to know how it could be got, if I knew where it was, and I told him I presumed it was among my father's papers, but that I had no control over them, but that it could be probably found if it was there. He said, that he wanted that for the purpose of making another will, that he was going to make another will because his business had been very prosperous and his property had accumulated and he had so much property on hand that was not spoken of in that will that he wanted to make another will for the purpose of changing the figures, and for the purpose of disposing of that property or something of that kind,—substantially in that way he spoke of it—and I told him if it could not be found, why, I had the original draft. That seemed to quiet him, he seemed to be better satisfied then and he said he would like to have it some time and I think he said he would call on me for it. My father died in February 1875, and from that time on I think the matter was spoken of between us several times.

Q. You went to live in Englewood in 1875?

A. I went after the election in the fall 1875 to

Englewood and stayed there through the winter and spring of 1876 when I went away—interrupted.

Q. And during the spring and summer you were in New York, in the city?

A. I was not anywhere—I was having a vacation, the first vacation that I had had for several years and after that I took rooms in Park Place and was there until I gave up the house in the spring and then I went to Brooklyn.

Q. During the time you were living in New York and Brooklyn in 1875, 1876 and 1877, did you see Mr. Gordon?

A. Yes, sir.

Q. How frequently?

A. I saw him whenever I could catch him down town; whenever I went down town I would call in and see him.

Q. At his office?

A. Yes, sir.

Q. And what would he do with you sometimes in the middle of the day?

A. Well, we would go out and did go out several times to lunch.

Q. And you had such conversations as you have related with him?

A. Yes, sir.

Q. If George P. Gordon wanted the original draft what reason would you have for copying it?

A. I wanted to keep a copy myself; I expected to keep the original draft, and I wanted a copy, a facsimile of it, that was a peculiar job, erasing, interlining and everything, and I wanted a copy, a facsimile of it, so as to show what sort of perplexing job we had had to get through with in that whole matter.

Q. Can you tell, in view of all the circumstances, whether the paper in Court Exhibit P 236 is an original or a copy, or are you in a state of uncertainty about it?

A. I do not like to testify with any uncertainty about it; if it is not the draft of 1868 that was used

when the will was drawn then it is a fac-simile of that draft of the will prepared for Mr. Gordon at some point of time between 1875 and 1877, of which I am not sure.

Q. Does the fact that this interlining in red ink and the erasures in places indicate either way as to its being the original or a duplicate?

A. No, sir; if I set out to make a copy a fac-simile of it, I would make it as near like itself as I could.

Q. How would you prepare it; what would you do first?

A. I would erase—(interrupted).

Q. What would you first write?

A. To prepare the copy?

Q. Yes.

A. I would first write it as it was in the first place and then I would erase whatever was erased from the draft, and interline it and make it as nearly like the original as possible, for my own satisfaction.

THE ORDINARY:

Q. That is, as I understand you, you would write it in black ink first?

A. First write the text as it was originally, then erase and then interline the same as in the original.

Q. Just following the process you went through in preparing the original?

A. Yes, sir; so as to have the satisfaction of showing what sort of job we had had in the matter.

Q. I do not see why you should like that satisfaction; you were a busy man; now why should a busy man who was in the habit of preparing many wills and had prepared many wills in his time, doubtless, why should he want the satisfaction of making a fac-simile of a paper such as this?

A. I should like the satisfaction in a job like that because the job was a much greater one than I had ever had, and I wanted to show how I had worked on it to get it to suit Mr. Gordon and all those things.

MR. COLLINS:

Q. Would it be in accordance with your habits and turn of mind to do such a thing as that?

A. To do what?

Q. To make a reproduction. a fac-simile of such a paper?

A. Yes, I would not allow a paper of that sort to go out of my hands, and never did in all my practice of fifty years; I do not think I ever allowed an important paper to go away from me without keeping some trace of it if I had to give up the paper; I would keep something in place of it, and if I should set out to make, to do a job of that sort to make a fac-simile of a job of that sort, I would make it as nearly as like it as I could possibly.

Q. And I understand you would have special reason to do so in the case of this will?

A. Yes, sir; this will was the hardest job I had had, and I have lived in the country, and to draw the will of a farmer willing his farm and a few cattle that is not so hard a job, but here is a friend of mine, a gentleman whose property was worth hundreds of thousands of dollars, and I took the job with reluctance, and when I got through with it I wanted to have something that I could see to show the amount of work there was in it.

Q. To preserve the history or evolution of the document, as I understand you?

A. Yes, sir.

Q. Did you fill any peculiar relation towards George P. Gordon, different from that of an ordinary client?

A. Yes, sir; I did; I told you that in my direct examination.

Q. Now, was there any later time when you might have had again to make a copy of this draft?

A. Well that is pretty remote, but it is very possible, there is an improbable possibility; I might have made one when I decided to go, and did see Sidney Doane and Mr. Cuthbert Gordon, it is barely possible that I did then, but I do not recollect it.

THE ORDINARY:

Q. Why do it then? What makes you think you might have done it then?

A. Because I thought they would take it up and they would want this draft I had and I made a copy —interrupted.

Q. So that you could give them the original or a copy?

A. Yes sir.

MR. COLLINS:

Q. So that you could give them one or the other?

A. Yes sir.

Q. And you would retain one of them yourself?

A. Yes, sir.

THE ORDINARY:

Q. But I understand you to say that you have no recollection of ever making a copy at all?

A. I would not like to swear positively about it—when I went to see Sidney Doane, that is more than twenty years ago, and I have been burdened with hard labor and thought, and when the original was made that is more than twenty-three years ago, 1868.

Q. If it should turn out that this is not the original draft, but a later reproduction of it, how do you account for the fact that you have come to consider it as the original draft?

A. Well, it lay in my drawer, and I have spoken of it and treated it as the original draft, treated it so and talked of it so. I have talked with Mr. King about it as the original draft. Oh, I don't know, carelessly I ran into that habit of speaking of it.

Q. Well, it is twelve years since you dismissed the subject from your mind?

A. Yes, twelve years, and twelve years of incessant work.

MR. COLLINS:

Q. Had you had the subject in mind at all from

the time Mr. Gordon's family dismissed it in 1878 or 1879 until you saw this newspaper account in the Telegram in 1890?

A. I never had occasion to give special attention to it, I cannot remember that I did, or that I had occasion to give special attention or to go specially to my drawer to get this, but it would occur to my mind and last fall, the time when the Telegram was printed and I bought a copy and took it home, and woke up to the subjeet, I pulled out my drawer and saw it.

Q. And it came into your mind as the original draft?

A. Yes sir, and I wrote immediately to Messrs. Black & King to come and see me and I would tell them something about it, and I told him that this was the original draft.

Q. Did it occur so to your mind that this was the original draft?

A. Yes sir.

Q. You call it on the endorsement the "original draft?"

A. Yes, when we took it to the Clerk's office.

Q. It seemed so to you then?

A. Yes sir.

Q. Is it so far as the substance is concerned?

A. As to the substance it is as nearly as I could make it.

Q. As a matter of fact, did you draw up Exhibit P 1, 1868, as you testified?

A. Yes sir.

Q. And did you draw it from a previously drawn paper in which there had been made interlineations, the result of communications from Mr. Gordon and your own emendations?

A. Yes sir, just as I testified before. If this was not the paper (Exhibit P 236) then it was one from which this was drawn and was on blue paper, that is according as I believe, as I remember.

CROSS-EXAMINATION BY MR. GUMMERE:

Q. You did make a draft in 1863 precisely in the words that that paper is in, did you?

A. Well, as nearly as I could make them.

Q. As nearly as you could make them?

A. As nearly as I could make a copy of the draft.

Q. I am not talking about a copy, I am talking about the original draft of the will?

A. The one executed?

Q. From the original draft the will propounded is copied?

A. Yes, sir.

Q. That is Exhibit P 1?

A. Yes, sir.

Q. Which is the draft, Exhibit P 1 or Exhibit P 236?

MR. COLLINS: Exhibit P 236 is the draft.

Q. You were asked when you testified before whether that was the draft, were you not?

A. I was.

Q. Did you then explain as you have done now?

A. I explained according to the light before me then.

Q. What did you say?

A. What did I say? I said this was the draft from which that (Exhibit P 1) was made.

Q. You did say that that was the draft, didn't you?

A. Yes, sir.

Q. Since that time doubts have come into your mind whether that is the draft or not?

A. Yes, sir.

Q. Do you recollect making a copy of that draft other than that appears here in Exhibit P 1?

A. A copy of this one?

Q. You swore when examined before you said that that was the draft?

A. Yes, sir.

Q. Do you recollect making a copy of the draft?

A. Of this draft?

THE ORDINARY:

Q. Of the original draft, do you remember making a copy of it?

A. I do not remember making a copy, except the one that was executed, Exhibit P 1.

MR. GUMMERE:

Q. I understand you to say that it is possible that you might have made a copy of the original draft?

A. At a later day.

Q. And I understand you to say that that is possible because Mr. Gordon wanted to look at the original draft?

A. Yes, sir; wanted something to guide him—interrupted.

Q. Why did he want to look at it?

A. He wanted it for the purpose of enabling him to make a new will, he wanted to change figures and wanted to dispose of property not disposed of there, and he gave reasons of that sort.

Q. Was that about the time he made the will of 1873?

A. No, sir.

Q. When was it?

A. It was sometime between the death of my father in 1875 when I took the rooms in Brooklyn—between the years 1875 and the spring of 1877.

Q. That is as near as you can come to it?

A. Yes, sir; that is as near as I can come to it.

Q. Tell us what Mr. Gordon said to you?

A. Said when?

Q. When he came to you and called on you for the copy?

A. He made a suggestion—interrupted.

Q. Remember you are now testifying?

A. Yes I remember—If he called upon me for it, he undoubtedly told me to bring it to him and I must have done so.

THE ORDINARY:

Q. Do I understand you are now swearing to what did occur, or what might have occurred?

A. I do not like to swear to it.

Q. You do not remember that Mr. Gordon ever did apply to you for it?

A. He made the request, but whether he made the demand for it or not I cannot remember.

MR. GUMMERE:

Q. You remember everything that Mr. Gordon said to you in 1868?

A. I do not remember exactly.

Q. You have testified to a great many things that people and Mr. Gordon have said to you, now you did have a memory of things which took place and conversations which you detailed which took place in 1868, what you did and what Mr. Gordon said,—now do I understand you to say you do not remember what Mr. Gordon said between 1875 and the spring of 1877?

A. What he said?

Q. Yes?

A. No, sir; I cannot tell his words, he spoke several times that he wanted that draft to enable him to make another will, for he was going to make another will.

Q. That was a very important paper you said?

A. The draft?

Q. The draft was a very important paper?

A. Yes, sir.

Q. Why, hadn't its significance gone when the will was made?

A. I just told you a little while ago that I wanted the draft for myself.

Q. That was your own notion?

A. Yes, sir.

Q. What did Mr. Gordon say?

A. I would not undertake to say what he said

particularly, if he made a demand for the paper, I took it to him if he did.

Q. You say that this—as I understand you, you might have made a copy at that time of the original draft?

A. Yes, sir.

Q. And you are induced to think that this may not be the original draft?

A. Well I would not undertake to swear which it is.

Q. You will not now undertake to swear whether this is the original draft of the will or a copy that you made or have made between 1875 and 1877?

A. It is very probable that this is a fac-simile that I made, it is very probable, but I have no distinct recollection in my mind that I did give him that original draft at the time, that has always been my beliet that I gave it to him and I think so now.

Q. And with that belief you testified that this was the original draft, when you first testified?

A. If he called for the original I must have made this a copy and copied it from that, and kept it from that time.

Q. What became then of the original draft?

A. Well I suppose he got it.

Q. He got both the draft and the copy?

A. No sir, this one I kept.

Q. You only preseved a copy?

A. Yes, sir.

Q. How long had you been at the bar then?

A. How long had I been, at that time—I came to the bar in 1841.

MR. COLLINS:

Q. That would be thirty-six years in 1877?

A. Yes, thirty-six years.

MR. GUMMERE:

Q. How many years were you at the bar?

A. I began to practice law in 1841.

Q. And in 1868 you had been at the bar for twenty-seven years?

A. Yes, sir.

Q. Now, I understood you further to testify that during that twenty-seven years you always made copies of papers by producing fac-similes, that it was your uniform custom in making copies of papers to make them fac-similes?

A. All papers like this, important papers like this, all papers that might lead to a controversy, if I had a point which was going to be in dispute or any contract or such paper as might lead to a controversy, I would make them alike, fac-simile.

Q. You mean that that was made in anticipation of a possible dispute?

A. Was then?

Q. No, your habits were such?

A. Yes.

Q. You say you always made copies in that way?

A. Yes sir.

Q. Now you have stated that you always did that if there was going to be any dispute any controversy.

A. Yes, if there was going to be a dispute, or likely to be anything that would lead to a controversy, I would make a copy of a paper as near like it as possible.

Q. When you made a copy?

A. Yes sir.

Q. When you made the copy had you any intimation that there was going to be any dispute or any controversy in regard to this paper?

A. No, sir.

Q. Why did you make it in this way; why did you not make Mr. Gordon a complete copy of the will?

A. Because it was so important a job.

Q. Had you ever drawn wills before?

A. Yes, sir.

Q. How many wills had you drawn?

A. I don't know.

Q. Was it not your constant habit to draw wills?

A. Constant habit?

Q. As part of your practice, did you not draw a good many wills?

A. Yes, sir; perhaps I have drawn—perhaps—well, I won't undertake to say.

Q. A large number?

A. Considerable.

Q. Did you always preserve the instructions, the draft?

A. I suppose I did.

Q. With the interlineations as they were?

A. Oh, I never drew anything up there worth so much as to require that.

Q. Did you ever furnish any other copies or drafts of wills?

A. No, sir; not that I can recollect.

Q, Then, as to furnishing copies of drafts of wills you had no habit of following the interlineations and making fac-similes?

A. This is the first instance where I had curiosity enough to go to the trouble of making a duplicate or fac-simile of the original.

Q. Do you mean to say that you did make a duplicate, do you mean to testify to the Court that you made a duplicate of the draft?

A. Yes, sir; I do.

Q. Where is it, what is it?

A. I do not know whether I gave it to Mr. Gordon or whether this is the one.

Q, You are sure now that you did make a duplicate of the draft?

A. Yes, sir.

Q. Then you testify now that it is not a matter of doubt now in your mind that you did make a duplicate, now it is settled that you did make a duplicate of the draft?

A. Yes, sir.

Q. That is certain?

A. Yes, I think so, if there was one made if you call it forward—interrupted.

Q. I want to get you down to a point, was there

a duplicate made to your knowledge, any duplicate made at any time of that draft?

A. I am not certain about it, I am not certain about it, but my impression is, my best recollection is that Mr. Gordon asked for that draft.

Q. That is all that you remember?

A. Yes, sir.

Q. You do not know whether you furnished him the duplicate at that time?

A. Before I gave that up I was determined to keep a fac-simile of it, if I gave him one or the other, if I gave him the original which he called for, then this is the duplicate, if I did, and if such a thing could happen that I gave it to Sidney Doane—but I don't know.

Q. You would not make several copies do you think?

A. No, sir.

Q. You are sure now that George P. Gordon asked to see the draft of the will—are you sure now that George P. Gordon asked you between the spring of 1875 and 1877 for the draft of the will?

A. He spoke about it several times and my best recollection is that he did call for it.

Q. Yes, for the draft?

A. Yes, sir.

Q. Why didn't he call, or what conceivable motive could he have in wanting the draft of the will instead of the will?

A. Well, the will was not in my control and the draft was in my control, and if he asked for it I could honor his order for the draft and give it to him.

Q. The real instrument, that is Exhibit P 1, which George P. Gordon wanted to see was not in your control, and that is the reason he asked you for the draft?

A. That he asked about after my father's death—do not get my testimony mixed—that he asked for was after my father's death, and I told him that I hadn't it, it was out of my control; it was among my

father's papers, and it could undoubtedly be found, but the draft I had and that would enable him to make a new will as well as the will itself.

Q It was at your suggestion that he asked you, if he did ask you, for the draft?

A. Yes, and he asked if he could have it, or if he could have it if he desired it.

Q. Is not Exhibit P 1 a draft of the will?

A. That document?

Q. Yes?

A. No, sir; that was made from the draft; that was fixed; that was made from what we call the draft of the will.

Q. Is it not itself only a draft?

A. No, sir; not what I call a draft; we are talking now about the original draft and the will itself; there were three drawn.

Q. Now I understand you to say that George P. Gordon wanted a draft because you suggested that you had the draft; George P. Gordon didn't want the will, you say first?

A. I did not say so; I did not say he did not want the will.

Q. What did you say?

A. He asked if he could find the will, if the will could be found and if he could have it.

Q. What reply did you make?

A. I replied it was among my father's papers and it could undoubtedly be found, and if it could not be found then I had the original draft from which that was drawn, and that would enable him to make a new will as well as the will itself.

Q. He then said no more about it, the will itself; your answer that it was among your father's papers; was it lost then?

A. Was it lost then? No, sir; I did not think it was, but I had no control over it.

Q. You made this Exhibit P 236 or a paper, a draft you say, before the will was executed?

A. Use the right word please—this was a facsimile.

Q. Or a possible fac-simile of it?

A. Yes, sir.

Q. If you swear this was only a fac-simile of that draft, well and good.

A. I do not swear to that.

Q. Now, you say possibly this may not be an original draft?

A. Yes, sir.

Q. How did you get the names of these witnesses?

A. Put them on at the time.

Q. At the time you made the draft?

A. Yes, sir.

Q. This is exactly like the will, is it; you put these names of the witnesses on the original draft at the time you made the original draft, you have sworn to that already.

MR. COLLINS: I object; he has not sworn to any such thing.

Question withdrawn.

Q. When did you put the names of the witnesses on the original draft?

A. On the original draft? the original that was used to make that; I put them in after the execution.

THE ORDINARY:

Q. Were the names on the original draft?

A. They were not at the time, just merely the township; we did not know who would be the witnesses.

Q. The one you retained did you put the witnesses on?

A. Yes, sir.

Q. When did you put them on?

A. I presume I did it very soon after; I cannot tell you when.

Q. Is this a fac-simile as to that, if not the original?

A. If not the original it is a fac-simile, that is as nearly as I can carry these things.

Q. With the witnesses names and all?

A. Yes, as near as I can carry the names of the witnesses after the paper was executed and sealed up, then I had to carry the rest in my memory as to the names.

Q. But those names were put on at what time; how soon after the will was executed?

A. I cannot tell you; very soon after; I cannot say.

Q. Within a year?

A. No, sir: within a few days.

MR. GUMMERE:

Q. You did not know who the witnesses would be?

A. At the time or before the execution?

Q. Yes?

A. No, sir.

Q. Why did you put on the address? How did you know they would all be of the township of Woodbridge?

A. Why did I?

Q. Yes?

A. I cannot tell you sir.

THE ORDINARY:

Q. Have you any of this blue paper now?

A. I have none that is fresh, I have a large mass of it in manuscript.

Q. When did you cease using that blue paper?

A. When my little pile was exhausted.

Q. How long ago was that?

A. That must have been—I must have used it up in 1872 or 1873 I have a brief—interrupted.

Q. Then the original draft would probably be in blue paper, if you had it at that time?

A. That has always been my impression, but I do not want to swear positively about it.

Q. Then you were making a fac-simile, if you made it similar in all other respects, why not adopt and use blue paper?

A. I told Mr. Beckett that my impression was that I had used blue paper and I was perplexed about this white paper.

Q. If that is a copy of the original draft and you desired to make it a fac-simile, why did you not put it also on blue paper?

A. I do not know, I hadn't any probably, I had a little of that blue paper which I bought of Speers in New York and used it very sparingly—my impression is that the original draft was on blue paper, but I am not going to swear about it, it is unnecessary and I know this, that that is a document—interrupted.

MR. GUMMERE:

Q. Haven't you produced in Court since the beginning of the trial in this cause this very blue paper and has it not been experimented on as to the effect of wetting it and the spreading of the ink?

A. They cut it off other pieces that we took out of the packages.

MR. COLLINS:

Q. Out of documents?

A. Yes, out of documents, they asked permission to take it out of a brief I gave Mr. Beckett which was made I think in 1870 they wrote over and asked permission to take a leaf or two out of that brief and I told them they could do so.

MR. GUMMERE:

Q. What was the date of this brief from which the sheets were taken?

A. I think that was made in 1870, I think, it was in the case that was decided in the Court of Appeals

in 1868 in April, and as fast as we could get it on, and the case coming to be tried, I made that brief for use on the re-trial.

MR. COLLINS:

Q. On the new trial?

A. Yes, and I had some—oh I used a large number of sheets to make that index to my work.

THE ORDINARY;

Q. When did you make that index?

A. I began to make it in 1868 and worked along on it for two or three years.

Q. And finished it in two or three years?

A. Yes, sir.

MR. GUMMERE;

Q. I want you to recapitulate precisely what you said as to the identity of this paper, it is a copy or an original?

A. I cannot tell you, I cannot swear positively what it is.

Q. Will you say why you doubt it again, why do you now doubt it?

MR. COLLINS—Why doubt what?

MR. GUMMERE:

Q. That this was the original paper?

A. That was used in 1868, why doubt?

Q. Yes?

A. Because this is on white paper and I was not using white paper, I was using blue.

Q. That is the first fact that makes you doubt?

A. Yes sir.

Q. What is the second?

A. That is enough, I do not know of any other.

Q. No other reason?

A. No, sir.

Q. You merely doubt now, because that is on white paper and not on blue?

A. Yes, sir; so I told Mr. Beckett last June that there was a link or two missing which affects me, and that I could not tell whether the original draft from which the will was drawn was on white paper or blue?

RE-DIRECT BY MR. COLLINS:

Q. In June 4th, 1891, the envelope in which this paper Exhibit P 236 had been put and sealed up and left at the Secretary of State's office was opened?

A. Yes, sir; here in Court.

Q. And you then saw it again?

A. Yes, sir.

Q. And that or shortly after was when you spoke to Mr. Beckett about the white paper?

A. Yes, sir; I think it was either after or a little before—Mr. Beckett will remember that better than I—it is very likely when I found it out and my attention was called to the white paper that I spoke to him about it.

Q. You used an expression a little while ago on the cross-examination that you had always in your own mind looked upon this as a copy and not the original because, I presume, because of this doubt; do you mean "always" or only since you have been thinking of it as a possibility?

A. Now, Mr. Collins.

Q. You used the word "always" which would carry you back to the time when you spoke of it as the original?

A. I do not know as I understand the question.

Q. You used the expression a little while ago on your cross-examination that you had always in your own mind looked upon this as a copy and not the original—I presume, because of this doubt; do you mean "always" or only since you have been thinking of it as a possibility—the word "always" would carry

you back to the time when you treated it as the original?

A. I always so regarded it, and so treated it, and talked about it.

Q. As the original?

A. Yes sir.

Q. But when you said a little while ago that you "always" looked upon it as a copy, do you mean "always" or did you look upon it as a copy since you began to consider the possibility of there having been a copy made.

A. Yes, sir.

Q. Which do you mean?

A. The word "always" don't belong there.

Q. You say the word "always" don't belong there?

A. I used to look upon this as the original draft when it lay in my drawer.

Q. And since you have come to consider the possibility of having made a copy I understand the impression or theory you are carrying with you is that this is probably the copy?

A. This is probably the fac-simile made from the original draft.

Q. And you think so from the fact of its being on white paper?

A. Yes, sir.

Q. That is all that guides you?

A. Yes, had it not been for Mr. Beckett's plausible theory that I might have got the paper from Mr. Gordon I think I might have stood to that theory, but from that time on until recently I have dismissed the subject from my mind.

THE ORDINARY:

Q. Let me see if I understand you—Until you saw that Exhibit P 1 and Exhibit P 236 side by side you supposed P 236 was the original draft?

A. I do not believe it was—interrupted.

Q. The question is, until you saw Exhibit P 1 and Exhibit P 236 side by side you supposed Exhibit P 286 to be the original draft, is that so?

A. I supposed that was the original draft until here lately when I spoke to Mr. Beckett the other day.

MR. COLLINS:

Q. In June?

A. In June, and I told him I was perplexed about that because it was on white paper, I was at a loss and I could not get these facts and circumstances together in a proper chain and I called his attention to it.

THE ORDINARY:

Q. When you wrote the endorsement on Exhibit P 236 did that doubt exist?

A. I supposed then it was the original draft.

MR. COLLINS:

Q. The doubt did not exist.

A. No, sir; it did not.

THE ORDINARY:

Q. And that was written when?

A. At the time we went to the office—interrupted.

MR. COLLINS:

Q. Read the date—the date is on it?

A. Thirtieth of October, 1890.

THE ORDINARY:

Q. Then you took that personally to the Secretary of State's office in Trenton?

A. Yes, sir.

Q. And at that time you believed it to be the original draft of the will?

A. At that time I believed it to be the original draft.

Q. And subsequently when Exhibit P 1 was produced that is this paper (indicating Exhibit P 1) and that was opened and you found that these docu-

ments were upon different kinds of paper your doubt then arose, as I understand you?

A. Yes, I began then to wonder how that could happen, my mind was very much influenced.

Q. You are sure that then the doubt arose for the first time?

A. Yes, sir; that is the first time I ever had any doubt.

MR. COLLINS:

Q. And what Mr. Beckett said settled your doubt?

A. What Mr. Beckett said threw me off my guard, his theory was so plausible that I accepted it.

Q. And that was that you got some white paper from Mr. Gordon or your father?

A. Yes, sir.

Q. Tell me, when sworn before and you said that you thought that was the original draft, why didn't you express that doubt then?

A. I was not in mind of it at that time when I testified before.

Q. Since June?

A. I was very sanguine then.

THE ORDINARY:

Q. That is about a month ago, the tenth of September only?

A. I was very sanguine then that this was the original draft, but I could not reconcile the fact of its being on white paper until after thinking about it in the vigils of the night and so on; I came to the conclusion there was some mistake, now I cannot tell you—(interrupted).

Q. Why didn't you on the tenth of September last express that doubt?

A. I did not get at it then; I do not know.

Q. Has this chemical testimony had anything to do with creating this doubt?

A. Well, I do not think it has, because I think that is all bosh; I think very little of it.

MR. COLLINS:

Q. I presume the possibility of this ink being made of a substance that did not exist in 1868 would have some weight in any man's mind, would it not?

A. Well, it would be likely to wake him up a little.

Q. And you learned since you last testified that certain scientific gentlemen were of opinion that the red ink on this draft was made from a substance not known in 1868; you learned that?

A. Yes, I learned that on the day I came into Court late, I came pretty near missing it; I came into Court late and sat down by a lady there and asked her what they were driving at.

Q. You learned that, did you not?

A. Yes, sir.

Q. Would not that fact cause you to still think more on the subject?

A. Oh, yes.

Q. Let me understand, if I can separate between memory and inference, do I understand that you do remember positively that George P. Gordon did speak to you between spring of 1875 and 1877 without making a new will?

A. Yes, several times.

Q. And that he did speak of the whereabouts of the executed will?

A. Yes, sir.

Q. And that you did remind him or tell him of your having the original draft of that will which he expressed a desire to see?

A. Yes, sir.

Q. Do you tell us that those things you remember?

A. Yes, those things I remember pretty clearly.

Q. Those things you remember?

A. Yes, pretty clearly.

THE ORDINARY:

Q. What do you mean by "pretty clearly?"

A. I remember I think that it might be so; I might make a mistake; I don't want to swear to a thing positively when there is a chance there might be a mistake.

MR. COLLINS:

Q. Do you or not remember George P. Gordon talking to you?

A. Yes, sir.

Q. On what subject?

A. In regard to making a new will.

Q. Do you not remember the existence and whereabouts of the old will being referred to?

A. Yes, sir.

Q. Do you or not remember the existence of this draft being referred to?

Objection by Mr. Gummere on the ground that the witness has already answered.

THE ORDINARY: I will overrule that question in view of the statement made by the witness that he remembered "pretty clearly."

Q. State what you remember of your interviews with George P. Gordon between 1875, the date of your father's death in 1875 and the Spring of 1877?

A. I remember that he asked about the original will, just as I have told you, and I told him where it was and that there was no doubt but that he could find it among my father's papers; that I didn't have it, and I had no control of it, but I told him I had the original draft which would enable him to make a new will if he contemplated making one.

Q. That you remember?

A. Yes, sir.

THE ORDINARY:

Q. Pretty well, or are you sure?

A. I am pretty sure of that.

Q. Pretty sure?

A. Yes, I remember it; I think I can state so positively; we had several conversations in relation to that subject.

MR. COLLINS:

Q. But as to his asking for the draft and your making a copy of the draft you do not have any positive memory?

A. I cannot recall that to memory so as to be sure to swear to it positively.

Q. Did you mention to any one before this controversy arose the fact of these subsequent conversations with George P. Gordon about the making of another will, and if so, who?

A. About the fact—(interrupted).

Q. Did you ever speak to any one, or tell any one, about Mr. Gordon having spoken to you along in the time you mentioned between 1875 or 1877 about his wish to make another will, and if so who did you mention it to?

A. Mr. King.

Q. The counsel in this case?

A. Yes, sir.

Q. Where?

A. At my rooms in Orange when he came over on my written request.

Q. That was the original visit?

A. The first visit, he came afterwards—interrupted.

Q. In October, 1890.

A. Yes, sir. Afterwards Mr. King and Mr. Beckett came, and I think I said something of the same thing, I think I related very much or nearly all to Mr. Becket that I did to Mr. King.

FURTHER CROSS-EXAMINATION BY MR. GUMMERE:

Q. Now I understand you to say that doubt in regard to the identity of this paper arose when you saw the paper was white instead of blue when it

was opened in the presence of the Chancellor, do I understand you aright?

A. Yes, sir.

Q. Then I understand you to say that in June other circumstances occureed, a conversation with Mr. Beckett—interrupted.

MR. COLLINS—You are confusing things, it was in June that this envelope was opened;

MR. GUMMERE:

Q. It is immaterial, I only wanted to follow the sequence of your mind, which created the doubt, you say you had a doubt in June by seeing the difference in the color of the paper, that began you doubts.

A. Yes, sir.

Q. And that doubt was strengthened by a conversation or intercourse with Mr. Beckett?

MR. COLLINS: I object to the question, it was removed by a conversation with Mr. Beckett.

WITNESS; It was taken out of my thought.

MR. GUMMERE:

Q. It was taken out of your mind then?

A. Yes, sir.

Q. Then I understand it still kept in your thought, it revived?

A. I had it in my mind and spoke of it again.

Q. Who to?

A. I am not sure who it was.

Q. And in October you had the further conversation with Mr. King, you say.

MR. COLLINS: No, that was in October, 1890.

Question withdrawn,

Q. You said you had a conversation with Mr. King in October, 1890.

A. Yes, sir, I did.

Q. You told him of this same circumstance.

MR. COLLINS: No, no, you are confusing the two things.

Question withdrawn.

Q. The result was that you were in doubt you said in June, but that that was removed, and that that was removed by the ingenious suggestion of Mr. Beckett?

A. Yes, sir.

Q. Now, you say on September 10th you had no doubt?

MR. COLLINS: When you testified last.

A. Yes, I was satisfied then that I was right.

MR. GUMMERE:

Q. In spite of the color of the paper?

A. Yes, sir.

Q. And at this stage your doubts are renewed?

A. Yes, sir.

Q. On September 10th you knew what the sanctity of an oath was?

A. Yes.

Q. And you knew that you were the most responsible witness in the case on September 10th?

A. Yes, sir.

Q. I see that the question asked you was (P 1,458)

"Q. I show you a paper drawn from that envelope and ask you whether that is the paper, No. 2, of which we have been speaking, with the red ink changes and with the additions of the names as testified to by you?"

MR. MILLER: Draft No. 2?

MR. COLLINS: Yes, draft No. 2, with the red ink changes.

A. Yes; this is the one.

Q. With the red ink changes and the addition of the names at the foot, as testified?

A. Yes.

Q. How do you account for the fact that you reversed the position of John and Alonzo Adams?

A. Well, that is a failure of memory; that is all. Those names were put there from memory. I intended to keep this as a keepsake as long as I lived."

Q. Now, Mr. Miller cross-examined you and he said (P 1,461).

> Q. I call your attention to Exhibit P 236 and heretofore referred to as C. L. C. which counsel on the other side has spoken of as paper No. 2, and which you identified as the second draft of the will of George P. Gordon. You stated here that this paper was completed in all respects as it now appears, both as to black and red ink, before Exhibit P 1 was executed?"

A. Yes, sir; P 1 was drawn from this.

"Q. This was written as it now stands, in all respects, except as to the signature, but in respect to red and black ink as it appears now, before it was executed?

"A. Yes."

"Q. Of that there is no question?

"A. No sort of doubt."

Q. That correctly states your testimony, does it, you then had no doubt whatever?

A. That testimony was just as my mind was at that time, according to my recollection.

Q. Your testimony depends on the state of your mind?

A. That testimony was given just as I remembered the facts, I had always been under the impression

that that was correct after I had the interview with Mr. Beckett.

Q. When you first saw the papers you did doubt, when you first saw the white paper you said a little while ago, that you did doubt the identity of the paper?

A. When I first saw it I told Mr. Beckett I could not account for its being on white paper.

Q. Then you doubted it?

A. He suggested that Mr. Gordon might have given me the paper or I might have got it from my father, and that put me at rest, and I did not think about it until afterwards when I came to see it here, and think about it more—interrupted.

Q. Never mind the explanation?

MR. COLLINS—I mind the explanation though.

WITNESS—When I came to think about it more my mind cleared about it, I suggested to Mr. Collins that that matter ought to be corrected, that my testimony was too sanguine and too positive, that I had been thrown off my guard and that I came here to-day for the purpose of correcting it.

MR. GUMMERE:

Q. When did you first express these doubts to Mr. Beckett?

MR. COLLINS—I object to the question on the ground that the witness did not express any doubt, he simply told Mr. Beckett that he did not think it was on white paper—the witness said he was perplexed about the white paper—he did not say that he told Mr. Beckett he had doubts.

Question withdrawn.

MR. GUMMERE:

Q. Did you tell Mr. Beckett that you had doubts?

A. I was perplexed about it, I could not understand how this came to be on white paper when I was using in 1868 this blue paper.

Q. You do not think that when you told him when you were perplexed you were in doubt—do you mean to say that "perplexed" that that word is not doubt?

A. You may call it what you please, I call it "perplexed" I did not understand it and I told him so.

THE ORDINARY:

Q. Then I understand you that you were perplexed when Mr. Beckett spoke to you?

A. Yes, sir.

Q. And that left you in a state of uncertainty as to how to get rid of that perplexity?

A. Yes, sir.

Q. And then he made the suggestion that freed you from that perplexity?

A. Yes, he made the suggestion about Mr. Gordon's or my father's paper.

Q. Then your conversation with Mr. Gordon did not occur to you at that time about his making a new will and your suggesting to him that you had this copy?

A. That I always remembered.

Q. Didn't that with your perplexity create a doubt in your mind?

A. About that paper your Honor, this was on white paper and I could not understand how it came to be on white paper, when I saw it opened here in Court before your Honor.

Q. When you were in that perplexity did the conversation you say you had with Mr. Gordon as to the possibility of making two copies occur to you?

A. What was perplexing about it was that Mr. Gordon wanted this draft of 1868 and I say that if

I could solve that question then I could determine in my mind what paper I gave him if I gave him any.

Q. Did that create any doubt as to this being the original draft from which you drew the will?

A. Well, I was in doubt, I was perplexed about it, and not sure, I always supposed this was the original draft, always supposed so up to that time for a long time.

Q. Were you then merely perplexed or were you in doubt?

A. Well, whatever your Honor pleases—perplexed, uncertain.

Q. And yet at that time you say this conversation with Mr. Gordon occurred to you?

A. The conversation with Mr. Gordon was long before your Honor.

MR. COLLINS:

Q. His Honor asks whether that conversation with Mr. Gordon about the draft came into your mind at that time you had the talk with Mr. Beckett about the paper?

A. I had an impression that I had the conversation with Mr. Gordon at the time I had the conversation with Mr. Beckett.

Q. Did the difference in the color of the papers and the rememberance of that conversation with Mr. Gordon create any doubt in your mind?

A. It put me in a state of perplexity. If the original was made on blue paper in 1868 and given to Mr. Gordon, of which I was not sure; then this must have been made from that paper when I gave it to Mr. Gordon in 1875 or 1877, and I could not understand how this should be on white paper, if it should be the original, and we put it in the Clerk's office at Trenton and called it there the original draft of the will; it was brought here and opened as such.

MR. GUMMERE:

Q. Then it was that the remembrance of all these facts that you have now testified to occurred to you, but you testified on the tenth of September positively as to the identity of that paper?

A. I testified on the tenth of September and I testified very sanguinely that this was the original draft?

Q. Yes, you did.

A. But I am here; I came here to-day to correct that testimony.

Q. Have you any knowledge now with regard to the paper or the circumstances that you did not have on September 10th, 1891?

A. There have been a great many things that I did not think of at the time.

Q. Please tell us what are the additional things that you did not think of on September 10th, 1891?

A. Oh, I cannot tell you that.

RECESS.

CHARLES H. BECKETT, a witness produced in behalf of proponents, being duly sworn according to law on his oath, says:

EXAMINED BY MR. COLLINS:

Q. You are a member of the bar of New York?

A. Yes, sir.

Q. And counsel in this case?

A. Yes, sir.

Q. Were you present in June last in Chancery Chambers here when Mr. Adams saw the paper Exhibit P 236, which had been drawn from the envelope by the Chancellor?

A. I believe it was in the month of June.

Q. And he saw the paper then?

A. Mr. Adams saw the paper then.

Q. Did he make any remark about it with regard to the paper upon which Exhibit P 236 was written, and if so what was said?

A. He did; I recollect he said that he expected to see it on blue paper. and he spoke about it that it perplexed him; I am positive that he used the word "perplexed" on that occasion in that conversation.

Q. What did he say to you?

A. He said that he was using blue paper at that time, and I recollect that I remarked that it did not seem to me that that should influence his opinion, inasmuch as I knew it would be possible in my own case to obtain white paper as long ago as that, from this, that or the other source, and I mentioned Mr. Gordon's name, and I mentioned his father's name, and after I had mentioned these possibilities or used this argument or theory, as you may call it, then our conversation ended, except that he remarked that it was afterwards; I think at the same interview to set my mind at rest, it was probably a vaporing of his mind; I recollect his using that word "vaporing."

THE ORDINARY:

Q. Did you suggest this statement of his to counsel associated with you?

A. Yes sir; I did.

Q. Why was not question asked with reference to it on his examination?

A. Because afterwards and again; well, perhaps, it may have been two or three weeks afterwards; I cannot tell: he came to see us again—(interrupted).

Q. Name who?

A. Mr. Collins and myself, and he said to set our minds at rest on that matter, he was convinced that he must have been mistaken, that it was a vaporing of his mind and what he said did set my mind at rest fully; I did not give it that importance at the first conversation that it has naturally had since.

Q. And when was it he said that; can you locate that time when he said that it was a "vaporing" of his mind?

A. When Mr. Adams and I came over here I should think was probably four or five days after the draft was opened; I was not here on the day the draft was opened, but four or five days afterwards, and I should presume that the conversation which I have just now referred to when Mr. Collins was present was two or three weeks after that, but I am not positive.

Q. That was in June?

A. I should think so.

No cross-examination.

DAVID BENNETT KING, a witness produced in behalf of proponents, being duly sworn according to law on his oath, says:

EXAMINED BY MR. COLLINS:

Q. You are a member of the New York bar?

A. I am.

Q. And you were formerly professor in Lafayette College, was it not?

A. Yes, sir.

Q. And more recently came to the bar?

A. Yes, sir.

Q. Are you counsel in this case?

A. Yes, sir.

Q. Are you the Mr. King to whom Mr. Adams referred as visiting him in October, 1890?

A. Yes.

Q. Did you so visit him?

A. Yes.

Q. Did he on that occasion make any remark about Mr. Gordon's having ever spoken to him about a purpose to make a new will after the alleged execution of this one in 1868 that he says he drew, if so, what did he say on that subject?

A. He did speak of that. He said, as nearly as I recall his language, "You, know, Mr. King, I thought Mr. Gordon had made another will later, because some time after my father's death along

about 1876 or 1877, along there some way, he met me and told me that his circumstances had changed, that he had become more prosperous and he wanted to make another will.

No cross-examination.

HERMANN ENDEMANN, a witness produced in behalf of proponents, being duly sworn according to law on his oath, says:

EXAMINED BY MR. COLLINS:

MR. COLLINS: I offer in evidence, if the Court please, under Sections 892 and 893 of the Revised Statutes of the United States, a certificate under the hand and seal of the Commissioner of Patents of a patent granted September 2nd, 1865, and numbered 2267 for "Improvements in the manufacture of compounds of silica, and in the production of silicated alkaline inks, colors and dyes," granted by the British Government to one Henry Ellis, of Bangor, in the County of Carnarvon, North Wales, Surgeon—of which I will read such portions as are essential.

Counsel reads as follows:

"Letters Patent to Henry Ellis, of Bangor, in the County of Carnarvon, North Wales, Surgeon, for the invention of "Improvements in the manufacture of compounds of silica, and in the production of silicated alkaline inks, colors and dyes."

Now, beginning at the bottom of page 2 I read as follows;

"A further portion of this invention relates to certain improvements in the combination of certain coloring matters with compounds

of silica, the same being effected by causing such coloring matter to become precipitated or gelatinized in combination with silicic acid by the use of supersilicates or compound silicates, and which products may be used in a state of precipitate or paste as valuable colors for various purposes, or by desiccation can be obtained as dry colors. Such compounds of coloring matter with silicic acid being dissolved in solutions of alkaline silicates will yield various colored inks and liquid dyes. The inks thus produced will not exercise any corroding action upon steel or other metallic pens, while they are less delible than other inks now in use. The liquid dyes thus manufactured are also of a permanent nature.

Then I go on to read at the bottom of page 4 as follows:

"For the manufacture of inks, the coloring matter of such dyes or substances is precipitated or gelatinized by means of a solution of any one of the soluble supercilicates or compound silicates before mentioned, the precipitate or gelatinous mass so obtained being dissolved in a solution of any alkaline subsilicate or commercial silicate of soda or of potash. When commercial silicates are employed for these purposes, the solutions of those silicates should be by preference of specific gravity 1.2 to 1.5."

Then I go on to read on page 7 as follows:

"For red ink and for silicated aniline colors, magenta or other aniline colors may be used in the dry state or in the state of solution; but as dry aniline colors will not directly combine with the soluble silicates, it is necessary to use intermediate bodies, such as resins, or gum

resins, to effect a combination. Gamboge is well adapted for this purpose, for at the same time that it makes the magenta soluble in a solution of alkaline silicate, it also modifies the color so as to produce a red silicated ink. Other gums, resins or gum resins possessing analogous properties may be used in the same way with magenta and other dry aniline colors, and thus a large variety of silicated aniline colors may be produced. In some cases a solution of cochineal and other coloring matters in ammonia or other alkaline solutions may be advantageously used to vary the tint of the original ink or dye.

"The liquid aniline dyes I treat as follows:

"For red ink I take aureine one measure and add to it an equal measure of commercial silicate of soda in solution of specific gravity 1.5. After stirring or agitating the mixture I let it stand, and then pour out the liquid part for use, leaving the sediment. By varying the quantity of either the silicate or the dye, various shades of red may be produced, and gamboge or other gums, resins or gum resins may be added at discretion, as with the dry aniline colors. Various other liquid aniline dyes may be treated in the same manner, thereby producing a great variety of solutions suitable for writing fluids of great permanency, and which will produce no corrosive action on steel or other metallic pens, and which fluids may also serve for other purposes already named."

"Documents written with inks, prepared as herein mentioned, may be rendered still less delible by means of a coating of a solution of supersilicate or compound silicate of potash or of soda, and paper hangings colored with any of the dyes in accordance with this invention may in the same manner be rendered washable without the colors becoming altered.

The silicated dyes obtained by means of the before-mentioned processes may be used either singly or in combination with each other, or with other dyeing substances, and the desicated colors may be powdered and mixed with such of the mineral, artificial, and other coloring matters as will not be affected by the solutions of alkaline silicates and used for coloring paper hangings or other purposes."

"Having thus fully declared and ascertained the nature of my said invention, and the manner in which it is to be performed, I would observe in conclnsion that what I consider novel and original, and therefore claim as constituting my said invention are:

"First, the methods of producing the soluble alkaline silicates, supersilicates and compound silicates substantially here-in-before set forth and described, or any mere modifications thereof."

"And, secondly, the methods of manufacing and producing silicated alkaline inks, colors and dyes substantially here-in-before set forth and described, or any mere modifications thereof.

Offered in evidence and marked Exhibit P 239.

Q. How old are you?

A. Forty-nine years of age.

Q. Where were you born?

A. In Germany.

Q. Where were you educated?

A. In Germany.

Q. At what institution?

A. At the Polytechnic of Hesse, Carlsbad, and later at the Universities of Giessen and Marburg.

Q. And your degree is from which one?

A. The university of Marburg.

Q. To what extent did your education go in the matter of analytical and organic chemistry?

A. During my stay at Marburg I worked almost exclusively at organic chemistry for three years.

Q. What profession did you adopt after your education was completed?

A. My education was for the profession of chemistry.

Q. Did you adopt it?

A. Yes, sir.

Q. When?

A. In 1864.

Q. Where did you practice; in Germany?

A. At the Polytechnic in Stuttgart, where I was tutor of chemistry until 1867.

Q. When did you come to this country?

A. In 1867.

Q. What has been your experience as a chemist here?

A. During the first few years I was assistant to Professor Chandle, professor of mines at Columbia College and also of Professor Joy, also of Columbia College, and from 1869 to 1880 I was connected with the Health Department of New York.

Q. As chemist?

A. Yes, sir, as chemist.

Q. Well go on?

A. And in 1879 I opened the laboratory which I now occupy at 27 and 29 New Street, New York City.

Q. There you carry on your profession in your own right?

A. Yes.

Q. And for yourself?

A. Yes, sir.

Q. Do you do an extensive business?

A. Yes, sir.

Q. What special attention have you given to dye-stuffs, what is your special branch?

A. My special branch is dye-stuffs, but I do other work besides.

Q. Your special branch is dye-stuffs?

A. Yes, sir.

Q. What familiarity have you had with eosin?

A. I have made a great many analysis of eosin to learn the method by which the various shades are obtained by the substitution of other ingredients, and I think in all I have made as many as thirty or forty different analysis.

Q. In the line of your profession and for clients?

A. For clients, yes, sir.

Q. Have you examined the document P 236 with a view of satisfying your own mind as to the character of the so-called red ink that appears upon it?

A. I have, yes, sir.

Q. How thororghly and carefully have you examined it?

A. I have examined it about three times.

Q. In presence of the Exhibit Master, and in the Chancery Chambers?

A. Yes. sir.

Q. At any length?

A. With the microscope and with the spectroscope I have examined it, and with other things as far as I had them with me under the circumstances.

Q. And you have given a thorough examination to it?

A. Yes, sir, without destroying or altering anything, just a superficial examination.

Q. Have you arrived at any conclusion as to whether the ink—the so-called red ink—or that document is eosin or not?

A. I arrived at no conclusion, positive conclusion, but I rather think it is not eosin.

Q. You have arrived at the conclusion that you think it is not eosin?

A. Yes, sir.

Q. Are there other substances known to be capable of producing inks in 1868 which would give a rosate hue such as that ink has, and give a bronze iridescence and turn yellow under hydrochloric acid?

A. Yes, sir.

Q. What leading one can you give?

A. Aurine.

Q. Is that the substance for which the patent to Dr. Ellis was granted?

A. Yes, sir.

Q. Were you familiar with the abstract of that patent in the records?

A. Yes, sir, I have seen it quite lately.

Q. It is a British patent.

A. Yes, sir.

Q. What is that word "aurine" derived from?

A. Aurine may be from the goldez reflex which the substance has.

Q. From the word "Aureate," meaning gold?

A. Yes, sir.

Q. Because it has a metallic iridescence?

A. Yes, sir.

Q. Do you know the pulication called the "Chemical News?"

A. Yes, sir, I do.

Q. A publication from London—published in London?

A. Yes, sir.

Q. And a recognized scientific publication?

A. Yes, sir.

Q. Does the issue of 1866, August 10th, 1866, of that publication contain a reference to this patent?

A. It does at page 69.

Q. And that has been familiar to the scientific world ever since, I presume?

A. Ever since, yes, sir.

Q. It copies the specification of the patent as I have read them substantially?

A. Yes, sir, substantially.

Q. Now Professor, is it also again referred to in the same publication of July 10th, 1868, on page 18.

A. Yes, sir, it is.

Q. That is an article by Dr. Adriani?

A. Yes, sir.

Q. And it treats of experiments with commercial rosolic acid, so-called aurine cake?

A. Yes, sir.

Q. I will read this part of it: "As regards the solution of Aurine in weak fixed alkalies and their carbonates, from experiments I instituted I think I may recommend Aurine cake as an article for the manufacture of a red writing fluid—red ink—of great beauty. Of the solutions I tried for this purpose I find that the solution in carbonate of soda answers best; this red ink can—Firstly, be used with steel pens, not only not corroding them, but actually on account of the alkali protecting the steel from rust and corrosion; and, Secondly, this ink would not affect blue laid paper colored with ultramaine, which latter pigment is decomposed by acids; and, since ordinary red ink is usually very acid both the pens and paper suffer if ultramarine blue laid paper is used for writing. Another advantage of the use of the solution alluded to instead of red ink is that it may be safely used by mechanical draughtsmen with their steel drawing instruments, which will not suffer from its use. Tampering with what is written with the alkiline aurine solution, with acids for instance, will at once become evident by the writing becoming yellow, while the primitive color cannot be destroyed."

Then again (reading extract from "Chemical News" July 10th 1868, page 18, line 33, 1st column.)

"Notwithstanding it is asserted that the color from rosolin acid is very frigitive, I find that things written now, five, and even eight weeks ago, exhibit no signs of change or fading. Aurine in alkaline solution, far surpasses best red ink in brilliancy; if its asserted instability should, on a more severe and lengthy trial, prove incorrect, alkaline aurine solutions may be of use, also, instead of water colors for drawings, designs and for mechanical and other draughtsmen, since the color is extremely brilliant, and the raw material not expensive, considering its immense tinctorial power even in small quantity.

Q. What is aurine?

A. A hydrite of dry oxy-phenyl carbonyle.

Q. Derived from what substance?

A. It was originally found in the coal-tar in the year 1834 and was then prepared and described.

In the year 1858 Persoz in France discovered a method of preparing aurine artifically from the action of sulphuric acid and oxalic acid upon carbolic acid.

The same effect was rediscovered in 1860 or 1861 by Gilbert & Smith of the chemical laboratory of Marburg jnst previous to the time I entered the laboratory of that University.

Q. Is it also derived from fuchsine?

A. Yes, sir; but the manufacture from fuchsine dates from a later period.

Q. What is the aurine cake, so-called, rosolic acid?

A. It is the crude aurine as it is prepared directly from the action of the materials upon each other.

Q. What did you do in the laboratory at Marburg which gave you any familiarity with aurine and its properties?

A. I did not work with aurine in the chemical laboratory in Marburg, only I worked at it at a later period, but I remember the time aurine was first described and when Gilbert & Smith were interested in the discovery which had been just made and they had written to England about the usefulness of the article for the purposes of dyeing cloth and the answer which they obtained was not very encouraging from the experiments that had been made in that respect in England, they simply stated that the material was not good for anything else but making inks.

Q. Have you experimented for the purpose of producing an ink made of aurine to compare with the ink that is upon this paper Exhibit P 236?

A. I have.

Q. Will you produce some of the ink that you have made and contained in bottles?

A. I will.

(Witness produces.)

Q. The witness produces first, the original primitive substance, then an ink—now tell the Court of what the ink is composed and produce some specimens of writing made with the ink?

A. Yes—the first I have got here is the substance itself.

Q. In this small package we have what is known as the commercial aurine?

A. Yes.

Q. Where procured?

A. I do not know where, but quite a number of years ago when I was making some tests of another dye-stuff which I wanted to compare with some other dye-stuff, and I took this aurine from my own collection made at the time.

Q. And this one?

A. This was obtained from Pickhardt & Kuttroff (indicating a second package produced of commercial aurine).

Q. You thought you would buy some of them too and you had some.

A. Yes, sir.

Q. Let me ask in passing what is coralline?

A. Coralline was, or used to be, originally called "pacohine," it was also discovered by Persoz and was obtained by the action of amonia upon aurine at a high pressure in closed vessels at 115 degrees.

Q. That is what coralline was?

A. Yes, sir; but this substance (indicating the packages of aurine) has lately been sold as coralline.

Q. Aurine has?

A. Yes, sir.

Q. And what you produced is now called in the market coralline and is really aurine?

A. Yes, sir.

Q. Then coralline is a commercial name that may mean different things?

A. Yes.

Q. And you experimented with aurine proper?
A. Yes, sir.

MR. COLLINS: These bottles containing the aurine are now offered in evidence.

Marked Exhibits P 241 and P 242.

Q. Describe the ink you have made with which the writing that you will produce for the Court was written?

A. The first ink which I will produce was an ink which was made of silicate of soda. This ink was made about two weeks ago, I believe, or it may be as long ago as three weeks, perhaps, and it originally wrote in a plain red, it has, however, during that time, while it aged, has got the property that it shows a golden iridescence.

Q. When first written did it not show that?
A. No, sir.
Q. But by the lapse of time that has developed?
A. Yes, sir.
Q. Give the constituents of it?

A. It was made up by dissolving aurine in a solution of silicate of soda made from the commercial silicate of soda by taking a part of this and mixing it with nine parts of water and adding this aurine to it.

Q. What else?
A. I do not think in this case I added anything.
Q. You think you added nothing in that case?
A. No, sir.

MR. COLLINS: I offer that in evidence.

Marked Exhibit P 243.

Q. "1876" upon it, what is that number?
A. That is my laboratory number.
Q. What else have you got?
A. I have a sample of "1888."
Q. "1888" being the laboratory number?
A. Yes, sir. This is produced by dissolving

aurine in a solution of borax, which has been made still more alkaline by the addition of caustic soda and also some ammonia and gum.

MR. COLLINS—I offer that in evidence.

Marked Exhibit P 244.

Q. Now the next one?

A. This is substantially the same, only a different preparation.

Q. And it has your laboratory number of "1894?"

A. Yes sir.

MR. COLLINS: I offer that in evidence.

Marked Exhibit P 245.

WITNESS: "1874" is aurine dissolved in carbonate of ammonia with the addition of some gum.

Q. "1874" is the same as the last with the addition of what?

A. Carbonate of ammonia.

Q. You say you find you have left the bottle at home; but you have brought the writing here made with it?

A. Yes, sir.

Q. Go on?

A. "1892 B" and "1877" which were made in the same manner with a basic borate and gum.

MR. COLLINS: I offer those in evidence.

Marked Exhibits P 246 and P 247.

Q. What next?

A. "1909," laboratory number, contains aurine and extract of sub-flower, and "1908" contains aurine, gamboge and alkanine.

MR. COLLINS; I offer those in evidence.

Marked Exhibits P 248 and P 249.

Q. Will you now produce such specimens as you desire to show to the Court of writing done with these various inks.

Witness produces a paper with lines of writing contained thereon with the laboratory numbers 1876, 1888, and 1894 prefixed to them respectively.

Q. These numbers, do they indicate the use of the inks with those laboratory numbers?

A. Yes, sir.

Q. When were these lines written?

A. Three or four days ago.

Q. Three or four days ago?

A. Yes, sir.

Q. They state in themselves the constituents of the ink?

A. Yes, except the gum and the amount of water used and the quantity.

MR. COLLINS: I offer that in evidence.

Marked P 250.

WITNESS: The inks on that exhibit are about two weeks old.

Q. The one marked "1874" on the narrow slip?

A. The ink is about three weeks old, and it was written I think yesterday.

Q. And that is aurine dissolved in carbonate of ammonia?

A. Yes, sir.

MR. COLLINS: I offer that in evidence.

Marked Exhibit P 251.

Q. I now show you a paper with four different

specimens of different writings on it signed by yourself, prefixed respectively with the numbers "1892 B," "1877," "1909" and "1908"—do those numbers indicate that the respective writings were written with the ink from the bottles we have put in evidence with those numbers on them?

A. Yes sir.

Q. And do the writings also state the essential ingredients of the ink?

A. Yes, sir.

Q. Leaving out the insignificant ingredients such as the gums, water, &c.?

A. Yes, sir.

Q. Stating what each was?

A. Yes, sir.

MR. COLLINS—I offer that in evidence.

Marked Exhibit P 252.

Q. In your judgment Dr., does eosin ink that of Professor Hodges and Stebbins that has been proved here correspond in color with the so-called red ink on the draft, Exhibit P 236, as nearly as some of your own specimens?

A. I can answer this question only with reference to the ink produced by Professor Hodges.

Q. Because that is the only one you looked at?

A. Because up to the present time I have not seen the other.

Q. I will not show it to you (handing witness a paper) this was written by the ink of Professor Hodges; what have you to say as to the correspondence in color between the red ink on the draft Exhibit P 336 and those specimens?

A. The sample produced by Professor Hodges is entirely unlike the writing on the draft.

Q. And how about Professor Stebbins?

A. Which is that one?

Q. The upper one—You see there are two and they differ from each other, Stebbins' name is on it?

A. I consider also the eosin ink produced by Professor Stebbins as being entirely different from the eosin—if that is supposed to be eosin ink—from the ink on the draft.

Q. Which of your specimens do you consider most nearly corresponds to the ink on the draft.

A. The ink No. "1888."

Q. "1888" is the one you would select?

A. Yes, sir.

Q. Has that ink and have all your specimens a bronzed iridescence?

A. Yes, sir; nearly all the specimens have a bronzed iridescence.

Q. Which iridescence most nearly correspond to that upon the draft, the aurine specimen or eosin specimens that are here?

A. The aurine.

Q. Wherein is that so; point out the resemblance and the difference?

A. The inks written with eosin have a decidedly green iridescence, while the iridescence of aurine is far more golden and more like the ink on the draft?

Q. The draft is golden is it?

A. Yes, sir.

Q. Is it difficult to get materials now exactly like those which were manufactured and sold as the same sort of article in the sixties?

A. Yes, sir; certainly, very.

Q. What are the reasons you cannot get now in the market exactly the same shades, that is in the crystal that you could get in 1868?

A. The advances made in the manufacture of artificial dye stuffs produced now and those which were produced in the earlier period, the earlier years and the other articles that have been in the market many years previous to the introduction of the production of artificial dyes has gradually disappeared.

Q. So that it would almost be impossible to reproduce an article in existence in 1868?

A. Yes, sir; it would be almost impossible.

Q. On account of the difficulty of getting the exact materials?

A. Yes, sir.

Q. Have you some other literature on this subject?

A. Yes, sir; I have got here the register to ten volumes of Wagner's Annual Report on the progress of technology.

Q. And this was published when?

A. His register was published in the year 1876, but it refers to the work of ten years previous to 1874?

Q. It refers to the works ten years previous to 1874?

A. Yes, sir.

Q. What does it say?

A. It says here amongst the inks, red inks and mentions as the first article "from aurine."

Q. That is on page 355?

A. Yes, sir.

Q. And the work itself do you find a reference to it?

A. The work itself reproduces the article of ardiani in the "Chemical News" and states also that his article has been published in six other German weekly and monthly publications.

Q. All German publications?

A. Yes, sir.

Q. And all published in the year 1868?

A. Yes, sir.

Q. And this itself was published when?

A. The volume was published in 1869.

Q. At page 657?

A. Yes, it gives a review of all the news published during the year 1868.

Q. You were not in Court when Professor Stebbins put a small piece of paper with a little red ink on it cut from Exhibit P 236 into a test tube of water to show that it had full fluorescence?

A. I was not here.

Q. You have been informed that from this fragment in the test tube there was produced a yellowish green fluorescence, have you?

A. Yes, sir.

Q. By others who witnessed it?

A. Yes, sir.

Q. Are there other bodies that will produce a similar fluorescence?

A. Yes, sir; there a great many bodies known which will do it; for instance purpurine, a substance which is not any more in the market; also turmeric has a fluorescence generally, which may be made to look different if you see it in a colored liquid which is produced by a great many substances.

Q. Will any of your samples which you have produced produce it?

A. No. sir; at least I do not know; I have not tested it in that respect.

Q: Are these substances you speak of commonly occurring bodies?

A. Very common at the time this document was supposed to have been written.

Q. And cheap?

A. Yes, sir.

Q. And as such as might naturally find their way into inks?

A. Yes, sir; certainly.

Q. As part of the trade secrets of the manufacturers.

A. Certainly, the main material used previous to that time was cochineal or carmine, which was a product of cochineal, which at that time was a high-priced article.

Q. Does this flourescent test of Prof. Stebbins satisfy your mind that it was eosin?

A. It does not; no, sir.

Q. He speaks also of a "diazo" test: you heard his testimony in that respect before you went out?

A. Yes, sir.

Q. Would that test, as he describes it, satisfy your mind that this was necessarily eosin?

A. Certainly not; it might be aurine just as well.

Q. By the way, will your inks here last?

A. Certainly they will; if the inks are made of

caustic alkalies, of course they will bleach quickly, and it is very improper to use caustic alkilies to make ink with, that was known in 1865, and I believe that was in the mind of the man that took that patent which has been put in evidence, that he used an alkaline salt for the dissolving the aurine instead of using a free alkaline.

Q. So that the ink you have is a different alkaline from the one prepared by Prof. Stebbins?

A. Certainly.

Q. Have you any doubt but that your ink would last from 1868 or 1869 until the present time, as on this draft Exhibit P 236?

A. Certainly, dry on paper, I should think it would.

CROSS-EXAMINED BY MR. GUMMERE:

Q. When you first came to this country you said it was 1867.

A. Yes, sir.

Q. What ink did you use here?

A. Black ink.

Q. Didn't you use red ink?

A. I used red ink only a very short time; a short period that I remember of.

Q. What kind of ink did you use?

A. I think it must have been an aurine ink at that time

Q. Where did you get it?

A. I bought it at the stationer's in New York; it had a peculiarity which I notice also in some of these aurine inks, if the carbonic acid gas acts upon the ink, the ink becomes turbid and looks like blood, uniformly the ink would get turbid if the carbonic acid gas acted upon it and it would become like blood, and I remember having seen such inks before and I used red inks hardly ever.

Q. You say then that the aurine ink was a matter of common sale when you came to this country in 1867?

MR. COLLINS: He does not say that; he said "use."

Q. I understood him to say he bought it in the market?

A. I bought an ink which I now think after the experience I have got I thought at the time was or must have been aurine ink.

Q. Was that ink a matter that was commercially dealt in, generally?

A. I believe it was at that time.

Q. Do I understand you to say that this aurine ink is a fixed color as you have written it here?

A. Yes, sir; it is a fixed color; of course it is a fixed color unless it is touched by chemicals.

Q. I mean by ordinary use?

A. For ordinary use I think it is if it is properly made.

Q. How long do you think it will last?

A. It will last for years.

Q. How many?

A. I think it will last for a great many years.

Q. I want to know how many?

A. It is only my judgment, but I should think it would last twenty or thirty years.

Q. Which one of your specimens do you think would last the longest, which one of your laboratory numbers do you think will last the longest?

MR. COLLINS—How can he tell without looking at them; he has to get his numbers to tell which is which.

WITNESS—I think No. 18—I cannot tell; they are simply experiments; they might have—interrupted.

Q. Have any of your specimens begun to fade?

A. Yes, some of them have; there was caustic alkali used and I have discarded those specimens; I have used caustic alkali at first and I found they would fade by not using that, but using a caustic soda—interrupted.

Q. Which one will not fade?

A. "1888" will not fade—probably "1887" will not fade, but will acquire after a while a golden look.

Q. I call your attention to "1877," has no part of it faded?

A. "1877" is made with a very small amount of aurine as compared with the other samples, and for that reason it looks more faded than the others.

Q. It is stated in the writing that there is less aurine in it; do you think if exposed to the light that these inks will all remain fixed colors as they are now for twenty-five years?

A. I cannot tell; I never experimented,

Q. Will "1877?"

A. I cannot tell; I do not think this document has been exposed to the light (indicating Exhibit P 236.)

Q. Will "1888" if exposed to the light fade?

A. The writing?

Q. Yes, the writing, just as you have it here?

A. It may fade if exposed to the light; nearly all dye stuffs fade if exposed to the light; I do not think this writing (Exhibit P 236) has been exposed to the light.

THE ORDINARY:

Q. Well, rolled up as that was, do you think your inks will last as long as that?

A. Certainly.

MR. GUMMERE:

Q. Cannot you tell me how long these inks will last exposed to the light, admitting that has not been (Exhibit P 236.)

A. I cannot tell you; I cannot unless I submit it to actual experiment.

Q. If the two were exposed to the same light for the next three weeks, do you think they will stand equally well?

A. I think so; probably.

MR. GUMMERE—I make the request to the

Court that these be exposed to the light by the Exhibit Master.

THE ORDINARY—The master may leave these specimens exposed to the light, also a portion of the draft.

MR. GUMMERE;

Q. I understood you to admit that aurine is the same as coralline?

A. It is not the same as coralline, but the name of coralline is also used for aurine.

Q. Is not the same name given to it and do not the publications state it to be the same thing, in your own tongue?

A. Yes, sir, it is in ordinary language.

Q. What is that publication you hold in your hand?

A. This is a publication by Schultz & Julius.

Q. Is it of authority in chemical circles?

A. Yes, sir.

Q. It is an original German book?

A. Yes, sir, it is.

Q. What does he say about it?

A. This gives in the first place at page 206 "aurine or rosolic acid," and it states that this is a "free acid" or rather an anhydride, and on page 207 it says "the yellow coralline is the sodium salt of the crude aurine," and under 208 it says "coralline or aurine R. (or red) ceralline or paeohine, obtained by the action of ammonia upon aurine," substantially what I stated before.

Q. So it is a chemical effect and not a mere matter of common nomenclature that aurine and coralline are the same; you said it was called the same?

A. It is not the same; I stated that it was not originally the same; that the original inventor of coralline called the substance that was invented by him (Persoz) paeohine and that it was obtained by the action of ammonia upon aurine at a high pressure in closed vessels at 115 degrees; and later on, how-

ever, the trade has sold aurine under the name of coralline, with the exception of one house, which sells it under the name of "coralline, the sodium salt of crude aurine."

Q. What is that ink in Exhibit P 236; what is it written with?

A. I do not know.

Q. I thought you said just now—interrupted.

A. I do not think it is eosin, I think it is probably aurine, but I do not know about it.

Q. What would you say; you come here as an expert to tell us about the colors and so on, and you said aurine is nearer that ink than eosin?

A. I said that the samples I have put up was more like the writing in the Exhibit than the writing produced by the other experts.

Q. What is that written with.

A. I do not know.

Q. Have you no opinion?

A. I believe it is substantially aurine ink with additions—I have not investigated that, I have investigated that subject for three weeks and ink makers have studied it for three or four years until they perfected a formula—interrupted.

Q. The result of your examination is that you cannot tell what it is written in, you have no opinion?

A. I have an opinion that this is written by a dyestuff of an acid character, which is confirmed when hydrochloric acid being applied to that ink, when the sodium salt of that ink has the red color, and that the free acid has got a yellow color—that is all I know about that ink. Also; that there is a fluorescence produced which is or may be produced by a great variety of substances which I have not investigated yet, and which I have not examined because that test was not before me at the time I was asked to investigate the matter; there was nothing before the Court other than the irridescence, the red color, and the change which was produced by the acid. Now, these aurine inks do exactly the same thing,

Q. You have made investigation and various experiments, and you were employed to determine whether that was eosin ink or not?

A. They could not employ me to determine whether it was eosin ink, because I hadn't anything to do with the instrument, but look at it, if I had been at liberty to make a number of tests with the ink on that instrument, which I was not, I would have been able to acertain just exactly what it was.

Q. As you now state and testify to the Court, you do not know what it is?

A. I do not know what it is.

RE-DIRECT BY MR. COLLINS:

Q. As I understand it, Dr., when you were informed the grounds upon which they claimed this to be eosin, you were not informed that they claimed fluorescence was one of them, so you did not have that in mind as a quality of the inks you were making?

A. Yes, that is just it.

Q. And that is the reason you did not direct any attention to that?

A. Yes, sir.

Q. Will eosin itself fade when exposed to the light?

A. Certainly it will.

Q. It is not a fixed color?

A. No, sir.

Q. Might it not fade so readily if it had remained over twenty-three years rolled up and had become hardened on the paper, that is not fade so quickly, as fresh ink would just made?

A. The ink in the bottle is more liable of changing than the ink on the paper; for the reason that the water is always one of the conveyers of oxygen to the material which destroys the color—interrupted.

THE ORDINARY:

Q. I understand that to be your explanation—

that is, take your copy which you may make to-day and expose it with this old ink, this ink which is said to have been written twenty-three years, which would fade the more quickly?

A. Certainly an ink that has been written a number of years and dried out has got a better chance to stand the influence of light than an ink which is freshly made and holds quite a quantity of moisture.

Q. And the only way to compare them would be to use freshly made eosin ink and freshly made aurine ink?

A. Yes, sir.

MR. COLLINS:

Q. Are ink markets in the habit of putting in a great many other substances besides the dye-stuffs and water, various other substances?

A. Yes, sir.

Q. And do they have more or less effect upon the mixture?

A. Yes sir.

MR. GUMMERE:

Q. You think an ink, the less moisture it gets the less likely it would be to fade?

A. Yes, sir; the drier it gets the less likely it would be to fade.

HENRY B. CORNWALL, a witness produced in behalf of the proponents, being duly sworn according to law on his oath, says:

EXAMINED BY MR. COLLINS:

Q. What is you age?

A. Forty-seven.

Q. What is your residence?

A. Princeton. New Jersey.

Q. What is your profession and were exercised?

A. Professor of analytical chemistry at the College of Princeton.

Q. Are you the head of your department?

A. Yes, sir.

Q. How long have you been there?

A. Since 1873.

Q. Where were you educated, in this country and abroad?

A. My scientific edueation was at the school of Mines at Columbia College, first the school of arts and then school of mines at Columbia College and then in Germany for a couple of years.

Q. Have you constantly practiced chemistry since you completed your studies?

A. Yes, sir.

Q. Are you familiar with eosin?

A. Yes, sir.

Q. And dye-stuffs generally?

A. Yes, sir.

Q. What special attention have you given them; what occasion have you had to study them in your profession within the last few years?

A. I have worked among coloring matters to a considerable extent for the Dairy Commissioners of New Jersey.

Q. Have you given particular attention to anilines?

A. They come in, in connection with the work of the Dairy Commissioners.

Q. You have been down here a few times and under the custody of the master have examined the so-called red ink on that draft Exhibit P 236, have you not.

A. Yes, sir.

Q. With a view to ascertaining as well as you could by inspection whether or not the ink contained eosin?

A. Yes, sir.

Q. Have you also made experiments with other substances to see how nearly an ink like that upon the draft can be produced?

A. I have.

Q. Yourself; you have done that?

A. Yes, sir.

Q. What substances were in use in 1868 that would produce an ink which would show in writing similar to that red ink on the draft?

A. Aurine as it is sometimes known, or coralline as it was known at that time and sometimes called.

Q. What is coralline strictly?

A. Coralline is a feeble acid, probably which is derived from coal tar.

Q. I mean as between aurine and coralline, wherein does aurine differ from Coralline?

A. There are several substances called coralline and used synonymously, and if there is an applied description it is applied to some of the salts of aurine.

Q. But the substance commonly called aurine is what you have taken?

A. Yes, what is commonly called rosolic acid.

Q. What conclusion did you come to with reference to that ink on that draft?

A. I have not been able to come to any.

Q. Do you think that any tests that the scientific gentlemen on the other side have given are conclusive as to that being eosin?

A. I do not.

Q. You have heard what they are, the whole of them?

A. I have, the whole of them.

Q. You were in Court during the time Prof. Stebbins testified?

A. The latter part of it, perhaps the latter half of it; I do not know just when it began.

Q. You heard him apply the "diazo test?"

A. Yes, I saw that.

Q. And the fluorescent test?

A. Yes sir.

Q. Do either of these tests convince you that this is eosin?

A. No, sir.

Q. What would you have to do really to be absolutely certain about it?

A. Well, you would have to make a chemical analysis of it, get down to some of its constituents.

Q. By scraping off the ink?

A. Yes, get enough in some way, to get at the constituents of the ink in some way?

Q. It would really practically destroy the instrument?

A. I suppose if you got any tests you would have to take the whole of it.

1C Q. You saw the fluorescent test made by Prof. Stebbins?

A. Yes sir.

Q. What was the color of the fluorescence caused by the fragment of the draft?

A. A Yellowish green color, I should say.

Q. Are there any other bodies that will produce a similar fluorescence?

A. There are.

Q. What?

2C A. Turmeric and purpurine will produce a yellowish green fluorescence.

Q. And others?

A. Yes, there are others, but those I have named are those I am best informed about; as to the color of that flourescence, there are other fluorescence.

Q. Are these commonly occurring bodies?

A. Yes sir.

Q. Inexpensive?

A. Inexpensive dye-stuffs.

3C Q. Likely to find their way into inks?

A. Yes, very likely.

Q. I take it, that as this test was not mentioned until to-day and you did not direct your attention to those experiments?

A. No, sir.

Q. Will you produce some writing which you have made with aurine?

A. Witness produces a paper which is marked "written October 21, 1891"?

4C Q. Was that written October 21, 1891?

A. Yes, sir.

Q. And "P. K. 2" indicates what?

A. The substance from which the particular specimens of aurine was procured, the number and order of the experiment, that is, the second trial I have made with that particular aurine.

Q. And the "P. K." means what?

A. Pickhardt & Kuttroff.

Q. You got it from them?

A. Yes, sir.

Q. What is "88"?

A. I do not know, I happened to write it there?

Q. Does that compare in your judgment with the color on this draft?

A. Yes, sir.

Q. Has it a golden bronze iridescence?

A. Yes, sir.

Q. And will it turn yellow under hydrochloric acid?

A. Yes, sir.

Q. What is this one marked "P. K. 1"?

A. Well, that is another sample of the same thing, I have not got the date of the writing on there, but I think that was written two or three days before.

Q. It is marked "No. 1"?

A. They are practically the same thing except the last one is two or three days older than the other.

MR. COLLINS—I offer those specimens in evidence.

Marked Exhibit P 253 and P 254.

Q. You have seen these specimens of Prof. Hodges, eosin ink and Prof. Stebbins eosin ink do they concur in color between themselves?

A. In the light in which I hold them now, the lower one I should say is decidedly a darker color.

Q. Than the upper one?

A. Yes, sir.

Q. In your judgment do they correspond in color with the ink on this draft, either one of them?

A. Not perfectly.

Q. Do they correspond as nearly as your own specimens do?

A. I do not think they correspond any more closely.

Q. What is the difference between those eosin inks on D 150 and that on the draft with regards to the iridescence, what is the difference? 10

A. The way I hold this now here, there seems to be and there is more of a green metallic color in the eosin than there is in one of these letters which I have before me on the draft.

Q. I suppose it is difficult to reproduce an ink made twenty-three or twenty-four years ago, even if you knew the ingredients that composed it?

A. It would with some of the ingredients because they are not made quite in the same way they used to be.

CROSS-EXAMINED BY MR. GUMMERE: 20

Q. Professor, was aurine ink in use commercially in 1868?

A. I do not know, sir.

Q. Did you use it yourself?

A. No, sir.

Q. Did you ever know any one use it?

A. No, sir; I have known it to be proposed to be used in publishers prints and such as that where it could be used. 30

Q. In 1868?

A. Yes, sir.

Q. Can you refer to the authorities?

A. I can give you the English title of it; it was Wagners Year Book of Chemical Technology. I took it from my library.

Q. Then you have read in that publication that it was used in England?

A. I have read that it was proposed to be used, as much as that it could be used. 40

Q. I asked you if you ever knew it to be used?

A. No, sir; I have not.

Q. Either in England or this country?

A. No, sir; not to my own personal knowledge.

Q. What is that ink in your judgment, on that draft?

A. I do not know what it is.

Q. Did you use the blue glass test?

A. No, sir.

Q. Is, or not, aurine a fugitive color?

A. It is no more fugitive than a good many of the coal tar colors.

Q. That is not my question—is it a fugitive color or not?

A. What do you mean by fugitive?

It will fade if you expose it for a length of time to the light, it will affect it so as to make it fade, it will not fade so much if not exposed to the light.

Q. Has a fugitive color any technical name?

A. There are some that will disappear very rapidly indeed.

Q. Please tell us whether this is a fugitive color or not?

A. I should say not, if you wish an absolute answer.

Q. How long do you think it will last?

A. A document like that, rolled up, I think it would last as long as the paper.

Q. Do you agree with Dr. Endemann that it is less likely to fade now after twenty-three years than if it were fresh?

A. I think it would be very likely to be less likely to fade, it might be protected by gum or whatever was in the ink, it would depend on the atmospheric agencies; I think it would be a little less likely to fade.

Q. What is the gum used for?

A. To keep it from sinking into the paper.

Q. Are any gums put in for their mordant effect?

A. I should not consider it necessary.

Q. What is the color of gamboge?

A. Yellow.

Q. What is the color of tumeric?

A. Yellow.

Q. Do you know any color which upon the application of the fluorescent test will give a green and also the pink tinge visible in that test?

A. In a simple color?

Q. Any color, any color at all, any aniline color or any other which, when treated with the fluorescent test will give the peculiar effect of a pink tinge and green fluorescence?

A. I think a combination of colors might be made to give you that effect.

Q. I ask you about a single color?

A. I am not sure but that it may be obtained—no, sir, I cannot say that I know whether it could or not.

RE-DIRECT BY MR. COLLINS:

Q. Will eosin fade by exposure to the light?

A. Yes, sir.

Q. They asked you if you had applied the green glass test to the ink—interrupted.

MR. GUMMERE: The blue glass test was the one I asked about.

MR. COLLINS—The green glass is the one that Prof. Doremus said produced the most discernible effect, the blue not so much.

LOUIS N. NORTON, a witness produced in behalf of proponents, being duly sworn according to law on his oath, says:

EXAMINED BY MR. COLLINS:

Q. You are a man of what age?

A. Thirty-six.

Q. And live where?

A. Newton, Massachusetts.

Q. Educated there as a chemist?

A. Yes sir.

Q. Where practice your profession?

A. I am professor of organic chemistry in the Institute of Technology in Boston.

Q. Where educated?

A. Under the professors at the Institute of Technology in Boston and under professors in Germany.

Q. And have followed chemistry as a profession ever since you completed your studies?

A. Yes sir.

Q. How long have you been professor in the Institute of Technology at Boston?

A. I have been there since 1882 now, I was assistent professor there some years ago earlier.

Q. In the meantime where were you?

A. In the meantime I studied abroad and was the chemist to the Omoskay Manufacturing Company in New Hampshire.

Q. Have you given special study to dye-stuffs?

A. Yes, sir.

Q. Including anilines and eosin?

A. Yes, all kinds of anilines.

Q. Are you sometimes called to testify in behalf of the Government in cases in Boston?

A. I do not recall any cases of that kind.

Q. You do testify in cases?

A. Yes, frequently.

Q. In litigations?

A. Yes, sir.

Q. On chemical subjects?

A. Yes, sir.

Q. Have you examined before to-day the draft Exhibit P 236 which is now before you there, with a view to ascertaining, if you could, what composed the ink, the so-called red ink upon it?

A. I have examined the draft by looking at it, I have not made any tests of it at all.

Q. You were not permitted to do that, all you did was to look at it?

A. Yes, sir, I have examinad it twice in these chambers.

Q. Before to-day?

A. Yes sir.

Q. Have you made experiments with substances to produce inks with a view to see whether other substances than eosin would produce an ink like that on the draft?

A. I have made experiments with a number of aniline red inks which date back to the year 1868 to see whether they would give inks which gave the same general appearance as this.

Q. What substances date back prior to 1868 as useable in inks which you treated?

A. There is fuchsine, which was on the market in a variety of shades and under a variety of names and there was safranine aurine and coralline. Aurine and coralline were on the market at the same time, the same substances were called by one name or the other.

Q. Strictly speaking what is the difference?

A. It is very hard to give any strict difference between them, because as I say the names have been used interchangeably, yellow coralline has been used under the name of aurine and red coralline has been used under the name of purpurine and red coralline is derived from aurine.

Q. Take aurine, have you experimented with that?

A. I have.

Q. Do you know whether that was known as a constituent of ink prior to 1868?

A. I cannot say that I know that it was used as a constituent of ink, but I know that the patent was taken out for making an ink of that substance, that a patent was taken out for that purpose, but I cannot say from my experience that ink was known to the trade made by that substance at that time.

Q. Aurine was known several years before that?

A. Yes, in 1862, and I believe some years before that.

Q. This fact, that this aurine was useable for the

making of ink and that a patent was granted therefor would be known to the business world?

A. It must have been known in 1865, I found a specification for a patent from the British Fatent Office in a publication which was published in the "Chemical News" in 1868 and the patent was granted to one Ellis.

Q. Have you some samples here of writing with red inks?

A. Yes, I have some samples as well as some aurine ink here, yes, sir.

Q. Let us have both, the ink and the samples of writing?

A. Here is a sample of aurine ink containing aurine, amonia, gum arabic and water. (Handing a bottle containing a red fluid.)

MR. COLLINS—I offer that in evidence.

Marked Exhibt P 255.

WITNESS—I have also a sample of aurine ink made of water—aurine is soluble in water.

Q. You produce that?
A. Yes, sir.

MR. COLLINS—I offer that in evidence.

Marked Exhibit P 256.

THE ORDINARY:

Q. Did you make the ink?
A. I did.

MR. COLLINS:

Q. When?
A. Last Monday.
Q. That is October 19th?
A. Yes, sir.
Q. Will you produce the writing made with it?

A. Here is one and here another (handing counsel a paper).

Q. The line with your name "Louis M. Norton" when was that writing?

A. It was written yesterday.

MR. COLLINS—I offer that in evidence.

Marked Exhibit P. 257.

Q. How do you think these two samples of eosin, one made by Prof. Stebbins and one by Prof. Hodges on Exhibit D 150 compare with the red ink writing on that draft, as to color and irisdesence, how do they correspond and what differences do you show?

A. As far as iridescence is concerned they seem to show a great likeness, but as far as the shade is concerned there is great difference.

Q. What difference?

A. I should say both of these are made of a yellow eosin, but as to the shade they do not match in the shade.

Q. How about the shade of the iridescence as compared with the golden bronze of the draft?

A. Very much to the same effect.

Q. Any more so than your own sample?

A. I do not think there is any perceptible difference as far as the shade or iridescence is concerned.

Q. Your sample corresponds with the other?

A. Yes, sir.

Q. How about the hue?

A. My own does not correspond in shade.

Q. No, but do the others?

A. My own corresponds more nearly to the original draft than the others.

Q. Then neither three of them compare exactly.

A. No, sir.

Q. I suppose it is almost impossible to produce the exact shade at the present time?

A. I should think it well nigh impossible.

Q. Why.

A. Unless we had exactly the same substances from which this ink was made.

Q. Even if you had the main substances that produced the color would it be likely to be a different article that you would get at the market at the present time?

A. I should think it would be difficult to get any article at the present time as they were then, that is to most of these articles; aurine has almost passed out of use, and the same may be said of eosin.

Q. I should suppose that certain foreign ingredients would have an effect on the color?

A. Yes.

Q. Your experiments developed quite a number of reds you say using the same shade of aurine?

A. It is quite possible so to do, as the shade of the aurine depends entirely on the character of the mixture, that is with which it is prepared. I have here a shade in which the same aurine was used in each one of these samples, and as to the colors they present quite a wide variation, which is all owing or according to the mixture used in preparing them; none of them are of exactly the same shade, but it serves the purpose of showing the different shades produced by the same substance by using different substances or mixtures in making the ink.

Q. Have any of them been touched with acid?

A. Yes, the first, third, fourth and sixth have been touched with acid.

Q. And this one No. 9?

A. I am not sure as to that; it may have touched with acid in the color store.

Q. But those underneath have not?

A. No, sir.

Q. Are all the inks made from the same identical aurine?

A. Yes, sir; but not finished inks.

Q. Showing the different shades produced by the same substances?

A. Yes, sir.

Q. You saw the test tube in which a little fragment of paper with ink on it was put in water and showing a fluorescence here to-day?

A. Yes, sir.

Q. What is the color of that fluorescence?

A. I should call the fluorescence green.

Q. Are there other substances that will produce such fluorescence?

A. There are other substances that will produce a green fluorescence.

Q. Could you arrive at any conclusion as to what entered into that ink, whether eosin entered into it, that is the substances of the ink, the red ink on that draft?

A. From inspecting it?

Q. Yes?

A. No, sir; I should not dare hazard an opinion from inspection, and I do not think any one could.

Q. What is the way to find it out?

A. To remove enough ink so as to make an analysis of the substance; with absolute certainty it cannot be found out in any other way.

CROSS-EXAMINATION BY MR. GUMMERE:

Q. Why has aurine gone out of use?

A. It did not give very favorable results; it was used for sometime, but was not a success, other and better colors have superseded it.

Q. Do you mean in the original tint or in the lasting quality of the color?

A. Especially in the use and method of application and the beauty of the shade.

Q. Are the aurine dyes deficientin lasting quality?

A. I have heard that they were, that they gave trouble in that respect, and also that they have been objected to in cases of skin poisoning from their use.

Q. Are you familiar with—I understand that you are thirty-six years of age—of course then you know nothing about the use of inks or what inks were used commercially in 1868.

A. Only from what I know from the patent which

I have mentioned and the literature on the subject.

Q. Do you know that they were used in 1868?

A. No, sir; I do not except that I know of the receipts given in the literature there abouts.

Q. Were all the things used for which you have seen the formula in the patents?

A. In regard to inks?

Q. Or anything else?

A. No, sir; there are many foreign patents that I never knew to be used.

Q. You never knew of the use of aurine, that is to be used for ink?

A. I do not know it is a fact.

Q. Neither from the literature or in any other way?

A. No, sir.

Q. And you cannot know when it was first introduced for the manufacture of ink then?

A. I merely know that it was patented in 1865 and that it was suggested to use it for another article in 1868.

Q. As to its being used you know nothing whatever, you have no knowledge whatever?

A. No, sir; none whatever.

Q. Do you know Professor Hodges?

A. Yes, sir.

Q. What is his reputation as a chemist?

MR. COLLINS—I object to that question; I have not questioned Mr. Hodge's reputation.

Question withdrawn.

Q. Look at those two inks; the upper one on Exhibit D 150 was made from an ink made by Professor Stebbins; do you know him?

A. I heard his testimony here this morning, but I do not know him personally.

Q. That you will remember was testified as made by Professor Stebbins and another one under it was made from an ink made by Professor Hodges?

A. Yes, so I understand.

Q. Is there a decided difference in the shade?

A. It seems so to me.

Q. How do you account for it that they are both made from precisely the same substance; how do you account for the difference?

A. I should account for it that they are made from different samples of eosin.

Q. If it is testified to that they are made from the same sample, from precisely the same eosin out of the same bottle; what have you to say then?

A. I can imagine it possible.

Q. Not at all incredible, you think?

A. Not incredible.

Q. And the difference in the shades that is not incredible, either?

A. I should be surprised to learn that these were made from the same eosin.

Q. If they were, I say?

A. I should be surprised to learn that that shade was produced from eosin from the same sample of eosin, although I do not say it is absolutely incredible.

Q. If you did find that these two did come from the same substance and out of the same bottle you would not be so much surprised, then, would you?

A. My experiments with aurine have been such that I have produced different shades and shades to a wide limit and my experiments in that respect prevents my being very much surprised with respect to what might be produced by the use of eosin.

Q. What do you think that is?

A. On here?

Q. Yes?

A. I am not prepared to give an opinion; I have not seen it myself and I have not made any tests on it.

Q. You saw the fluorescent test?

A. I did.

Q. Did you see that it produced a green fluorescence; did you notice that green tinge with a ro-

siate tinge which Professor Stebbins produced; did you notice that, too?

A. Yes, sir.

Q. Do you know of any other substance which, being dissolved in water will produce that greenish tinge and rosiate tint?

A. Together?

Q. Togther?

A. I do not know of any other single substance that would produce that effect.

MR. COLLINS:

Q. You do not know of aurine being used in ink in 1868 you told us; you do not know that it was not used either?

A. No, sir.

Q. You do not know what ink makers used in their ink in 1868?

A. I do not know, it was impossible for me to see that.

Q. The same data was open to them as to any one, being the fact that aurine could be used?

A. Oh, yes.

MR. GUMMERE:

Q. Will you apply a little water to Professor Hodge's ink anywhere and also to Professor Stebbins' ink?

(Witness wets his flnger and over the names of Hodges and Stebbins applies the water.)

Q. Is there any difierence in the effect produced by the water on the two inks of Protessor Hodges and Stebbins?

A. It is almost impossible to say, because it is impossible to touch the same amount of ink with the same amount of water at the same time, I cannot testify as to that.

Q. It is the same color, only a difference in the shade?

A. It looks to me to be the same color with a difference in the shade decidedly.

THE ORDINARY:

Q. Does that depend on the same quantity of ink you touch?

A. It does, it is impossible to touch the same quantity of ink so that I cannot tell anything about it. I notice on these that were touched this morning, that there was a very distinct difference in the shade on the same ink.

Q. Does not one seem to have more substance in it than the other?

A. It seems to me quite unlike.

Q. A greater dilution of the one than the other, is there not, apparently?

A. Well, I feel very doubtful about that.

MR. COLLINS:

Q. I understood you to say that you did not know of any single substance that would present a green and pink fluorescence, how did you mean when speaking of a mixture of substances?

A. I seems to me that it is quite possible that such a mixture could be found if a number of substances were experimented on.

MR. GUMMERE:

Q. Can you name any that will?

A. I can name substances that will produce the green fluorescence and others that will produce pink in the same solution, but whether it will give the same result as eosin I cannot say—I could get the two substances, but how they will act, that I cannot say.

Q. Do you know of any mixture in an aqueous solution that will produce the same result?

A. I think it is quite possible there may be such.

ARTHUR H. ELLIOTT, being recalled in behalf of the proponents, says:

Q. You have already told us when you were called as a miscrscopist and testified as to the handwriting something about your training, and you said your special studies were chemistry and physics, and that you began the study of chemistry about 1868 or 1869, and at that time we had not gone into that subject so fully and did not ask you with regard to it. State what has been your experience in analytical and organic chemistry and particularly as to dye-stuffs and eosin and the general subject?

A. I began the study of chemistry symmetutically in or about the Spring of 1866, and at that time the aniline colors were, I might call it, a new fad with chemists, for want of a better term. It was something new and as an enthusiastic and young student I naturally became interested in it. At that time a number of chemists, Hoffman and others, were making a number of brilliant discoveries and I naturally took note of them. I knew of the existence of the colors that were then in vogue, so to speak. Since that time and whilst these discoveries were being made I left London and went to Manchester and there I got interested in dyeing and calico printing and naturally in connection with them I became acquainted with aniline colors and other coloring matters used for dyeing calico stuffs. They were endeavoring at that time to introduce these aniline colors and there was just then a good deal of prejudice against them by the leading dyers in Manchester, and that continued until about 1869 or 1870; I did not do much with it after that until 1878, the summer of 1878, when I went to Professor Chandler and he put me to work on a lot of experiments to be made with respect to some of the more modern dye stuffs, eosin and colors of that class, and I also remember we experimented to a slight extent with later discovered coloring matters with the view to ascertaining the dyeing quality, that is, the amount of dye stuff it took to dye well.

Q. So that you gave considerable attention to the subject.

A. From that time on I have done more or less with it, but in 1878, 1879 and 1880, if I remember rightly, those three years I gave a great deal to it.

Q. Carry your mind back to the beginning of your studies in 1869 in London with regard to the experiments that the people in the laboratory were making on red inks?

A. I remember in a general way making experiments, that is my fellow students and myself, upon the various inks at that time, purple, red, fuchsine and mixtures of fuchsine, with a view to making red inks that did not have an iridescence. The inks apparently that were introduced at that time, as near as I can remember, were those early aniline inks, and the objections to them was this peculiar golden bronze iridescence and it was with the view to kill this iridescence or obliterate it that we experimented and also with the view of producing various agreeable shades.

Q. Some of them connected with the ink manufacture?

A. I cannot say that we students; I personally knew practically little of these matters myself and these were experiments made by my fellow students whom I knew practically very little about; I knew their names at the time, and I worked with them.

Q. You do not know the substances that were worked with?

A. Oh, yes, I do, I saw them there.

Q. What were they?

A. Fuchsine and chrysaniline; those I remember, and rosolic acid; there may be others, but I know of those, those I remember.

Q. Now Professor, have you examined this draft Exhibit P 236 with the view of forming an opinion as to whether or not it was written with an ink containing eosin?

A. I have.

Q. Or whether it may have been written with

some other substance, or what do you think about it?

A. Well, sometimes when I look at it, I think it was eosin; at other times when I look at it I think it is not.

Q. Are you able to form an opinion?

A. No, sir.

Q Do you think any one can without an analysis?

A. My experience with regard to colors of this character is that tests applied to such minute quantities are very delusive and unconclusive in my mind and I would not like to state from any test that I have seen applied to this, and could possibly be applied to such small quantities; I would not like to say whether it is eosin or not.

Q. You were here all the time the scientific testimony was given on the other side?

A. Yes, sir.

Q. This morning?

A. I only came into the room at the extreme end of the diazo test.

Q. What other substance would give a similar tint and bronze iridescence and turn yellow under hydrochloric acid?

A. As far as the shade of the color is concerned mixtures—the early mixtures of fuchsine which makes a tint- what we then call chysaniline—appearing to me to be of this shade or very closely approaching it, as far as my memory goes, that is, it is a long time ago to carry a shade in my mind.

Q. Have you been able to get the chrysaniline now?

A. I have not been able to get the chrysaniline I then knew. With reference to the test with hydrochloric acid, most of them will bleach out or turn of a lighter yellowish orange color, the fuchsine will bleach out completely.

Q. What about aurine?

A. It will turn yellow because you destroy any alkaline substance mixed with it to get it into solution.

Q. What do you consider of coralline?

A. It will give a base very similar to this, it is hard to tell from the color of some varieties of aurine and some varieties of eosin provided you mix them with the same material and use gum arabic to make the material up,

Q. Do these ink makers use the same ingredients?

A. I do not know.

Q. Was aurine known as an ink constituent prior to 1868?

A. Yes, sir; it is on record, I did not know it as an ink constituent, I knew it was a dye and in the spring of 1868 or 1867 I know they were experimenting with these things with a view to manufacturing inks, but who they were I do not know, I was in the laboratory with a number of students and one does not know all of his fellow students, he cannot become acquainted with every one of them and all their objects.

Q. Did you see this so-called fluorescent test today?

A. I did.

Q. Are there other substances which will produce a similar fluorescence?

A. I believe so, yes, sir; I believe it is on record so.

CROSS-EXAMINATION BY MR. GUMMERE:

Q. Was aurine to your knowledge used—you say it was suggested on record and so on—but was it used in the making of red ink?

A. To my knowledge I do not know that, no,sir.

Q. You only think it might have been?

A. No, sir? I know there is a patent in existence where it is mentioned, and I know further that it is mentioned in the "Chemical News" under aurine-cake and other chemical rods.

The "Chemical News" as a rule have everything new in it, articles on everything new, and it was a common organ of information between us.

Q. Did you know whether aurine was used and in the manufacture of ink, and if so when?

A. I do not know personally that aurine was used in the manufacture of ink.

Q. Did you know when eosin was used in the manufacture of ink?

A. I did not know it.

Q. You did not know anything about the subject of when red inks were made or the substances they were made of?

A. The early red inks the bright colored inks before 1868 were made from cochineal and they were scarlet inks and I know of those.

Q. Do you know of any other substances of which red inks were made?

A. Carmine, also fuchsine, varieties of fuchsine and some shades of ink approached as far as my memory goes very closely to this shade.

Q. Well you have knowledge then of these substances, the information as to aurine and eosin as I understand you?

A. I know of aurine, yes, sir.

Q. No, no, you just testified that you knew of carmine and so on, that they were used in the manufacture of ink?

A. I did not know that of my own personal knowledge, only from the records found in the books.

Q. You know nothing about the manufacture of inks at all?

A. No, sir.

Q. You do not know when any substance was begun to be used in the making of red ink?

A. No, sir.

Q. Did you see the fluorescent test?

A. Yes, sir.

Q. What was the color used—submitting the ink merely to pure water, was it not—that is a misnomer perhaps—but we will say water—now what was the result?

A. A greenish fluorescence.

Q. Did you detect any rosiate hue in it?

A. I did not notice it particularly I came in just about the close of it and I did not notice it myself,

I did not look very closely and I did not notice anything except the greenish fluorescence.

Q. Assuming that to be so do you know of any other substance which being submitted to the same test of water will give the opal tint, that is the green and the pink tint together?

A. I do not think I do, that is to say, I do not know at the present moment, I do not know of any substance that will give exactly that color, although I am under the impression that there must be cases of a great many organic bodies which would give the fluorescence results.

Q. All you know is, you don't know anything that will give a combination of the rosiate and greenish tint, although you think there are some other substances that will?

A. I say I think there are.

Q. You have seen the same result produced?

A. No, sir; I have not seen a test of that kind made. I have used eosin in dyeing and any one that dissolves eosin would note the fluorescence and I have used other fluorescent substances such as escoline; I cannot remember them all now, but I know there are substances that give a distinct green fluorescence.

Q. Are any of these used for ink making?

A. I cannot say.

Q. Is there any reference in any chemical literature of to-day which might give the same result in the test of water used in the manufacture of ink?

A. I do not know, but it is on record to use archil.

Q. That gives the same result on being tested?

A. I do not know, I never tried it.

RE-DIRECT BY MR. COLLINS:

Q. Purpurine, you have heard of that?

A. Yes, sir; that is one of the coloring matters in madder.

Q. Does that give a fluorescence?

A. Yes, sir.

Q. Have you heard of tumeric?

A. Yes, sir.

Q. And fustic?

A. Now you recall the names to me, I do remember them and that fustic is one.

Q. Are these substances or some of them likely to have found their way into the manufacture of inks.

A. Possibly they are used as dye-stuffs and they might possibly be used as inks.

Q. They are cheap.

A. Yes, sir.

Q. And one maker might want to differ in his inks from that of other people?

A. Yes, most likely.

Proponents rest. (Case closed).

Adjourned for argument to December 16th and 17th.

EXHIBIT P 1.

I, GEORGE P. GORDON, of the township of Woodbridge, County of Middlesex, and State of New Jersey, being of good health and of sound and disposing mind and memory (hereby revoking all former wills by me made), do make, execute, publish and declare this my last will and testament in manner and form, to wit:

ARTICLE I.

SEC. 1. I am now seeking and expect to purchase that piece of land now owned by Mr. E. Laing, lying between my land and the road leading from the "*Six Roads*" to Plainfield, and directly opposite the "*Bramhall Place*," so called, consisting of about acres.

Now in case I secure the title to that piece of land and I shall be the owner of it at my decease, I give and devise the same to my wife, Lenora M. Gordon, her heirs and assigns forever, the same to be for her sole and separate use, free and clear from all debts, claims or demand or against her husband, if she should ever again intermarry; and

SEC. 2. I empower and direct my executors hereinafter named to cause to be erected and built upon said piece of land so devised, a dwelling house and a carriage house, both to be located as my wife shall direct, and to be built of such materials and in such style of architecture as my wife may desire and shall direct; also suitable fences and such and such other improvements and ornaments of the same

as my wife may deem suitable and appropriate to its location; and I order and direct my said executors to advance and expend for such buildings and improvements, the sum of Fifteen Thousand Dollars to be paid out of my estate so fast as said buildings and improvements shall be advanced and completed?

SEC. 3. I direct my said executors to advance to my said wife the sum of One Thousand Dollars to be expended in furnishing said house; the same to be advanced to her as soon as the said house shall be finished and ready to be furnished; in addition to which she shall have (as soon as said house shall be finished) the bedstead and bedding which we now use, and all the furniture, pictures, ornaments, carpets now used or which may be used by us in our private chamber at the time of my decease; also the horse, harness and phaeton now used by her as her private use; and if the said horse shall not be living at the time of my decease, or be too old for use, she then shall have One Hundred and Fifty Dollars for the purchase of another horse, to be paid out of my estate.

SEC. 4. I also give to my said wife, Lenora, the sum of Twelve Hundred Dollars yearly, to be paid to her by my said executors out of my estate, in annual or semi-annual payments, as she shall designate in writing to my said executors.

SEC. 5. My object in making these provisions for my said wife, as expressed in Secs. 1, 2, 3 and 4, is to secure to her a comfortable and independent home and ample support; which said devise, bequests, sums of money and legacy here-in-before mentioned are in the lieu of dower, all her dower rights by the common statute law, and if my said wife, Lenore, shall not express by deed her election before said buildings are begun, to have and accept the same in lieu of such dower right, then all the foregoing provisions of Article I, Secs. 1, 2, 3, and 4, shall be wholly void and of no effect.

SEC. 6. I give to Elizabeth May, sister of my wife, and who is now a member of my family, the sum of five thousand dollars with which I wish her to purchase for herself a small neat comfortable house and garden, and where Elijah May, the father of them shall have a home during his natural life.

I also give to said Elijah May the sum of one hundred dollars a year, to be paid fifty dollars semi-annually during his life. 10

ARTICLE II.

SEC. 1. I give and devise to my daughter Mary Agnes Gordon, my homestead and farm as it lies on the right hand and northerly side of the highway leading from the "*Plainfield road*" at the "*Bramhall Place*," so-called, westerly past my residence consisting of lands I purchased of the Jaques family, formerly known known as the "*Doctor Jaques Farm*," and the land lying east of it which I purchased of James Compton, together with all its appurtenances to have and hold the same and all the rents, issues and profits of the same during her natural life; provided, however, that if my said daughter shall intermarry then I give and devise the said homestead and lands to my said daughter and her husband jointly, and to the survivor of either of them and their heirs in fee simply absolute. 20

SEC. 2. I also give and bequeath to my said daughter Mary Agnes, the sum of three thousand dollars yearly during her natural life, to be paid to her out of my estate in annual or semi-annual payments as she may prefer, the same to be for her sole and separate use; and if she shall intermarry I then give to such husband two thousand dollars yearly during his natural life, to be paid to him out of my estate in annual or half yearly payments, as he may prefer, the same to be for his sole and separate use; and if my said daughter and her said husband shall have lawful issue living at the death of either of them 30 40

then the sum so given to eitheir of them shall be paid in like manner to such living issue share and share alike, and to the survivors or survivor of them and their heirs.

SEC. 3. If my said daughter Mary Agnes, shall intermarry, I then give to her and her husband jointly and to the survivor of eitheir of them, their heirs and assigns forever, one equal one-fourth part of each, all, and every patent or patents granted and issued to me by the Commissioner of Patents, under and by virtue of the Patent Laws of the United States, for improvements in printing presses, or in any manner relating thereto, and all renewals of the same; and also the one equal one fourth part of all profits that may be derived from the sales of any part or all the presses or parts of the same that may be manufactured under the authority of said patents or any or either of them.

SEC. 4. If my said daughter shall not intermarry, and so long as she shall remain single the said one equal fourth part of said patents and the profits accruing from such sales, shall be held in trust by my executors for the uses and purposes hereinafter provided and specified.

ARTICLE III.

SEC. 1. I give to my brother Cuthbert C. Gordon, his heirs and assigns forever, one equal one fourth part of each all and every patents or patent granted and issued to me by the Commissioner of Patents under any and by virtue of the Patent Laws of the United States, for improvements in printing presses, or relating thereto, and all renewals of the same; and also one equal one fourth part of all the profits that may accrue from the sales of any part or all the presses that may be manufactured under the authority of said patents or any or either of them.

SEC. 2. I now am seeking and I expect to pur-

chase of my neighbor Henry Adams, Esq., his farm upon which he now resides, formerly known as "*Thomas Morris Farm*," of about sixty-five acres, lying opposite to and on the southerly side of my farm upon which I now reside; and for which farm I have offered four hundred dollars per acre, or say twenty-five thousand dollars, and adding thereto the cost of the new dwelling and improvements now being erected and made, which I estimate at eight thousand dollars, making in all, for said farm and its appurtenances, the sum of thirty-two thousand dollars.

If the said farm shall not have been purchased by me before my death, I then order and direct my said executors to keep my said offer of thirty-two thousand dollars to Mr. Adams or his grantees or assigns, for said farm and appurtenances, and if the same shall be accepted by said Adams, his grantees or assigns, I order and direct said executions to pay to said Adams, his grantees or assigns, the said sum of thirty-two thousand dollars, ($32.000) for said farm, and I order and direct that the deed for the same shall be made from said Adams, his grantees or assigns to and in the name of my brother Cuthbert C. Gordon and his wife and three children, Cuthbert O., Henry and Lucretia, (or the survivor or survivors of them) jointly and to the survivors or survivor of them in fee simple absolute.

SEC. 3. If Mr. Adams or his grantees or assigns shall accept such price and give such conveyance of said farm in the manner and form aforesaid (as in the preceding section 2), I then give and devise to my said brother Cuthbert and wife and children (or the survivors of them) all that piece or parcel of land which I purchased of James Compton, bounded southeasterly by said Adams farm and southwesterly by the Potter farm, and northerly by the highway running along said "Compton lot," so called, said devisees to have and to hold the same jointly and to

the survivors or survivor of them in fee simple absolute.

SEC. 4. If the said "*Adams Farm*" shall be purchased and conveyed at the price and in the manner and form aforesaid: I then give to my said brother, his wife and children (or to the survivors of them), the sum of ten thousand dollars ($10,000) in cash, to be expended in improvements upon said farm, especially first a basement or cellar shall be made, southerwesterly of the old barn, upon the brow of the hill at, or near where the hay barrack now stands, and either a new barn shall be erected thereupon or, if they prefer, such new barn may be dispensed with, and the old barn may be placed thereupon and it shall be newly boarded, shingled and painted, and in either case the old barn must be removed from its present site and the grounds made level and neatly fenced off in line with the fence along the lane; also in such changes and improvements in and around the dwelling house as they may deem necessary; also for new fencing and other improvements of said farm.

And I order and direct my executors to advance said ten thousand dollars in such sums and so fast as such improvements shall be advanced and completed.

SEC. 5. If my said executors should fail to secure said farm and the conveyance of the same at the price and in the manner and form herein before specified; then the foregoing devise of the "Compton lot," and the foregoing bequest of ten thousand dollars, (as in Sec. 4), for improvement purposes, shall both and each be absolutely void.

ARTICLE IV.

SEC. 1. I give to my nephew, A. Sidney Doane, his heirs and assigns forever, one equal one-fourth part of each and all and every patent or patents

granted and issued to me by the Commissioner of Patents, under and by virtue of the patent laws of the United States, for improvements in printing presses, or relating thereto, and all renewals of the same; amd also one equal one-fourth part of all the profits that may accrue from the sales of any part or all the presses that may be manufactured under the authority of said patents or any or either of them.

SEC. 2. In case my said wife Lenora shall elect not to accept the devise and bequests in the manner and for the purposes set forth in the first article, Secs. 1, 2, 3, 4, 5, of this, my last will and testament, but shall elect to take her dower right in lieu of the same:

I then and in such case empower and direct my said executors to erect or cause to be erected upon such land (if I shall be the owner of the same at my decease), a dwelling house and carriage house and other improvements of the same, all to be made of such materials and such style of architecture as my said nephew, A. Sidney Doane, shall direct;

And I order and direct my said executors to advance and expend for such buildings and improvements, the sum of twelve thousand dollars, to be paid out of my estate so fast as said buildings and improvements shall be advanced and completed; and I then give and devise the said land and its appurtenances to my nephew, A. Sidney Doane, to have and to hold the same during his natural life; the remainder to his wife and children jointly, and to the survivors or survivor of them in fee simple.

SEC. 3. In case my said wife Lenora shall elect to accept the devise and bequests in the manner and for the purposes specified in said first article, Sections 1, 2, 3, 4, and 5 of this, my last will and testament, so that my nephew, A. Sidney Doane, can take no benefit under the last preceding, Section 2, of Article IV., I then give to my said nephew the sum of ten thousand dollars ($10,000), in cash, to be paid to him out of my estate, not herein otherwise

disposed of; but I order and direct that no part of said ten thousand dollars shall be paid until after the foregoing provisions of Article I., Sections 2 and 3, and 4, shall have been fully carried out, paid and discharged.

ARTICLE V.

I am now seeking and I expect to purchase of James Compton his farm of about thirty-five acres, upon which he now resides, which farm lays northeasterly of the Adams farm and southerly of my farm and extends down to the angle at the "Six Roads," for which farm I have offered and am willing to pay said Compton three hundred and fifty dollars per acre, or in all twelve thousand, two hundred and fifty dollars ($12,250.)

In case I secure the title to that farm I shall erect upon it a commodious, cheap and substantial factory building, and shall place in it suitable machinery and instruments for manufacturing printing presses under my said several patents.

I shall also erect a sufficient number of cottages, neat, commodious and suitable for the mechanics and workmen, whom I may employ in such factory.

If said farm shall not have been secured by me before my decease, I then order and direct my said executors to keep the same offer to said Compton, his grantees or assigns, for said farm; and if my executors shall secure the title thereto, they shall pay to said Compton his grantees or assigns the said three hundred and fifty dollars per acre out of my estate upon the delivery of a good title deed in fee.

And in that event I order and direct my said executors to carry out my plans and to cause to be erected the factory and cottages asherein before specified, and to maintain the same as a manufactory of printing presses under my said several patents or either of them.

Provided, however, that if I shall have erected, purchased or rented other buildings elsewhere and

shall have established, prior to my decease, a manufactory of such printing presses. then my said executors shall not be required to purchase the said Compton farm, but may do so, if in their judgment it will be beneficial to my estate ro make such purchase.

ARTICLE VI.

SEC. 1. I give to my sister, wealthy Jane Bogert, her heirs and assigns forever, one equal one-eighth part of each all and every patent or patents granted and issued to me by the Commisssioners of Patents under and by virtue of the patent laws of the United States, for improvements in printing presses or relating thereto, and all renewals of the same; and also one equal one-eighth part of all the profits that may accrue from the sales of any part or all the presses that may be made under the authority of said patents or any or either of them.

SEC. 2. I give to my said sister, Wealthy Jane Bogert, and her children, and to the survivors or survivor of them, living at my decease, the sum of six thousand dollars, to be divided equally.

SEC. 3. I give to my sister, Adaline Julia Gordon, the sum of Ten Thousand Dollars, to be paid to her out of my estate.

SEC. 4. The payment of the foregoing sums of money, specified in Secs. 2 and 3, must be postponed until the payment of the various sums required under Secs. 2 and 3 of Article I, and Secs. 2, 3 and 4 of Article III, and Sec. 2 of Article IV and Article V, shall have been fully complied with, paid and discharged, but interest shall be added from the day this instrument shall be probated.

ARTICLE VII.

SEC. 1. I give to my sister, Mary Ann Doane, her heirs and assigns forever, the one equal one-eighth

part of each, all and every patent or patents granted and issued to me by the Commissioner of Patents under and by virtue of the Patent Laws of the United States, for improvements in printing presses or relating thereto, and all renewals of the same;

And also one equal one-eighth part of all the profits that may accrue from the sales of any part or all the presses that may be manufactured under the authority of said patents. or any or either of them.

SEC. 2. I give to my sister, Mary Ann Doane, and her children, and to the survivors or survivor of them living at my decease, the sum of Ten Thonsand Dollars (except the said A. Sidney Doane, who is otherwise amply provided for), to have and hold the said Ten Thousand Dollars, share and share alike.

SEC. 3. The payment of the said Ten Thousand Dollars must be postponed in the same manner and for the same causes as here-in-before mentioned in Sec. 4 of Article VI.

ARTICLL VIII.

I give, devise, and bequeath all the remaining part and residue of my said estate, both real and personal, wheresoever and whatsoever, to my said executors in trust for the following uses and purposes, viz.: They shall sell at a fair price all real and personal property which I may own at my decease, not herein otherwise devised or bequeathed, and not needed for the general good of my estate and beneficial to my said devisees and legatees, and they shall invest the same and all other funds which may accrue from my estate not herein specifically bequeathed, in United States Government Bonds, or in State Bonds, or in City Bonds, or in first-class Railroad Bonds, or in Bonds and Mortgages upon good and improved seal estate, worth at least twice the amount, so that they may realize therefrom not

less than six per cent. annually, and they shall divide and pay all the interests, rents, issues and profits whatsoever accruing therefrom in the following manner, viz.:

To my said daughter Mary Agnes, and her husband jointly if she shall intermarry, my said brother Cuthbert C. Gordon, and my said nephew A. Sidney Doane, and their heirs surviving them respectively, each the one equal one-fourth part thereof; and to my sister, Wealthy Jane Bogert, and my sister, Mary Ann Doane, each the one equal one-eighth part thereof; and upon the decease of either of them such part and portion thereof as is above designated for either of them, respectively, shall be paid share and share alike to the children of them surviving respectively: 1C

And in the event that either my said daughter, my said brother, my said nephew or my said sisters shall have no lawful issue, them or either of them surviving respectively, then such part or portion thereof as is above designated for either of them respectively shall be divided and paid equally to my other nephews and nieces *per stirpes* and not *per capita*, and to their heirs forever. 2C

ARTICLE IX.

In the event that my said Executors shall not have at hand or under their control sufficient funds to pay the entire purchase money for the said "*Adams Farm*," as directed in article III, Section 2, or the entire purchase money for the said "*Compton Farm*," as directed in Article V. of this instrument, I hereby empower and direct my said Executors to procure as promptly as possible a sum of money sufficient to make a payment of one third of the purchase money, as a first payment upon the same or either of them, and to make, execute and deliver as such executors. a bond or bonds and mortgage or mortgages equal to the balance of such purchase money with interest 3C 4C

thereon, and for such short term of years as may be agreed upon; and I hereby order and direct that my entire estate both real and personal owned by me at my decease shall stand pledged as a security and be liable for the payment of such bond or bonds or either of them with lawful interest upon the same.

ARTICLE X.

I nominate and appoint my brother Cuthbert C Gordon, my nephew A. Sidney Doane, and my respected and highly esteemed friend Charles Beebe Executors of this my last will and testament; and I empower and specially direct my said Executors to exercise great caution and economy in the care and management of all business pertaining to the execution of the various provisions of this my last will and testament, and in the conduct and management of the business and the interests of my estates and the investments of all moneys provided herein to be invested, and to make changes of such investments, on any part thereof from time to time as the safety of the same may in their judgment require, and the interest of the devisees and legatees herein may demand.

And my said Executors shall not be required to give any bond or bonds or other security; but in lieu thereof and as an ample security for the honest and faithful discharge of their duties as such executors, all the devisees, bequests and legacies here in made for their benefit respectively and their children respectively, shall stand pledged as a security for the honest and faithful discharge of their duties as executors respectively.

And I order and direct that all books, papers, vouchers, securities belonging or in any wise pertaining to my estate, and all future interests, rents, issues and profits arising therefrom shall be open to the inspection of any devisee or legatee herein or his or her agent or attorney, semi-annually, at a meeting to be appointed for the purpose, by my

said executors, and at which meetings my said executors shall give a true and just account of their doings in the execution of this my last will and testament, and all matters pertaining thereto shall be adjusted and proper vouchers shall be taken and given of settlements up to the date of such meetings.

In witness whereof, I have hereunto set my hand and seal this day of July, A. D., 1868.

GEO. P. GORDON, [L. S.]

Signed, sealed, published and declared by the said George P. Gordon to be his last will and testament in the presence of us, who, at his request, were present at the same time, and subscribed oer names as witnesses at the request and in the presence of said testator and in the presence of each other, this 25th day of July, 1868.

HENRY ADAMS,
Township of Woodbridge, N. J.

ALONZO C. P. ADAMS,
Township of Woodbridge, N. J.

JOHN Q. ADAMS,
Township of Woodbridge, N. J.

State of New Jersey, ss.:

Henry C. Adams being duly sworn according to law on his oath deposes and says that the paper writing purporting to be the last will and testament of George P. Gordon, the testator therein named deceased, was drawn by deponent under instructions of said George P. Gordon and that deponent was present at the signing and publication thereof; that

deponent saw the said testator sign and seal the said annexed writing and heard him publish, pronounce and declare the same as and for his last will and testament on the twenty-fifth day of July A. D. 1868 at the residence of deponent's father in the township of Woodbridge, in the County of Middlesex, in the State of New Jersey; that at the time of the doing thereof, the said testator was of sound and disposing mind, memory and understanding as far as deponent knows and as he varily believes and that Henry Adams, Alonzo C. P. Adams and John Q. Adams, the then subscribing witnesses thereto, were present at the same time with this deponent and that they together subscribed their names as such witnesses in the presence of the testator and of each other, at the request of the testator.

Deponent further says that Henry Adams was the father and Alonzo C. P. Adams and John Q. Adams were the brothers of deponent and that all three are dead, the first named having died on February 6th, A. D. 1875, the second named having died in May, A. D. 1875 and the last named having died March 26th, A. D. 1875. Deponent resides at No. 145 Main Street in the City of Orange in the State of New Jersey. Deponent is seventy-two years of age.

HENRY C. ADAMS.

Subscribed and sworn to at Jersey City, N. J., this 17th day of January A. D. 1891, before me at Jersey City.

ALEX. T. MCGILL,
Ordinary of New Jersey.

State of New Jersey, ss.:

EDWARD L. ADAMS of full age being duly sworn according to law on his oath says that he resides in the Township of Woodbridge in the County of Middlesex and State of New Jersey, that Henry Adams was

the father of deponent and died February 6th, A. D. 1875, Alonzo C. P. Adams was a brother of deponent and died May 8th, A. D. 1875; that John Q. Adams was a brother of deponent and died March 26th, A. D. 1875; that Henry C. Adams who has made the foregoing affidavit is the brother of deponent; that deponent is in the fiftieth year of his age; that his brothers Alonzo and John were older than deponent and younger than their brother Henry; that deponent at request of his brother Henry made search among the papers of his father in the house where his father resided in his lifetime and in which he died and in which deponent still resides and has resided since his fatner's death and previous thereto,—for a sealed package said to contain the will of George P. Gordon, deceased, that on November 15th, A. D. 1890, deponent found among said papers such a sealed package as his brother had described and on December 13th, 1890, deponent with his brother Henry, Edward G. Black, Esquire, and Louis V. Booraem, Esquire, counsel for the present proponents deposited said package unopened with the Fidelity Title and Deposit Company of Newark, N. J., in one of the safe deposit boxes of said Company and this morning procured the same from said box and produced said package before the Ordinary unopened whereupon said package was opened by the Ordinary and the paper writing proporting to be the last will and Testament of George P. Gordon deceased hereto annexed was taken there from by him; that deponent was thoroughly familiar with the handwriting and signature of George P. Gordon, late of the township of Woodbridge, near the City of Rahway, deceased who was proprietor of the Gordon Printing Press Works in said city and who died in A. D. 1878, having often seen him write and was also thoroughly familiar with the handwriting and signatures of deponent's father and brothers Alonzo C. P. Adams and John Q. Adams having often seen them write; that the signature "Geo. P. Gordon" of testator affixed to said paper writing is in the proper hand-

writing of said George P. Gordon, and that the signatures of the witnesses to said paper writing are in the proper handwriting of the father and said two brothers of this deponent respectively.

EDWARD L. ADAMS.

Subscribed and sworn to before me, this 17th day of January, 1891, at Jersey City.

ALEX. T. MCGILL,
Ordinary of New Jersey.

State of New Jersey, ss.:

EVA MEDORA DOANE of full age, being duly sworn according to law, on her oath says she is a niece of George P. Gordon, late of Woodbridge, near Rahway, New Jersey, deceased, who died in A. D. 1878, and whose will hereto annexed is now propounded for probate; that Augustus Sidney Doane named in said will was the brother of deponent and died in March, A. D. 1888; that Charles Beebe named in said will was a family friend who died before said Doane and after Cuthbert C. Gordon hereinafter mentioned but at what exact date deponent cannot state and that Cuthbert C. Gordon named in said will together with said Doane and Beebe to be executors thereof was the brother of said testator and uncle of deponent and that he died in November, A. D. 1883. Deponent further says that said George P. Gordon, deceased, left a widow (since deceased), and one daughter, Mary Agnes Gordon, who died in Paris, France, May 29th, A. D. 1890, unmarried, and that the only surviving sisters of said George P. Gordon are Adeline J. Gordon and Wealthy Jane Bogert. No brother survives.

EVA MEDORA DOANE.

Subscribed and sworn to at Jersey City, N. J., this 17th day of January, A. D. 1891, before me at Jersey City.

ALEX. T. MCGILL,
Ordinary of New Jersey.

State of New Jersey, ss.:

William H. Hall of full age, being duly sworn according to law on his oath, says that he is fifty-six years old and has lived in Rahway, New Jersey, for forty-five years; that he has been a hardware merchant there; that he well knew George P. Gordon, who lived near Rahway, aforesaid, and who died in the year A. D. 1878, that deponent had transacted business with him and had often seen him write in his lifetime; that deponent has examined the signature to the annexed paper writing purporting to be the last will and testament of George P. Gordon, deceased, and knows it to be in the proper handwriting of said George P. Gordon, late of Woodbridge, near Rahway, deceased well known to deponent; that said George P. Gordon was proprietor of the Gordon Printing Press Works in Rahway, and deponent sold his merchandise and received many checks from him, and was thoroughly familiar with his handwriting and signature.

WM. H. HALL.

Subscribed and sworn to at Jersey City, this 17th day of January, A. D. 1891, before me at Jersey City.

ALEX. T. MCGILL,
Ordinary of New Jersey.

State of New Jersey, ss.:

THOMAS H. SHAFER, of full age, being duly sworn according to law on his oath, deposes and says that he is a counsellor at law of New Jersey of forty-four years standing; that he has resided in Rahway, New Jersey, for forty-four years last past; that he well knew George P. Gordon, late of the Township of Woodwridge. in the County of Middlesex, in business in the City of Rahway, New Jersey, deceased, who died on or about January 27th, A. D. 1878, and was familiar with his handwriting and signature, having frequently seen him write and having transacted a great deal of professional business for him; that deponent also well knew Henry Adams and his

sons Alonzo C. P. and John Q. Adams, who lived in the Township of Woodbridge, in the County of Middlesex, New Jersey, and who all died within a few weeks of each other in the year A. D. 1875; that deponent transacted professional business for said Henry and Alonzo C. P. Adams and was familiar with their handwriting and signatures, having often seen them write; that deponent has seen the signature of John Q. Adams; but does not remember having ever seen him write; that deponent has this day attended before the Ordinary to examine a paper writing which he was informed would be propounded for probate as the will of George P. Gordon aforesaid deceased, in order that deponent might prove the signatures of the testator and witnesses if he recognized them; that deponent has carefully examined the paper writing produced from the package opened by the Ordinary and which paper writing is hereto annexed and purports to be the last will and testament of Geore P. Gordon, deceased, and the signatures thereto affixed as of testrtor and witnesses; that the signature as testator "Geo. P. Gordon" is in the proper handwriting of George P. Gordon, late of Woodbridge and Rahway, aforesaid, deceased, well known to deponent; that the signatures of Henry Adams and Alonzo C. P. Adams as witnesses are in the respective proper handwriting of said Henry Adams and Alonzo C. P. Adams, late of Woodbridge Township aforesaid, deceased, well known to deponent, and that deponent verily believes that the signature of John Q. Adams as a witness is the signature of said John Q. Adams, late of Woodbridge Township, aforesaid deceased, well known to deponent, the said signature closely resembling signatures of said John Q. Adams, which deponent saw in his lifetime and had no reason to question.

THOS. H. SHAFER.

Subscribed and sworn to at Jersey City, this 17th day of January, A. D. 1891, before me at Jersey City.

ALEX. T. MCGILL,
Ordinary of New Jersey.

PREROGATIVE COURT OF NEW JERSEY.

In the Matter of the LAST WILL AND TESTAMENT OF GEORGE P. GORDON, Deceased.

It being made to appear by the petition of Adeline J. Gordon and by proofs herein supplemental thereto, that George P. Gordon, late of Middlesex County, in this State, died more than ten days ago, leaving the last will and testament hereto annexed; that the executors named in said will are all dead; that the testator's widow and child are dead, and that his only next of kin are the petitioner, Adeline J. Gordon, and her sister, Wealthy J. Bogert, who are sisters of the deceased, George P. Gordon.

And the said Wealthy J. Bogert having by writing duly executed renounced all right to administer her brother's estate, and the said Adeline J. Gordon having applied by her petitition aforesaid for probate of said will and for letters of administration *cum testamento annexo*, and the proofs of the due execution of said will being sufficient and no cause appearing to the contrary: It is on this seventeenth day of January, A. D. eighteen hundred and ninety-one ordered that the said will and testament be and the same is hereby admitted to probate as the last will and testament of the said George P. Gordon, deceased, and that letters of administration of the estate of the said George P. Gordon, *cum testamento annexo* be issued to the said Adeline J. Gordon and to William H. Corbin upon their entering into bond to the Ordinary in the penal sum of fifty thousand dollars with two or more sufficient sureties, conditioned as the statute requires. The said bond to be approved by the Ordinary.

ALEX. T. McGILL,
Ordinary.

ALPHABETICAL INDEX

TO

VOLS. I, II, III, IV, V.

Proponent's Witnesses.

	Direct.	Cross.	Re-Direct.	Re-Cr
Adams, Henry C.—	2	11	54–78	66–
			136–1,454	1,
			1,624–1,643	1,632–1,
			1,655	1,
Adams, Edward L.	82–797	89–814	127–132	130–
	838	838		
Athley, Elizabeth—	1,183	1,185	1,187	1,
			1,189	
Baldwin, Frank W.—	1,021	1,022		
Barber, Amos P.—	704	733	749	
Baumann, Ernest J. P.—	752	771	785	
Baumann, Camille E.—	1,449			
Beckett, Charles H.—	1,656			
Bogert, Elsie—	1,334	1,336		
Brewster, Robert C.—	1,241	1,246	1,247	1,
Burlinghame, Elizabeth—	1,451	1,453		
Bloodgood, William B.—	1,425	1,427		
Casler, Henry C.—	1,080	1,081		
Case, Jerusha C.—	1,445	1,448		
Chitty, John—	1,257	1,259	1,260	1,
Cornish, William W. M.—	1,167	1,173	1,178–1,182	1,
Cornwall, Henry B.—	1,682	1,687	1,689	
Cresson, Charles M.—	1,108	1,133–1,151	1,164–1,165	1,165–1,
			1,166	1,
Davis, Joseph—	1,029	1,029		
Dalley, Charles C.—	1,239	1,240		
David, George—	1,027	1,027		
Day, John—	1,252	1,255		

	Direct.	Cross.	Re-Direct.	Re-Cross.
egner, Frederick L.—	791	796		
iellenbeck, Edward A.—	1,322	1,323		
oane, Agnes C.—	1,035–1,042	1,053	1,061–1,064	1,063
oane, Eva Medora—	1,337	1,341	1,345	
odd, Charles E.—	1,422	1,423		
unkel, Albert—	1,072	1,073	1,075	1,076
unkel, Harvey—	1,229	1,230		
lliott, Arthur H.—	1,462	1,485	1,493–1,495	1,494–1,495
			1,700–1,705	1,496–1,703
ndemann, Hermann—	1,659	1,676	1,681	1,682
veritt, Edward A.—	1,034	1,035		
well, Marshall D.—	843	896	951	
eld, James W.—	1,033	1.033		
nk, Charles M.—	1,095	1,098		
nehout, John—	1,234	1,235		
reeman, Wilberforce—	1,031	1,032		
eorge, David—	1,027	1,027		
ill, John—	1,025	1,026		
ordon, Elizabeth T.—	136			
ordon, Adeline J.—	1,190	1,202	1,210–1,211	1,210
ackney, David G.—	1,090	1,093		
aring, Albert R.—	1,039	1,040	1,042	
ankins, Michael—	1,296	1,299	1,302	1,303
eald, Donald A.—	1,150	1,151		
icks, William B.—	1,440	1,442		
icks, William V. H.—	8,40	842		
ıques. Mortimer—	1,314	1,318		
ɔnes, Frank—	1,420	1,421		
ingsley, George P.—	1,030	1,030		
ing, David B.	1,658			
ain, Eden—	1,428	1,431	1,433	1,433
indsley, Charles A.—	1,028	1,028		
indsley, John L.—	1,023	1,024		
[anderville, Giles P.—	1,089	1,090		
[cLaughlin, Owen—	1,303	1,311		
[cClelland, William W.—	1,334	1,374	1,401	1,406
[oore, Julia D.—	1,261–1,324	1,329	1,332	
[orrell, Daniel S.—	1,221	1,223	1,226–1,227	1,228–1,228
[orton, Solomon A.—	1,423	1,424		
[ulvaney, Thomas	1,266	1,278	1,294	

	Direct.	Cross.	Re-Direct	Re-C
Nellis, Abraham—	1,076	1,078	1,080	
Norton, Louis N.	1,689	1,695		
Rauch, Edward H.—	818–953	970	1,011	1
Rudd, William T.—	1,236	1,237		
Scott, Charles-–	1,102	1,102		
Semilis, Alexander—	1,216	1,218	1,219	
Shafer, Thomas H.—	1,103	1,107		
Sherer, William—	1,146	1,148		
Stafford, William A.-–	1,543	1,545	1,548	1
Tingue, William J.—	1,418	1,419		
Vanderburgh, Alexander—	1,250	1,252		
Wagner, Alfred J.—	1,064	1,070	1,072	1
Watson, George H.—	1,211	1,213	1,214	1
Wheeler, Charles W.—	1,233			
Williams, Edgar—	1,019	1,019	1,021	1
Willlams, Ezra C.—	1,416	1,418		
Williams, Charles G.	1,421			
Winslow, William E.—	1,433	1,437	1,439	
Wood, George C.—	1,081	1,084		
Woodruff, Johnathan—	1,406	1,409		

ALPHABETICAL INDEX

TO

VOLS. I, II, III, IV, V.

CONTESTANTS' WITNESSES.

	DIRECT.	CROSS.	RE-DIRECT	RE-CR
Adams, Henry C.—				
Allen, Joseph W.—	466	467	472	
Ames, Daniel P.	365	396	453	
Bishop, Frank R.—	238	248		
Bussing, Robert S. Jr.—	152	154	154–155	155–
Cantwell, Thomas W.—	311			
Carvalho, David W.—	205–214	266	310–1,497	
	249			
Carpenter, David P.—	697	698		
Chandler, William J. D.—	529	531		
Colby, Albert—	600			
Crater, Philip W.	603	605		
Crooks, Thomas W.	571	572		
Cushney, Henry B.—	666	672	681	
Davids, David F.	1,553	1,555	1.557	
Doremus, Charles A.	1,573	1,577	1,580	
Drummond, Charles W.	460	465		
Fish, Frothingham—	681	684	692–694	
Hagan, William E.—	323	338	355	
Hodges, Harry B.	1,505	1,517	1,542	1,
Jayne, Benaiah G.—	544	553		
Knox, John M.—	519	521	523	
Lansley, James C.—	584			
Leeds, Albert R.	1,566	1,569	1,572	1,
Matteson, Raphael—	177	178	184	
Merrit, David H.—	524	526		
Morton, Henry—	1,557	1,559	1,560–1,565	1,
Newcombe, John F.—	527	528		
Orton, James F.—	472	476		
Osborne, Harry W.—	173	174	176–212	
Omberson, John W.—	580	582		
Pickhardt, Carl—	1,580	1,584	1,586–1,587	1,

	Direct.	Cross.	Re-Direct.	Re-Cross.
he, Dominick H.—	515	517	592–595	594
kwell, William—	541	543	544	544
ers, William H.—	185	190	198	196
lhusen, George—	139–596	144–600	146–150	146–150
			600	600
lers, Samuel—	701			
age, George W.—	695	697	697	
bins, James H.—	1,548	1,552	1,590–1,621	1,608–1,623
man, Henry L.—	478	496	510	511
Vleet, William E.	159	160	201–212	
			215	
Vooris, Elias W.—	533			
Wyck, Henry D.—	587	625	608–665	666
ng, Edward F. C.—	455	457		

New Jersey Court of Errors and Appeals,

IN THE LAST RESORT IN ALL CAUSES.

BETWEEN ADELINE J. GORDON, et al., *cum testamento annexo* of GEORGE P. GORDON, deceased, and AUGUSTUS SIDNEY DOANE, Appellants, and WILLIAM W. OLD, Executor, etc., of Lenore N. Van Wyck, deceased, PAULINE THERESA REITZ and SAMUEL RICHARD RUYSSENAERS.	On Appeal from Decree of Prerogative Court, revoking probate etc.

Brief for Appellants.

This is an appeal from a decree of the Ordinary revoking the probate of a will proved before him in common form, but afterwards challenged and by him required to be proved in solemn form.

For reasons of economy, and also that this court may see exactly how the proponents presented their case before the Ordinary, we have not recast the comprehensive brief submitted in print to him, but present the same to this court just as he had it, supplementing it herein by such suggestions as are called forth by the Ordinary's opinion and by such reflections as further study of the case have evoked.

New Jersey State Library

First.

THE ORDINARY'S OPINION.

The learned Ordinary seems rather to argue the case against probate than to judicially consider both sides of the controversy. The opinion reads more like a lawyer's argument than a judge's deliberation.

We are compelled, therefore, to devote some time to an effort to overcome the unconscious bias against the appellants which the reading of the opinion must necessarily create in the minds of the members of this court. This we hope to successfully accomplish; for the opinion bristles with errors of fact and unfounded presumptions.

Second.

ERRONEOUS PRESUMPTIONS ON THE PART OF THE ORDINARY.

1.—That crimes have been committed.

The proponents on the trial produced the disputed paper purporting to be the last will and testament of George P. Gordon, which paper had already been proved in common form, and called Mr. Henry C. Adams who testified that he drew the paper under Mr. Gordon's instructions; that he was present at its execution; that he saw Gordon sign it, and heard him declare it to be his last will and testament, and heard him ask the subscribing witnesses to sign it, and saw them also affix their signatures thereto in the presence of the testator and each other, and also proved other facts connected with the drafting, execution, custody, and discovery of the document. His brother, Edward L. Adams, testified to the discovery of the paper, to its custody, and to the possession by him of the house in which it had been executed, and had remained until shortly before it was propounded. It was also proved that Henry Adams (the father) and Alonzo C. P. and John Q. Adams (brothers of the above named witnesses), the subscribing witnesses were all dead.

The contestants undertook to overthrow the will thus established by this direct and positive testimony, by trying to show that Henry C. Adams was a forger and a perjurer; that he had forged the names of the testator and the three subscribing witnesses to the will; that the whole will, twenty pages long, was his fabrication and that his testimony in reference to the drawing and execution of the paper was all false and perjured.

In order to sustain charges so grave as these and so repugnant to reason and morality, the proof must be clear and convincing.

(*a*) *The law presumes innocence.*

The crimes charged by the contestants are similar to those which the party seeking to overthrow the Meeker will (Boylan against Meeker, 4 Dutcher, 274) charged in, that case, and which Mr. Justice Van Dyke (page 326), characterizes as "the most wicked, willful and corrupt "perjury on the part of all the witnesses. Such a "position so filled with horror (says the learned "Justice) so shocking to our moral sense and so "variant from our experience, I cannot adopt and "am not at liberty to adopt without some evidence "to prove it."

Since the decision by this court in Kane v. Hibernia Ins. Co., 10 Vt. 697 contestants may not be required to prove these charges beyond a reasonable doubt as appears to be the doctrine of many other courts. (See proponents' brief before the Ordinary, point 111, p. 176.) It is obvious, however, that this court did not intend by that decision to depart from the well settled doctrine of law and morals that he who relies for his claim or defense upon showing that a grave crime has been committed, must bring clear and convincing proof, and not merely such proof as would establish any ordinary fact in the trial of a civil cause. The presumption is against the commission of such crimes as forgery and perjury, and contestants must overcome not only proponents' direct testimony but this presumption also. Since that

decision this court has, in Osborne v. Osborne, 17 Stew., 257, approved the doctrine of Berckmans v. Berckmans, 2 C. E. Gr., 453, that in an action for a divorce adultery must be proved beyond a reasonable doubt, and in Berdan v. Trustees of School District, 2 Dick., 8, that the party setting up usury must prove it beyond a reasonable doubt.

(*b*) *To support a finding that crimes have been committed a clear preponderance of evidence is required.*

One of the cases especially approved in Kane v. Hibernia Ins. Co. was Scott v. Home Ins. Co., 1 Dillon, 105, in which Dillon, J., correctly instructed the jury *inter alia* as follows: "But the charge is a grave one. The act charged "is one which men in general will not commit, but "of which men are sometimes guilty; in view of "which the Court instructs you that in order to jus- "tify you in finding that the plaintiffs them- "selves burned or caused the property to be burned, "the legal evidence taken together must be such as "clearly satisfies you of the truth of the proposi- "tions."

The learned Vice-Chancellor Van Fleet, in Traphagen vs. Voorhees, 44 N. J. Eq., 21-24, where the claim rested upon a charge of forgery, applies the doctrine of Kane v. Hibernia Ins. Co. in a manner that must meet the approval of this court. He says: "The "plaintiff is not bound to prove the truth of his "charge beyond a reasonable doubt, but only by a "fair preponderance of evidence. The burden of "proof is, however, on the plaintiff, and when, as in "this case, the issue to be tried involves something "more precious and important to one of the parties "than a mere property right, it would seem to be a "plain dictate of justice that the court should before "pronouncing judgment, which, while it does not "convict a citizen of a high crime, yet puts a "stigma upon him, which renders him more detest- "able than he would be if he had been convicted,

"require the truth of the charge to be proved by "evidence of a very persuasive and convincing char- "acter. Equivocal, uncertain and conjectural evi- "dence is clearly insufficient to support such a judg- "ment." The doctrine thus laid down by the learned Vice-Chancellor is in harmony with the best settled principles of law, and the highest and best morals, and was not at all impaired by the reversal of his decree on the facts (45 N. J. Eq., 41).

The learned Ordinary departed from this wise and safe doctrine of the law and presumed at the outset that crimes, outrageous and repugnant to right, reason and morality had been committed, and this presumption led him to misread and misconstrue the testimony and to constantly insinuate bad motives and meanings, where he should have found only honest intentions and truthful statements.

II.—That Mr. Henry C. Adams had a wrong motive in coming to the State of New Jersey.

On the presumption that forgery and perjury had been committed by Mr. Henry C. Adams, it was necessary to find a motive. The contestants claimed that the provision of the will for the purchase of the farm of Henry Adams, the father of the witness, would prove a pecuniary advantage to the witness, should the will be admitted to probate, and the learned Ordinary overlooked or misconstrued important facts. Before commencing to consider the testimony proper, he says of Mr. Adams in connection with the latter's going from Fort Plain in 1868 to take up a temporary residence at his father's house (Record, p. 6, fol. 24): "He had very little property, not sufficient to justify his permanent retirement from remunerative employment." The intimation is that Mr. Adams gave up his law practice in New York State to come to Woodbridge in this State for some improper purpose. Now what are the undisputed facts about Mr. Adams' intentions, property and prospects at

the time he went to Woodbridge? The learned Ordinary intimates that Mr. Adams intended to permanently retire from "remunerative employment." Mr. Adams himself testifies and his testimony is not disputed (Testimony, p. 65): "I came down in February, 1868, but did not intend to stay in New Jersey, but after I got acquainted here I thought I could do better by moving down, and I had opportunities to engage in business in New York. I was uncertain what to do. My ambition was to complete this work, which I had had in view for some time, and I concluded to move my library down and leave Fort Plain, and as I was ready to come a telegram came that our building was burned up there, my library of about 1,000 volumes consumed, and all the papers and my account boooks were destroyed." Surely there is no ground in these statements for suspicion that Mr. Adams came down to this State with evil intent, as the Ordinary insinuates; on the contrary, it is evident he intended to return to Fort Plain, where he had left his library. Then what are the facts in regard to Mr. Adams' property and prospects? He states (p. 16) that he had at that time accumulated some thousands of dollars, and (p. 17) that the claims due him personally from clients were more than $10,000. He had an extensive library (p. 65); his father had accumulated enough money to permanently retire from "remunerative employment," and had done so, and was living the life of a country gentleman in this State. At the time of his death his estate was worth $140,000 (p. 812). Mr. Adams, Sr., had five children, some of whom had advancements from their father, but Henry C. Adams had received nothing by way of advancement at the time of his father's death. He and his father were evidently on intimate terms. They had been in business together in Fort Plain (p. 566), and the son might very reasonably have expected that on his father's death he would inherit at least an equal share of the estate with his brothers and sisters. The value of $140,000 put upon the Adams' estate has not been disputed at all. One-fifth of this, the presumptive share of Henry C. Adams, is $28,000. As a

matter of fact the testimony shows that Mr. Henry C. Adams did not intend to permanently retire from active practice, and had he intended to do so, his financial condition and prospects were such as would justify a man without family and of quiet scholarly tastes in retiring from the active practice of his profession, and devoting his life to congenial literary pursuits. Moreover, it is evident that he expected his laborious literary work to be a source of revenue (p. 56). Besides, at the time in 1879 when the Ordinary thinks the forgeries were committed, Henry Adams was dead, and Henry C. Adams was in the enjoyment of the life estate left him under the Deed of Trust (p. 4, 812).

The learned Ordinary having thus presumed in advance that Mr. Henry C. Adams had committed forgery and perjury attributes to him a consciousness of wrong which must be "explained." Mr. Adams had been asked about his finances (pp. 16–17), and had testified frankly and freely about them. The Ordinary characterizes this testimony of the witness (fol. 24) as "his explanation." Could the most skilled criminal prosecutor have made a more adroit and uncalled for unfavorable insinuation? The facts stated by the witnesses were plain and simple. They needed no explanation. We submit that one who looks at them fairly and judicially, and without the prosecutor's squint, will find nothing tortuous or evil in them.

III.—That Mr. Adams' literary work was purely a pretence.

His Honor says (folio 25) of Mr. Adams' literary work, "as the fruit of his labor for a quarter of a century, he produces a volume of his glossary, stating that the whole work, to consist of three volumes, is finished but not yet published." This belittling slur is uncalled for and unfair. An examination of the volume (Exhibit P. 9) shows that extraordinary learning, patience, investigation and research were required in its production. "One volume in a whole quarter of a century," says the

learned Ordinary in effect, "is all that he has produced. If he had been a diligent student and writer he would have produced a whole library. Of course he has been spending his time in forging all manner of wills and documents pursuant to the evil intent which brought him to our fair State."

IV.—That Mr. Henry C. Adams was possessed of a remarkable shrewdness and cunning for the perpetration of evil.

The Ordinary says (folio 60) that Mr. Adams "appears by the proofs to be a shrewd and able lawyer, with keen insight to human nature and many years of experience in contemplating and weighing the value of evidence * * * * so that the most cunning devices consistent with probabilities may be attributed to him, if credit is given to the theory of his moral obliquity."

There is no evidence in the case whatever that Mr. Adams was a "*shrewd or an able lawyer*," or that he had what the Ordinary terms "*a keen insight to human nature*," or that he had "many years of experience in the contemplation and weighing of the value of evidence.' There is nothing in the case to show that he had any legal experience or practice whatever, except during his career in Montgomery county in his father's office, where it could not be argued that he had more than the ordinary experience of a country lawyer. What right, then, has the Ordinary to indulge in the luxury of a presumption which gives to Mr. Adams extraordinary ability? Or by what authority can the Ordinary, conceding that he invests Mr. Adams with this more than ordinary ability, ascribe it to a tendency altogether evil? Throughout this entire opinion, with one exception which we shall refer to below, the Ordinary invests Mr. Adams with this superhuman ability and cunning, and even goes further than that and presumes that this ability is used in an evil direction. While nowhere in the opinion has he in so many words declared that Adams was a forger or a criminal, it is evident that the Ordinary has presumed that the

theory of his "moral obliquity" is correct. There is no testimony to warrant any such presumption. A careful reading of the testimony given by Mr. Adams and by the many witnesses who have long known him, shows him to be characterized by unusual simple-mindedness and conscientiousness, qualities the very opposite to those with which the Ordinary has been pleased, contrary to the evidence, to invest him. (See Brief before the Ordinary, page 132.)

The evidence shows in connection with the exhibit of the Adams *Glossary of Legal Terms*, that Mr. Henry C. Adams is a bookworm; but does not this especial fact tend to exclude the idea of capability to plot and intrigue with tendencies to "moral obliquity"? And where is the evidence in this case that would justify the presumption that Mr. Henry C. Adams was an exception to his type?

V.—That Henry C. Adams' acquaintance with the testator requires "explanation."

Mr. Henry Adams, the father, and the testator were next neighbors in the country. They were acquainted, of course. When Mr. Henry C. Adams came to Woodbridge he also became acquainted with Mr. Gordon. Both had musical tastes and played the flute. Is there anything unnatural in this? Anything that requires explanation? Nevertheless the Ordinary insinuates that there is, for in speaking of Mr. Adams' testimony about it (fol. 26) he says "He explains, etc."

VI.—That a pecuniary motive on the part of Henry C. Adams was established.

(*a*) In his endeavor to establish a motive in Mr. Henry C. Adams for committing forgery and perjury, the learned Ordinary (folios 66, 67, 68) referred to a possible gain which might come to the witness were the will admitted to probate, and the provision for the purchase of the Adams farm carried out. The Ordinary finds that under the Deed of Trust made by Henry Adams, Henry .C

Adams would have about 17 per cent. of the annual income of his father's property. This property, as has been shown (Testimony, page 810), amounted to $140,000, and 17 per cent. of this sum is $23,800, in which sum the witness had a life interest under the Deed of Trust. The Ordinary concluded that Mr. Henry C. Adams' annual income would probably be increased by $200 if the provision for the purchase of his father's farm, contained in this will, could be enforced. "It is impossible," the Ordinary says (fol. 67), "to either affirm or deny that such a sum would be a sufficient motive to induce the crime charged in this case. To Henry C. Adams that sum in all probability appeared large. At all events it was all important to him. He had no time to earn money. He had embarked in a literary enterprise which required all his time. In return after a few years he saw in it honor, fame and fortune. He could not earn money, yet he must not starve during the intervening years. It cannot be said that an additional annuity of $200 was not a coveted prize."

In the case of Boylan vs. Meeker where similar revolting crimes of forgery and perjury were set up by the contestants to prove a will, which like the one in question here had been established by direct and positive testimony, the contestants claimed that the witnesses to the will had a mercenary motive and an agreement to share with the plaintiff property worth about $8,000 as a consideration for their part in committing the crimes. This court (Van Dyke, J.) scouts the idea that such a consideration would have been sufficient to induce the forging of the will and sustaining it "by the blackest and foulest perjury."

There is absolutely no evidence to show that Mr. Adams thought an addition of $200 to his annual income "all important" as the Ordinary argues, or, that a paltry sum "seemed large" to him, or that "he had no time to earn money," or that he "must not starve during the intervening years," if he did not get money from the forgery as the Ordinary intimates. These are groundless

assumptions on his Honor's part, and are most cruel and unjust.

Singularly the Ordinary overlooked important evidence which has not been questioned in the case which shows that such an increase in Mr. Adams' income would present no temptation to him.

Instead of having the income of 17 per cent. of his father's estate *merely for life* under the Deed of Trust, Henry C. Adams might by simply consenting to have that deed set aside, as is sought to be done by his relatives, without committing any such revolting crimes as forgery and perjury, *obtain* 20 *per cent. of the whole estate absolutely*; that is, he would have, instead of a life estate in $23,800 (Testimony, p. 810, 816), the sum of $28,000 outright. The annual interest on the latter sum invested at 6 per cent. is $294 more than on the former. It would clearly be far more profitable to Mr. Adams to have this Deed of Trust set aside than to get the profit which the Ordinary figures out he might get under the provisions of this will. And yet what do we find him doing? An action was begun in 1881 in New York to set aside this Deed of Trust and the litigation is still pending, Henry C. Adams instead of pursuing a course which would be very advantageous to him pecuniarily, has always out of filial regard for his father's last wishes opposed the setting aside of this deed, and has never acquiesced in a decree obtained in New York purporting to set it aside. He would at once receive moneys now in a New York Trust Company for his account if he would submit to that decree. In the light of these facts (and they are clearly proved and not disputed) what becomes of the $200 mercenary motive which the Ordinary felt must necessarily be discovered before proceeding to the assumption that Mr. Adams had devised a stupendous scheme of fraud and endeavored to execute it by forgery and perjury?

There is an absurd incongruity in presuming that a lawyer who is "shrewd and able," with "keen insight to human nature," and "an experience of many years in weighing the value of evidence," and contemplating the

same (fol. 60), capable of the "most cunning devices consistent with probabilities;" with a tendency to "moral obliquity" (fol. 61), would be satisfied with the "coveted prize" of a possible additional annuity of $200 ~~a year~~ fol. 68). Such shrewdness, ability and experience demand and command a higher price.

It is certainly a remarkable thing that a lawyer, shrewd and able, capable of the most cunning devices, evil-minded enough to be capable of forgery, of perjury, and of an outrageous scheme of fraud, should not have known that the provisions of the Statutes of this State (Rev. 1244) under a will executed as was the one in question, neither his father nor any member of his family could take any advantage (a point which was entirely overlooked in the Ordinary's opinion and consideration of the case); that he should have produced a draft and voluntarily filed it in the court, when as a consummation of his wicked scheme he intended to produce the forged will itself; and should have done all manner of other things which this simple minded old scholar and student did in connection with the will in question (Brief before Ordinary, pages 126–128). How contrary this is to Vredenburg, J., in Boylan v. Meeker (p. 369), who says: "But what forger ever thought of taking a copy of his own forged instrument to guard against its loss or destruction!"

(*b*) *Error of fact as to value of Adams' Farm.*

The learned Ordinary has fallen into error in regard to the present value of the so-called Adams farm, and has unfortunately overlooked or misread the evidence. At folio 52 His Honor says: "It is also to be here noted that the Adams farm is now scarcely worth one-third the price for which it is directed to be purchased. It is true that in 1868 it was worth a higher sum, possibly two-thirds of the value placed upon it in the disputed paper, and it is also true that to accomplish his wishes, Mr. Gordon had paid about that time exorbitant prices for property adjoining his residence, fully equal to the price designated in the disputed paper for the Adams farm."

No attempt whatever was made by either proponents or contestants to show the present value of the Adams farm. The contestants called three witnesses to prove the value of the farm in 1873 (Testimony, pp. 695 to 703). The first of these, Mr. Savage, stated that he thought $200 per acre would be a good price for the Adams farm at any time (pp. 696, 697), but that Gordon paid, he thought, $500 an acre and perhaps more for similar property. He also said that the prices of land declined in 1873, and that there was at that time no market value for land in Rahway. In 1870 he had sold land at $250 per acre and since that time had sold the same property at $100. The witness, Sanders (pp. 702, 703), was asked about the market value of the Adams property in 1873. He stated that there was very little market value for the land at that time except a very low price, and that he thought that the Adams farm would have been worth $100 an acre, if they could have found a buyer for it, but some people thought that land was worth $1,000 an acre at one time. Now it is to be noted that not one of these witnesses gives any testimony in regard to the value of this land at the present time or in 1879, the time at which the Ordinary thinks the will was forged (fol. 86). On the contrary these witnesses show that the price set upon the Adams farm by the testator in his will was a reasonable one for 1868. Mr. Edward L. Adams testified that his father said he would not take less than $50,000 for it, that he refused $35,000 for the farm in 1868 or 1869 (p. 810) and that the trustees of the Henry Adams estate, of which he is one, in making up the inventory of the estate, shortly after Henry Adams' death, which occurred in February, 1875, valued it at $25,000 (812). (See proponents' brief before the Ordinary, pp. 149, 150.)

There is then no evidence to support the Ordinary's statement that the Adams farm is now scarcely worth one-third the price for which it is directed to be purchased." Or that it was not worth more than two-thirds of such price in 1868.

Edward L. Adams (p. 813) states that the trustees now figure the estate upon the basis that the farm is worth $25,000 (812, 813). There is no other evidence as to the present value of the farm except this and the statement of Savage in answer to inquiries as to the value of property in 1873 that "$200 an acre would be a good price at any time." The trustees of the Adams estate had no interest in putting an excessive value upon the property or of maintaining a higher valuation than was fair and proper. It must be borne in mind that the evidence of Gordon's desire to obtain the Adams farm is uncontradicted and given by other witnesses than the Adamses. (See testimony, Baumann, p. 754, 789.)

It is to be noted here as not without significance by way of showing the bias of the learned Ordinary that while he erroneously states that the value of the Adams farm is "scarcely one-third of the price for which it is directed to be purchased" (fol. 52), for the purpose of disparaging Mr. Henry C. Adams and throwing doubt upon his integrity and honesty, his Honor, nevertheless, assumes, in a number of instances throughout his opinion, that the Adams farm is worth the price named in the will, when such higher price will be more disparaging to Mr. Adams. As one of the indications of the wicked shrewdness of Mr. Adams, he points to the fact that Cuthbert C. Gordon has been given a great interest in securing the probate of this paper. At fol. 58 he says "as has already been seen, if the executor failed to make the purchase of the Adams farm after probate he (Cuthbert C. Gordon) and his family would lose about $40,000 worth of property." And at fol. 65 he says "for it is noticed that upon failure of the Adams purchase, the brother was not to have an equivalent for the $40,000 worth of property he would lose." In this $40,000 there is included the value of the Compton lot, which is put down at $10,000, and His Honor therefore puts a value of $30,000 on this farm for the purpose of exaggerating the temptation which Henry C. Adams was placing before the Reverend Cuthbert C. Gordon.

VII.—Unfair presumptions as to the custody, finding and production of the will and Mr Adams' knowledge of it.

The Ordinary, as if to distinguish against the contested paper (fol. 27), is particular to state that the Brooklyn will so called "was found among his (Gordon's) papers," whereas there is no evidence in the case upon that subject.

We would also refer to the insinuations cast by the Ordinary upon Mr. Edward L. Adams (fols. 23-24). Mr. Edward L. Adams' testimony was in no wise contradicted. He was an important witness for the proponents, and especially in proving the signatures of his father and deceased brothers as subscribing witnesses to the will. No attempt was made to disprove his testimony. He testified that he moved into his father's house at Woodbridge in October, 1876, and continued to live there with his wife and family, except for a short interval; that ever since that time he has had possession of the house, and has always had the key of the closet where the will was found (p. 86); and that the closet was kept locked (p. 122). He himself found the will (p. 89). By the Ordinary's opinion it would appear that he had been in possession of the house only since 1886 (fol 23). The Ordinary dismisses the entire testimony of Edward L. Adams at the 24th folio of his opinion with this slurring remark: "It does not now appear what business Edward L. Adams pursues, but I gather that he is a farmer and also a performer upon some musical instrument in a band." The fact that he is a performer upon some musical instrument may have logically as much weight against his character and the credibility of his evidence, as the $200 annuity motive assigned to Henry C. Adams by the Ordinary in his opinion at folio 68. But certainly this uncontradicted evidence of Edward L. Adams as to the custody and finding of the will as well as his evidence as to the signatures of his father and brothers as subscribing witnesses, is a matter to be overcome before an attack

could be made upon Henry C. Adams' motives or his "moral obliquity" presumed. *It alone is complete proof of the will.* The Ordinary has failed to overcome this in his opinion; he does not undertake to do so.

At folio 31 the Ordinary, in commenting upon the result of Mr. Henry C. Adams communicating with A. Sidney Doane in 1879, the fact that Gordon had executed this will in 1868, and that he (Adams) had a copy of it which might be probated, said that Mr. Doane "refused to act upon this proposition." An unfair inference is implied from this bald statement. The testimony shows an excellent reason why Mr. Doane declined to take up the matter. The Brooklyn will which Mr. Doane undertook to probate had been rejected. The testator's widow and daughter had contested that will and Doane was beaten in the contest. Mr. Adams (p. 23) gives what is obviously a truthful account of the interview with Doane, who execrated the Brooklyn proceeding and did not propose to spend his time and money in another contest. He well knew the character of the contestants, and one contest with them was enough for him. Moreover he was in their employ as their agent managing the Gordon Press Works.

The Ordinary then refers to the presentation of the matter to Rev. Cuthbert C. Gordon, testator's brother, and in so doing insinuates by such phrases as "giving as his excuse," and "according to the testimony of Henry C. Adams," that Mr. Adams' account of the whole matter is ficticious. There is no ground for such insinuations.

The letter of Mr. Adams to Cuddy Gordon (Exhibit P. 3), and the postal card to Collingwood Gordon (Exhibit P. 4, testimony pp. 57–58) produced in court years after they were written, and without Mr. Adams' aid or knowledge, are witness to the truthfulness of Mr. Adams' statements, if any corroboration were needed.

At folio 125 the Ordinary claims that the request of Cuddy Gordon indicates "that the object of the visit (to his father) had not been made known to the father; that the father's patience with mystery was exhausted, and that he had determined that his son should force a disclosure

of the mysterious scheme that annoyed them," is another instance of the unfair presumptions on the part of the Ordinary not warranted by any evidence whatever. Mr. Adams testifies distinctly and positively to his conversation with Cuthbert C. Gordon (p. 23), and the Ordinary presumes that this direct and positive testimony is overthrown by the fact that in reply to a letter to Cuddy Gordon, a son of Cuthbert C. Gordon, requesting him to call upon Mr. Adams, the young man writes at his father's request asking what Mr. Adams wishes to see him about. Other explanations of Cuddy Gordon's request would be quite as reasonable as the one the Ordinary makes. He was a young man at home with his father. It would not be unnatural that he should desire to know the reason why he was requested to make a journey to Orange before taking the time and trouble to comply with the request. It might very well be also, that the elder Gordon that Mr. Adams might want to have Cuddy undertake the probate of this will, and that in view of Mary's "fair promises" he was opposed to having any member of his family engaged in a litigation against her. This would be a sound reason why he should ask Cuddy to request Mr. Adams to give the information, The Ordinary's inference makes it necessary to believe that Adams' testimony in regard to the interview with Cuthbert C. Gordon is out and out perjury. The other theories do not require any such presumption, and are far more in accordance with the settled doctrines of law, and with reason and common sense, than the Ordinary's assertion. Moreover, it would seem from the postal card of Henry C. Adams to Cuthbert C. Gordon (Exhibit P. 4) that Cuddy's letter had been of an altogether friendly character, and had contained some account of Gordon's illness, for Mr. Adams writes in his reply: "Sorry indeed to hear of your illness since I was there." This is not in keeping with the Ordinary's unfounded conclusion that the "father's patience with mystery was exhausted," and that he was determined that his son should "force a disclosure of the mysterious scheme that annoyed them."

Mr. Adams had now presented the matter to two of the executors named in this will, one of whom was a nephew and had been the business manager of the testator, the other his only brother; and had besides endeavored to communicate with a son of this brother, another nephew of the testator. There had been the unsuccessful attempt in Brooklyn to probate the paper propounded there. There had been a contest which excited bitterness. There had been "fair promises" on the part of Mary Agnes Gordon, who had inherited on the rejection of the Brooklyn will the bulk of the property. Mr. Adams did not have in his possession the will now propounded, but only a draft or copy, and a suit in chancery would have been required to probate it. He did not know whether the original could be found or not. He had communicated with all the male members of Mr. Gordon's family whom he knew, two of whom were executors named in the instrument. The widow and daughter had contested successfully the paper offered in Brooklyn, which was in some respects more favorable to them than the will in question here. It was not surprising that Mr. Adams, in view of the circumstances, concluded to let the matter drop. His so doing was reasonable and natural, nor any evidence of wrong intent on his part. No bad motive can fairly be imputed to him, and yet, the Ordinary having presumed at the outset that he is actuated by dishonorable motives, and has been guilty of forgery and perjury, draws most unfair and unfavorable inferences from Mr. Adams not communicating with the widow or daughter, or the official or other persons who dealt with Mr. Gordon's estate (fol. 33). In order to support these unfair inferences the Ordinary presumes (but there is not a particle of evidence) to say (fol. 126) that Adams saw in the interval "the transfers of properties controlled by the will (of which he alone had knowledge) into the hands of innocent purchasers for value." How does the Ordinary know in the absence of evidence, that any properties were transferred "into the hands of innocent purchasers for value" during those eleven years. It may be that

such transfers were made. It is necessary that they should have been made in order to support the Ordinary's inference, but in the absence of evidence to support that, we submit that such presumptions are grave errors.

The learned Ordinary's assumption that Mrs. Gordon, the widow, was dead before Mr. Adams communicated knowledge of this will to the attorneys for the proponents, is one of the many errors of fact into which His Honor has fallen, all of which errors militate against the proponents. The evidence shows that Mr. Adams communicated with the attorneys for the proponents October 17th, 1890, that October 30th, 1890, the draft was deposited with the Secretary of State (p. 1458), and that the widow of George P. Gordon who married Van Wyck, died in December, 1890 (p. 590), showing that the Ordinary's assertion that Henry C. Adams waited until after the death of the widow of George P. Gordon is a mistake. The will itself was discovered before the 21st of November, 1890 (p. 64). Nor is the fact that Mr. Adams did not communicate with the attorneys of the proponents until after the death of Mary Agnes Gordon, testator's daughter, when fairly regarded, capable of a construction unfavorable to Mr. Adams On the death of the testator Adams supposed that another will had been made. He learned of the contest in Brooklyn, and the rejection of the so-called Brooklyn will. He then communicated with Doane, the nephew, and Collingwood Gordon, brother of testator, and communicated with Cuddy Gordon, another nephew. Doane was indignant and disgusted with the Brooklyn contest, and had enough of will contests with testator's widow and daughter. "Fair promises" had been made to Collingwood, and he was old and feeble and did not desire a contest with Mary. Cuddy was youthful and under his father s control, and there were family reasons why it was not desirable that he should not enter into a contest. These were all the male members of the family that Adams knew and two of them were executors of the will. They were not enough interested in the matter to undertake the probate (and it must always be re-

membered that he was not the custodian of the will, did not know that the will itself was in existence, but only had a copy), and there did not appear to Mr. Adams to be any one sufficiently interested in the probate to undertake a litigation about it. After Mary Agnes Gordon's death, however, there was a vigorous contest over her will, and the newspapers evidently had startling and interesting accounts of what was going on in this contest in New York. Mr. Adams saw an account of this contest entitled "Battling for a Fortune," in the Evening Telegram (Testimony, pp. 20–32). From this article he learned of Mary's death, and saw that her "fair promises" had not been kept, but that she had by her will undertaken to give all of her property to "a girl who was a servant of hers and to a foreigner who was her friend abroad" (p. 61), and he was very much stirred up about it (p. 42). He says "I was a friend of George P. Gordon and liked the man exceedingly well, and such a thing would make me feel distressed that that man's estate should be squandered in the way it would be and his family deprived." He recalled to mind the will he had drawn for the testator and the copy which he had kept. He thought that over and said (p. 19), "Mary Gordon had not any property to give if George P. Gordon's will of 1868 is in existence." How strange and unnatural it would have been, presuming as the law requires us to presume that Mr. Adams is an honorable man, if he had not under the circumstances at once communicated with the lawyers who are conducting the contest on behalf of the Gordon heirs in New York. He told them all he knew about it; he placed at their disposal for probate the draft or copy which he had; he promised them that as soon as he could arrange his affairs he would himself go and try to find the original; he did try and find the will itself, and aided as far as he could in the discovery and probate of the document. All these things are honorable and creditable. Nothing unfavorable to Mr. Adams can be found in any of them unless by a mind filled with the unwarranted presumption that Mr. Adams is guilty of the revolting crimes of perjury and forgery.

The learned Ordinary, contrary to the evidence, presumes (fol. 127) that it was possible for Henry C. Adams to put the parcel in a reddish brown envelope into the closet of the Woodbridge house when he went there to try to find the will. It was not possible for him, according to the evidence, to do so without the connivance of his brother, Edward L. Adams, who is, according to the learned Ordinary's presumption, made an accessory to the fraud and forgery and perjury. Mr. Edward L. Adams testifies that the key to that closet was in his possession. Henry C. Adams could not search in that closet because Edward had the key thereto. Indulging in the legal presumption of honesty and not fraud, how natural it was that Henry C. Adams in his quiet scholarly way should go out to the old homestead and look around to see, whether among his father's effects which still remained there he could find this reddish brown parcel which he remember so distinctly, and when unable to do so should communicate the fact to his brother who had possession of the entire house, the key to the closet, etc.

The learned Ordinary thinks he finds in Mr. Adams' statement to Mr. King (p. 38) "that the will *must* be somewhere in the house," and in his request to Edward that the latter search the house carefully so as to be able to testify in court that he had searched for and could not find it, evidence of lack of sincerity and truthfulness; but what more natural than for him in his desire and determination to do the utmost he could to find the paper to feel and say "It *must* be there among my father's papers where it was left years ago—it must be there," and to request his brother who had for all the years had possession of the house to search very carefully, so that if it could not be found that the testimony required by the courts of such careful search would be at hand. The apparent discrepancy between these statements is, when looked upon in a reasonable and natural way, a proof of the genuineness and honesty of the witness.

VIII.—That Mr. Adams' testimony is all false.

(*a*) The learned Ordinary (fol. 128) falls into another error of fact growing out of his presumption that a crime has been committed, and that Mr. Adams' testimony is all perjured. He says, referring to Edward Adams finding the will and recognizing the package from Henry C. Adams' description of it, "At this instruction, although if he speaks truly twenty-two years had passed since he had seen the package, during which time his mind had been engrossed on an absorbing work, he described it so accurately that although it was not endorsed his brother had no misgivings regarding it, and when Adams himself saw it he was so confident of its contents that he declared it and suffered it to be put away unopened." There is no statement in the evidence any where by Mr. Adams or any one else that twenty-two years had passed from the time he had seen the package after the will was executed until it was found by his brother in 1890, and the learned Ordinary's implied charge that Mr. Adams speaks falsely in saying that it was twenty-two years, is entirely groundless. He could not make such a charge if he had in mind the facts as they are shown in the evidence. It is true that Mr. Adams testified very clearly and distinctly that the will had been enclosed and sealed up in this reddish brown envelope in July, 1868, and that Mr. Gordon had given it to his (Adams') father, and had requested the latter to keep it in his custody; but Henry C. Adams no where says that he did not see the parcel many times thereafter during his father's lifetime, nor does he say anything from which a fair inference could be drawn that he had not seen it often. On the contrary the inference, if not a necessary one, is at least extremely reasonable from the testimony that he did see it frequently. On page 11 of the testimony he says, in answer to the question where his father put the package: "Well, he had it for some time in his safe, but the safe was taken away, etc." Henry C. Adams made his father's house at Woodbridge his home (although he was frequently ab-

sent) from 1868 to 1875, and no doubt had free use of the safe. His intimacy and friendship with Gordon continued during those years. He was engaged largely in literary pursuits, and was doubtless much of the time at the Woodbridge mansion. He may have seen this parcel a thousand times during those seven years from 1868 to 1875. It is highly probable that he did see it frequently. But if he had never seen it after 1868, there would be nothing unusual in his memory of the package. It was a home-made envelope, constructed in the absence of a proper one, and the mind often retains such trifles as this when more important matters are wholly forgotten. Go back to 1868 and see if your memory does not recall some trifling details when important events have faded away.

(*b*) The learned Ordinary proceeds (folio 128) thus with his insinuation that Mr. Adams' testimony is perjured: "This wonderful memory stands in marked contrast with the uncertain groping forgetfulness with regard to the originality of the draft of the will, and Mr. Gordon's real or pretended application to him for the will itself."

It is true that Mr. Adams' memory in regard to the draft of the will was indistinct and uncertain. He evidently thought in talking with Doane, Cuthbert Gordon and with Mr. King, that the paper which he had and which was deposited with the Secretary of State was the orig-inal draft of the will, and he so testified. There were evidently several drafts of this will. It is obvious that this must have been the case in the construction of a document so long and with such complicated provisions. Mr. Adams testifies (36,/456) that there was at least one other draft, but does not say there was only one other. The number of drafts would not naturally impress itself upon the mind of the witness, but the fact that many changes had to be made, and that there was a great deal of difficulty in getting the paper into its final shape so as to be satisfactory to Mr. Gordon would impress itself. The witness says (1456): "Number 1 was the first attempt to make a will for Mr. Gordon

from memoranda, which he gave me." If the Number 1 referred to was the first attempt to make "a will," there were, no doubt, drafts made from which Number 1 was drawn. Mr. Adams remembers Mr. Gordon's having given him memoranda for changing this Number 1, and says: "We made the changes in it, I believe, and from that drew another, that is Number 2." Mr. Adams thinks Mr. Gordon took away No. 1 with him, and that he, Adams, retained No. 2, and that No. 3 was the paper executed, namely, Exhibit P. 1. This would leave No. 2 in Mr. Adams' possession, and this, he thinks, is the draft before the court, Exhibit P. 236. Very likely in addition to draft Number 2, Exhibit P, 236, Mr. Adams had another draft of the will. How easy it would have been for Mr. Adams to have been mistaken as to whether this so-called original draft, Exhibit P. 236, was draft No. 2, or a preceding draft The black ink portion of it may very easily have been a draft made prior to draft No. 1. Mr. Adams may have had it along with draft No. 2, and before giving the latter to Mr. ~~Adams~~ Gordon in 1875 or 1876, may have made the changes in red ink then. It would be a matter of but a few minutes to make the additions in red ink, and doing so would (not being a matter of importance) not be likely to impress itself upon Mr. Adams' mind. He had always had in mind that he wanted a copy and had a copy in his possession. He had the original draft in his possession at least until 1875 or 1876, when Gordon spoke about making a new will. Then if he gave the original to Mr. Gordon, and retained a copy, which he made to agree with the original by a few moments' work, it would be by no means strange that he should forget having done so, not having had occasion to think about the matter much for many years, and that after many years had passed he should still think he had the original draft.

The fact that he drew the will of Mr. Gordon, making at least two drafts before he got it satisfactory; that Gordon executed it at his father's house; the various circumstances connected with that important transaction, and the fact that he himself wanted to keep a copy and had a

copy of it, would naturally fix themselves clearly in his mind. Later circumstances might fade from memory.

Mr. Adams' memory shows the characteristics usually found in memories of people of advanced years. These characteristics are universally recognized.

The courts frequently take notice of the fact that "the usual concomitant of old age (the absence of which would be surprising) is the loss of memory as to recent occurrences." Eddy's Case, 32 N. J., Eq. 705.

Perhaps the most recent case of importance in which this characteristic of old age has been recognized and great regard given to it, is that of McClaskey vs. Barr, 54 Federal Rep., 781. In that case a witness by the name of Barr 77 years old testified with great clearness about certain matters which occurred when he was a boy, which had fixed themselves in his mind for certain reasons, detailed in the opinion, and as to other things of a more recent occurrence his testimony was confused and contradictory. "He was 77 years old when he gave his "deposition, and his testimony as to dates in "addition to being inferential, is so uncertain and "varied that it must be disregarded. But he details "one circumstance with the clearness and exactness "which often characterizes the statements of those "advanced in years in reference to events of their "early life, and that is that the will was probated "and admitted to record; that he was present when "the executor took it from the house; that he saw "his eldest sister get it; that he saw it, and saw her "hand it to the executor at the gate, but was not "present in court when it was admitted to probate." His testimony on this point is,further, "that the will "was sealed up,—he did not know by whom; that it "was sealed up the first time he ever saw it, and "endorsed as the will of Robert Barr, and that it "could not have been over one month after the death "of Robert Barr that the will was taken out of his "house and given to the executor; that it was at the "first term of the Orphans Court after his death. "It is not strange, nor does it discredit him, that the

"witness, seven years past three score and ten, was "in the course of a cross-examination drawn out to "502 questions, confused and contradictory, and "that his memory was at fault as to dates—which do "not so much impress themselves upon the young. "Nor is it stange that the incident of his boyhood "of the delivery of the will to the executor, so "coupled in his mind with the then recent death of "his great-uncle as to be of special significance in "fixing the time, should abide in his memory in his "old age."

Henry C. Adams was 73 years old when he gave his testimony. His memory exhibited all the characteristics of his age, being tenacious in regard to many of the things that occurred many years before, less clear and distinct in regard to more recent events. He had, shortly after the will itself was probated in common form in the court and when the draft of the will was opened, some sort of questioning in his mind about the draft, growing out of the fact that the draft was on white paper and the will itself on blue paper, and an impression had been in his mind that the draft had been on blue paper (p. 1624); and he appears to have been troubled somewhat in his own mind to such an extent that he spoke of the matter to counsel. The reason of this questioning as it came to the surface of his consciousness, was the difference between the color of the paper in the draft and in the will. That difference was a thing that was palpable to him and excited inquiry. Counsel suggested that possibly he may have got white paper (he thought he had no white paper at the time, but only blue paper), from his father or Mr. Gordon, and he at once saw how that might easily happen, and after recalling the past felt sure that this was the original draft and dismissed the matter from his mind and told counsel that he might set their minds at rest because he was convinced that this was the original draft and that his questioning was probably what he termed in his quaint speech a "vaporing of his mind" (pp. 1625 1657). Both Mr. Adams and the counsel then dismissed

all question from their minds as to whether the draft (Ex. P. 236) was the original or not, and Mr. Adams gave his testimony to the effect that it was the original draft, and (on cross-examination) that the red ink interlineations were made at or about the date of the execution of the will in 1868. Subsequently the contestants offered evidence tending to show that the red ink interlineations had been written with cosine ink, which was not discovered until 1874, and the red ink interlineations assumed an importance which they did not have before that time. The perplexity which had before troubled the witness came to his mind, and he wondered if after all, he could be mistaken about this being the original draft; whether he could have made a copy later and have given Gordon or some one else the original draft. He recalled the fact that Mr. Gordon had some time between 1875 and 1877 spoken of his desire to make another will, and had asked him where this will which had been executed in 1868 was (p. 1625), and that Mr. Gordon had said that he wanted this will for the purpose of making another will, because his business had been very prosperous and his property had accumulated, etc. The witness says he remembers telling Mr. Gordon that he presumed the will was among his (Adams) father's papers, over which he had no control, that if it could not be found there he (Henry C. Adams) had the original draft (p. 1625).

David Bennett King, the attorney who had the first interview with Mr. Adams in regard to this draft, testifies that Adams spoke to him at this first interview, of Mr. Gordon's telling him that his (Gordon's) circumstances had changed, and that he had become more prosperous and wanted to make another will (p. 1658).

The more Mr. Adams thought about it and tried to recall, the more he was in doubt and perplexity as to whether Exhibit P. 236 was the original draft or whether he had given Gordon the original draft in connection with the conversation referred to, and had before doing so made a copy. There were some transactions—a link or two in the chain of events—which he could not recall and which troubled him. We submit that it is not an un-

common experience in connection with events that have occurred years ago, that one who has had to do with them will find himself trying in vain to recall a link here and there which has for some reason slipped away, and sometimes the more one tries the more confused, uncertain and perplexed he becomes about it. There is then nothing strange about Mr. Adams' state of mind in regard to this draft. He says that Mr Gordon spoke of wanting the original draft, and if he asked for it the witness certainly must have given it to him (p. 1626), and if he gave him the original draft, it would be in accordance with his habit to keep an exact copy because of the great importance of the paper and of the difficulty of getting it into its final form as approved and executed by the testator. (1626, 1627.) He thinks it would be in accordance with his habit to have made his copy a fac simile of the original, and it is evident that it would be in accordance with his habit as a lexicographer dealing with the exact quotations and phrases of old authors, which abound in the published volume of his glossary that he would be as exact and careful as possible if he undertook to make a copy.

(*d.*) There is, however, in all this testimony not the slightest ground for the declaration of the Ordinary (fol. 131) that in this ordeal (the examination about the draft) "he (Adams) avowed a mental inclination and habit to simulate writings." He did say it would be in accordance with his habit to make a fac simile of the original draft. This he might very well do without any inclination to simulate writings in the sense in which a forger simulates. The two things are entirely distinct and different, and the Ordinary most unjustly presumes that they are identical. It is true that Mr. Adams' mind was confused, groping in uncertainty during his direct and cross-examination in reference to this draft, but that confusion, uncertainty and groping about are indications (if we regard it with our minds free from presumption that he is a forger and a perjurer, and with the proper and reasonable presumption that no crime has been committed) of Mr. Adams' extreme conscientious-

ness and honest desire to recall the exact events. Were he the "shrewd and able lawyer" with "keen insight to human nature" and "many years of experience in weighing the value of testimony," capable of the "most cunning devices consistent with probabilities," prone to "moral obliquity," capable and guilty of forgery and perjury, as the Ordinary presumes he is, he would not have been uncertain and troubled; his mind would not have been groping about trying to recall the exact fact, and the links which had slipped away, but he would have boldly asserted that he recalled the exact facts, and would have no doubt simply and directly given a version of the transaction which could not have been open to these insinuations and unfavorable presumptions in which the Ordinary indulges. We submit, then, that Mr. Adams' testimony upon this branch of the case, is evidence of thorough going, simple minded honesty and integrity rather than of perjury; and we ask the learned judges of this court to read with care and minds free from any bias against this witness, pages of the testimony 1624 to 1658 on this subject. See also proponents' brief before Ordinary, p. 133, "The War of the Red Inks."

IX. Unwarranted presumption that secrecy on Henry C. Adams' part was a badge of fraud.

The learned Ordinary, in arguing the case against Henry C. Adams, says (fol. 122): "The conduct of this witness with regard to the disclosure of this paper is marked with clandestinity."

What secrecy was there in all of Mr. Henry C. Adams' course in reference to this will that deserves the Ordinary's stigma?

(*a*) Mr. Gordon requested that Mr. Henry Adams take care of the will and keep it secret (Testimony, page 9). Probably the majority of men who make wills wish to have the fact of their having done so, and the character of the provisions which they have made, kept secret.

It can hardly be argued that secrecy in the lifetime of

a testator in regard to a will having been made and its provisions is a badge of fraud.

(*b*) The Ordinary says in regard to the letter to Cuddy Gordon (folio 124), "that it most significantly suggests an air of secrecy and mystery calculated to awaken the suspicion that caused Cuthbert C. Gordon righteously to demand a straightforward declaration of the truth and purpose of Mr. Adams." It is difficult to see how Mr. Adams' simple invitation to Cuddy Gordon to say nothing to any one, but come straightway and see him, could be tortured into any such proof of wicked intent as the Ordinary presumes it to contain; nor is the Ordinary warranted in the assertion that the letter awakened the suspicion of Cuthbert C. Gordon and led him to "demand a straightforward declaration of the truth and purpose of Mr. Adams," and that "the object of Adams' visit to Cuthbert C. Gordon had not been made known," and that the "father's "patience with mystery was exhausted," and that Cuthbert C. Gordon had determined that his son should force a disclosure, and that there was a mysterious scheme that annoyed them. The simple facts are that Adams had spoken to Mr. Gordon about this will; that Gordon had said that he was too old to undertake a contest, and that Mary had made "fair promises." Then Mr. Adams thought young Cuddy having rights under the will ought to know about it, and that it was better that he should see the young man alone and tell him quietly. So the letter "say nothing to any one but come straightway to me, etc.," was written. In reply Cuddy wrote that his father wanted to know what Mr. Adams wanted with him. In this there is no indication of annoyance, no suggestion of a mysterious scheme, no evidence that Adams did not make known the object of his visit to Cuthbert C. Gordon, no proof that suspicion was aroused in the minds of any of the parties, or that they had any doubt about the straightforwardness and honesty and good purposn of Mr. Henry C. Adams. Nothing connected with these communications between Adams and Cuthbert C. Gordon and Cuddy can fairly be

construed unfavorably toward the witness. The secrecy suggested was entirely natural and proper. The contestants and the Ordinary have censured Mr. Adams for not telling more people about the will. In this instance Mr. Adams after telling the senior Gordon, went a step further and tried to communicate with the son who had a large pecuniary interest in the will, and pursued the only natural course in asking the young man to come to him; but we find the contestants and the Ordinary censuring this friendly act, and claiming that it is such "clandestinity" on the part of Mr. Adams as shows fraud.

(*c*) The unfair and unwarranted presumptions of the Ordinary in regard to the silence of Mr. Adams about this will from the time he endeavored to communicate the facts regarding it to Cuddy Gordon down to the time of the communication to Messrs. Black and King, have already been referred to. There is in this reserve of Mr. Adams no evidence of any desire to conceal the fact that such will had been made and that he had a copy, nor that had he known any member of the Gordon family who desired to have the will probated, he would not have used his best efforts to find and probate the original, or, being unable to find that, to have probated the copy, the original having been lost. All the evidence in regard to this course indicates that he would have done what he could to have the wishes of his old friend, the testator, carried out. Under the circumstances he did more than most men would. The Ordinary could have made a better argument than he did on this point by urging that Adams showed too much zeal for one who was not the custodian of the will, and had merely a copy in his hands.

(*d*) The letter to Messrs. Black & King the Ordinary unfairly insinuates (folio 124), suggests a scheme and mystery calculated to awaken suspicion, and this epistle is considered of so much importance that His Honor inserts it in full in his brief (folio 34). The indications of a desire for secrecy in this letter are,—First, that it is marked "private and confidential." Doubtless had it been an open letter sent to Messrs. Black & King by way

of the newspapers, the learned Ordinary and the contestants would have been satisfied that no fraudulent "clandestinity" was lurking any where at this section of Mr. Adams' course.

The second indication of secrecy is the suggestion that Messrs. Black & King should bring "no brass band, fife or drums." It is evidently another way of suggesting that they come quietly without talking of the matter so as to arouse great expectations or stir up a sensation. Now these indications in this letter of a desire to avoid publicity are perfectly natural. Mr. Adams is a quiet retiring scholar, with the well known characteristics of a man of books and research, avoiding newspaper notoriety and everything sensational. His attention had been called to the Mary Gordon will contest, and the fact that cruel injustice had been done to the family of his deceased friend by an article in the Evening Telegram, with the very sensational title, "Battling for a Fortune." He knew nothing of the lawyers he was addressing and did not wish his letter made a part of a newspaper sensation. He had a lawyer's natural shrinking from having the facts of a case published and generally talked about before the case is tried; a desire to avoid trying a case first "by newspapers." The natural and ordinary course for a lawyer in Mr. Adams' position was to ask the attorneys for the Gordon heirs to have an interview without publishing the fact abroad at all, and to tell such representatives that he had a draft or copy of a will of the testator and what it contained; that he thought perhaps the original could be found, and that if not it was possible by a suit in chancery to probate the draft or copy—and to talk over with them the matter and ascertain whether they and the legatees under the will thought it wise to undertake the search for the will, or to probate the draft if the will could not be found, and they would naturally do this without telling their neighbors or acquaintances that a new will had been discovered, or something was going to happen over in New Jersey, and that sensational developments might be expected. We submit that the opposite course, the one which the Ordinary and con-

testants would apparently approve, would be justly censured by all reasonable lawyers and business men.

(*e*) The Ordinary says that Mr. Henry C. Adams, on going to Woodbridge to find the will, first "by himself alone took a survey of the premises," indicating that this showed a fraudulent "clandestinity" of purpose, but in the first place there is no evidence that he took a survey of the premises alone. We do not know who else besides himself and Edward were in the house at the time. Certainly for a portion of the time he was there there was company at the house. Mr. Adams says (p. 38): "I did not let Edward know what I came for. I took a survey of the premises myself." It does not follow that he was alone. When he did not find the will he told Edward to search for it. How this simple natural action could be tortured into anything wicked it is difficult to see, and it is one of the minor matters, insignificant indeed in itself, but to which the Ordinary evidently attributes an evil meaning and design on the part of Mr. Adams.

(*f*) His Honor, apparently grasping after some proof of Mr. Adams' fraudulent clandestinity, specially notes (folio 38) that "on the outside of the envelope in which he sent this letter (the letter announcing the discovery of the will) he endorsed the word "Eureka." What possible unfavorable inference can be drawn from Mr. Adams' action in writing on the back of the envelope the word "Eureka" it is difficult to see, and yet His Honor regards it as of enough importance to remark upon it, apparently, as another indication of moral obliquity (fol. 38).

"The next day," the Ordinary continues, "with two lawyers he (Adams) went to Rahway and identified the package found by Edward as that which contained the will" (folio 38). What inconceivable wickedness must possess the soul of the man who goes with two lawyers!! Besides, from the text of the Ordinary's opinion it would seem that these two lawyers were independent of this proceeding, and solely interested in protecting and forwarding Adams' presumed scheme of fraud and forgery,

whereas the testimony shows (29, 40, 61, 93), although the Ordinary does not allude to it, that the lawyers were Messrs. Black & King, attorneys for the proponents and for the heirs of the testator. Has not the Ordinary, as is usual in cases where human nature assumes to make serious charges, fallen into the same lack of frankness which he charges against counsel and attorneys in folio 101 of his opinion?

The learned ~~counsel~~ Ordinary also animadverts upon the fact that Mr. Adams identified the package found by Edward as that which contained the will, "although it was not then opened, and was not endorsed in any way to indicate the character of its contents, and he had not seen it, if he is to be believed, for more than twenty-two years" (39). We have already commented sufficiently upon His Honor's error in saying that Mr. Adams stated that he had not seen the package for 22 years, but we refer to this passage again because of the Ordinary's animadversion upon the fact that the package was deposited unopened. Had it been opened we should unquestionably have had the Ordinary commenting upon that as an indication of fraud or an opportunity for its commission.

We especially urge upon the learned judges of this court, most of whom have themselves been practising lawyers for many years, and engaged in many civil cases in the courts of this State, to examine carefully all the evidence bearing upon these various matters in reference to which Mr. Adams maintained a secrecy which the learned Ordinary has thought fit to call by that ill-favored epithet "clandestinity", and see whether or not Mr. Adams' acts are not characteristic rather of a high-minded, honorable man with high sense of decorum and propriety, than an evil-minded man, bent on some scheme of fraud and plunder.

X.—Presumption of truth on part of contestants' witnesses, not of proponents'.

The learned Ordinary having presumed that the revolting crime of forgery and perjury had been commit-

ted, and that proponents' case rested upon such shocking crimes, views the evidence of the proponents with disfavor—that of the contestants with favor. For example, Mr. Adams testified that the red ink interlineations were made in 1868. The contestants undertook to overthrow this testimony, to destroy its effects and to break down the witness. The Ordinary, in regard to their course, says, "with a view to testing the truth of this testimony the contestants submitted the draft to scientific experts, etc." (fol. 91). When, however, His Honor comes to the rebutting testimony of the proponents, which he might have spoken of as "for the ~~very~~ purpose of testing the truth" and accuracy of the evidence given by contestants' experts, we did not find any such assertion on his part intimating that the proponents are acting in good faith, but the very contrary is insinuated, for he says (92) "the effect of this testimony, which was *by no means destroyed* by the opposing witnesses," etc. His Honor insinuates that contestants' witnesses were called "solely for the purpose of testing the truth," but that proponents' witnesses were called for the purpose only of destroying the testimony given. A careful examination of the testimony given by the ink experts shows that the evidence given by the witnesses for the proponents was quite as much "for the purpose of testing the truth" and bringing out the facts as was that given by contestants' experts.

Third.

THE ORDINARY'S INCONSISTENCY IN REGARD TO DECLARATIONS.

The learned Ordinary has fallen into another singular error, growing out of his presumption that this will is a fraud and a forgery, and Mr. Adams a forger and perjurer. The testator had told several persons that he had made a will, and that Mr. Henry C. Adams had drawn it, and besides, papers and letters were offered in evidence to show declarations of the testator. Most of this ev-

idence was offered by the proponents, who claimed that declarations are admissible, when the question is simply forgery *vel non*. The learned Ordinary rules out all of this evidence. The appellants claim that this was an error of law and will later on endeavor to maintain their contention. The significant fact to which we now direct attention is that the so-called Brooklyn will, which is nothing more or less than a declaration by the testator, is made use of constantly by the learned Ordinary in endeavoring to overthrow the disputed paper, which proponents had proved by direct and positive testimony to be the last will and testament of Geo. P. Gordon. The proponents did not on the trial object to the admission of this Brooklyn will but welcomed it for the purpose of comparison of the testator's intentions as shown therein, but they submit that the use made of it by the Ordinary, who ruled out all declarations, was an indication of bias and prejudice on his part.

(See page 36a for continuation)

Fourth.

UNWARRANTED IMPUTATION UPON THE GOOD FAITH OF THE COUNSEL AND ATTORNEYS FOR PROPONENTS.

The learned Ordinary charges the attorneys and counsel for proponents with lack of frankness in presenting the case to the court, referring particularly to their course in regard to Mr. Adams' perplexity about the draft noted above. His Honor says (folio 101): "It is impossible to study this remarkable case at this point only without grave doubt as to the truthfulness of Mr. Adams, and indeed as to the frankness with which the case was produced to the court in behalf of the proponents." We submit that this imputation is wholly unwarranted by the facts as shown in the testimony. When Mr. King had his first interview with Mr. Adams, the latter showed him a paper purporting to be a draft or copy of the will (36). Mr. Adams allowed Mr. King to make a copy, retaining the original himself. Later

Third—continued.

We submit, further, that other declarations of Mr. Gordon, construed as helpful to the contention of the contestants, have been used by the Ordinary, notwithstanding his ruling.

He ruled (fol. 116): "I refer to declarations of Mr. Gordon which *make for* and *against* the authenticity of the disputed paper as his will. I received this evidence under objection, that I might, in the determination of the case, pass upon its admissibility and *use or reject it according to* my conclusion * * (fol. 120), I therefore decide against the admissibility of the declarations. *This extends to the evidence upon both sides.*"

Did he so extend his ruling? He did, as far as proponents' witnesses testified to such declarations. (See proponents' Brief before the Ordinary, pp. 109, 111.) But how about declarations that made "*against* the authenticity" of the will? In addition to the Brooklyn will referred to above, with the exception of one letter written by Mr. Gordon to VanWyck (Testimony, p. 611) contestants only offered, by way of declarations, certain letters written by Mr. Gordon to his wife, some seven or eight in number, and dated between July 27, 1868, and May 5, 1872 (pp. 613–617). These were so offered after proponents' *prima facie* case—and for the express purpose, as contestants' counsel then stated, (p. 616) "of contradicting Henry C. Adams' statement as to the relations existing between Mr. and Mrs. Gordon at the time of the will * * * which is to my mind a very important matter in this case when a will of such provisions as are contained in this alleged will is presented for probate—"

Proponents duly objected to their admission on the ground that testator's declarations were not competent (p. 616), and also on the ground that the evidence referred to by Mr. Miller "was all evinced by his own cross-examination" (as indeed it was; see pp. 79–82), and the Ordinary directed (p. 616) that the ruling should be reserved until the final argument—and he ruled thereon, in his opinion, as above stated.

Yet, notwithstanding his ruling, we find him using these very letters to make "*against the authenticity*" of the will, at folio 89 of his opinion:

"That provision"—for testator's wife—"has so attracted attention that the proponents have offered evidence that Mr. Gordon was jealous of Mr. VanWyck, which the contestants have *essayed to rebut by letters of Mr. Gordon, which abound in expression of endearment and devotion to his wife.*"

It was a queer way to "rebut," when the letters that "essayed" to do it went in, at p. 617, on May 27, 1891, and proponents did not offer their evidence until afterwards! but what we complain of is that contestants have obtained all the advantage, from declarations, in the Ordinary's opinion, that they would have obtained had they been admitted in name as well as in fact, while the door was hermetically sealed against the proponents.

Mr. Beckett went with Mr. King (31) to Mr. Adams' house, and compared this copy and conferred about it. Mr. Adams promised, as soon as he was through with some pressing business in the New York Surrogate's court, to go out to Woodbridge, where his father, who had been given the custody of the will by Mr. Gordon, lived and died, and see whether he could not find the will itself in the Adams house which his brother had occupied most of the time since his father's death. In the brief delay that occurred before this could be done, Mr. Adams and the attorneys felt it important that the draft or copy should be put in some safe place in the event of accident or Mr. Adams' death (1457, 1458) which was accordingly done, and the paper was brought to Trenton and deposited for safety with the Secretary of State, the clerk of the Ordinary's court, in an envelope endorsed "for use of Black & King for probate." Soon afterward Mr. Adams went out to Woodbridge, where his brother was living, and made a survey of the premises to see whether he could find the original will, but could not do so, and thereupon told his brother Edward L. Adams about it, and in the belief that the original could not be found, requested Edward to make a further careful search of the whole premises so that in view of the probability that the draft would have to be probated, Edward having had possession of the premises almost constantly since his father's death, could make the sort of affidavit required by the court on the probate of a lost will (38). Edward L. Adams accordingly made a more careful and thorough search and on the second day found the parcel that had been described to him by his brother Henry C. Adams (83, 90, 91). Edward then informed his brother, who at once wrote to Messrs. Black & King that Edward had found it and would meet him the next day at Rahway between one and two o'clock (64). Edward G. Black and David Bennett King, the attorneys, went to Rahway with Henry C. Adams and were by him introduced to his brother Edward, who produced the package containing the will (61, 93). The attorneys were evidently satisfied with Mr. Adams' ident-

ification of the package, and on the legal and reasonable presumption that honesty rather than fraud is the prevailing characteristic with men, did not break the seals of the envelope so positively identified by Mr. Adams. There was some talk of what should be done with the paper, but it was left in the custody of Edward L. Adams, and subsequently deposited in a safe deposit company in Newark in the presence of the Adamses, Edward G. Black and Louis V. Booraem, from which place it was taken direct to the Ordinary's court for probate and by him opened and admitted to probate in common form (89, 129). After its probate in common form and some time in or about the month of June, 1891 (1656, 1645), the draft of the will was opened in the presence of the Ordinary and attorneys for the parties (1143). Mr. Henry C. Adams was also present.

The draft had been deposited with the Secretary of State the 20th day of October, 1890, and it was opened in court June 4th, 1891 (1458), several months having intervened. In the meantime the original will had been found and produced before the Ordinary and probated and Mr. Adams had given his direct testimony in regard to the draft and execution of the will. When he saw this draft opened, however, it occurred to him that it was strange that the draft should be on white paper, while the will was on blue paper, and he could not understand it. His recollection was that he used only blue paper then, and he could not recall a link or two in connection with the matter, and his inability to do so perplexed and troubled him (1645). He accordingly mentioned it to Mr. Gilbert Collins and Mr. Charles Henry Beckett, two of the counsel for proponents. They did not regard the old man's perplexity as of great importance, because it seemed to them that it would have been natural for him even though he had no white paper of his own, to have gotten some white paper from Mr. Gordon or from his father, Henry Adams. There is nothing in the evidence to indicate that it was more than the most casual conversation between Mr. Henry Adams and the counsel, although as it turns out the Ordinary has seen fit to

charge these gentlemen at folio 101 of his opinion with a lack of frankness toward the court only to be equalled by the untruthfulness of Mr. Adams. They made the suggestion to Mr. Adams which evidently occurred to them on the spot, and the aged witness, on thinking the matter over, dismissed the subject from his mind, and told the attorneys that it was probably a "vaporing" of his (Adams') mind, as he had become convinced that the draft was the original one. Some months afterward, in September, 1891, Mr. Adams so testified (1455 to 1459, 1657) and that he had no doubt about it.

The Ordinary seems to argue that it was the duty of the attorneys, when Mr. Adams was giving this testimony, to bring out the fact that the witness had at one time been in some doubt or perplexity about whether this was the original draft or not, and that there had been a link or two in his mind which he could not recall; and that a duty devolved upon them to make manifest to the court each casual intellectual process in the mind of the witness since he had come under their observation. The attorneys did not and do not regard Mr. Adams with those preconceived notions of moral obliquity which in their judgment warranted any such inquisitorial espionage, nor did they think that good faith to the Court required them to have all the intellectual processes of the witness spread upon the record. In fact they had no reason to doubt that Mr. Adams' conclusion was correct, and they ~~are~~ were still of that opinion. When, however, on thinking the matter over, the doubt and perplexity recurred to Mr. Adams' mind, after this testimony was given, and after the red ink experts called by contestants had testified—the attorneys, as a matter of good faith to the Court, recalled the witness and had him testify as to his doubt and perplexity about this original draft.

The attorneys for the proponents filed the original draft with the Secretary of State, thus preserving it; the attorneys for the proponents requested the Chancellor to have it produced; the attorneys for the proponents, after the Chancellor had produced it, offered it in evidence; the attorneys for the proponents, on finding that Mr.

Adams really had entertained some perplexity as to whether the draft was the original or a copy, recalled him for the purpose of stating to the Court such expressions of uncertainty and perplexity. Notwithstanding such conduct upon their part, showing the utmost frankness, they find at fol. 101 of the Ordinary's opinion that they are stigmatized with a lack of frankness. What more could they possibly have done in the interest of frankness and good faith?

And after all, upon what foundation, both as against Mr. Adams and the attorneys for the proponents, do these charges of the Ordinary rest? Upon the theory, and the theory alone, that the draft contains amendments or interlineations in eosine ink, and we submit ~~it~~ that it is begging the question to start with that theory, because it is still an open question (by no means a vital question) in the case whether or not the red ink interlineations are eosine, and it is another instance of His Honor's presumptions in favor of the contestants, to assume that it has been established in this case, that the red ink interlineations are eosine. It was shown beyond doubt by the proponents' red ink experts that the red ink interlineations could have been made of aurine ink. This was met by contestants' experts with the assertion that aurine ink (1625) would fade, and that had the red ink on the draft been written with aurine (coralline) ink it would before then have entirely faded out. The proponents' experts, however, entirely overthrew this evidence by showing that aurine ink properly made would not fade out, producing the patent granted for it in England some years prior to the date of the will, producing accounts of its qualities in the scientific publications, and producing samples, which have now been written two years, and which are now here before the Court, and show no disposition whatever to fade out. The testimony of the contestants' experts tending to show that the red ink was made of eosine was fully met and overcome by the evidence of the proponents' experts. It was certainly a remarkable thing, and another proof of the weakness and

unreliableness of expert testimony, that the learned experts called for the contestants should all have sworn that there was no substance known in 1868 from which a red ink could be made which would have the qualities of the ink in question. The experts for proponents, among whom are Prof. Cornwall of Princeton, and other gentlemen of highest standing among scientists, showed beyond question that aurine was such a substance, that it was known and in use for making red ink in 1868 and prior thereto, that its color and the gold bronze iridescence which characterized it made it more nearly approach the writing in question than did the samples written in eosine ink produced by contestants, and that when treated by hydrochloric acid it turned more nearly the shade produced in the ink in question when treated with hydrochloric acid than did the eosine samples which the contestants brought forward, and finally when, in their extremity, the contestants' experts claimed that the ink would fade (1625) or changing color become almost white within twenty-four to forty-eight hours (1623), the proponents' experts proved that if properly made such ink would not so fade (1666, 1677, 1678), producing samples of writing in aurine ink which had been written some time before, which samples are now exhibits in this case, and are presented herewith.

The whole argument in the opinion as to the untruthfulness of Mr. Adams in regard to the draft and lack of frankness of the counsel (90 to 103 inclusive) in reference thereto, is based solely upon the presumption that the red ink in the draft is eosine, and we submit that the same has not been established, and that the preponderance of evidence is strongly against that theory.

Fifth.

THE LEARNED ORDINARY FELL INTO SERIOUS ERROR IN CONSIDERING THE QUESTION OF THE ALLEGED IMPEACHMENT OF THE CHARACTER OF HENRY C. ADAMS FOR TRUTH AND VERACITY. (Folio 103 to 107).

The evidence showed, and it was not disputed, that Mr. Adams left Fort Plain and came to Woodbridge in New Jersey in 1868; that he has not resided in Fort Plain since that time, but has resided in Woodbridge and Englewood in New Jersey, also for a short time in the City of New York, and for the past thirteen years in the City of Orange in this State.

The contestants called two witnesses to impeach his veracity. These both came from Fort Plain or the vicinity. One of them, Cushney, was thoroughly impeached and discredited by proponents' witnesses, and shown to be utterly unworthy of belief. Not even does the Ordinary dare mention the name of Cushney in his argument for the contestants. The other witness who came "voluntarily," with his expenses paid, was one Frothingham Fish, who appears at one time to have been a Judge of the Supreme Court of New York, and who testified that he had heard that Adams, a quarter of a century ago, when practicing law at Fort Plain, drew affidavits more strongly than the facts warranted. The proponents called numerous witnesses from the same place who had known Henry C. Adams from boyhood, and had been his neighbors, and they all testified that his reputation for truth and veracity was good and had always been good.

(See on this point the outlines of the testimony in proponents' brief before the Ordinary, p. 153).

One of these witnesses, it will be noted, had been a sheriff of the county (Testimony, p. 1066); another a justice of the peace; another a merchant; another a promi-

nent business man; another manager of the Western Union Telegraph Company; another the postmaster; three others were lawyers, etc., etc. These fellow-townsmen, were certainly much more representative men than Frothingham Fish, and they had ampler opportunities of knowing the reputation of Henry C. Adams in the community than had Judge Fish, who lived at Fonda, fifteen miles from Fort Plain.

The learned Ordinary attempts to clear Mr. Fish from the charge that he swore falsely, which naturally occurs to any one who reads his testimony and then reads the testimony of the numerous witnesses for proponents, which is directly antagonistic to him, by saying, "I apprehend that a reconciliation of the difference between the witnesses must be, if at all, not by throwing out the testimony of the Judge, but by concluding that he knew of a reputation which did not become so general as to reach the gentlemen who differ from him." The Ordinary himself by here acknowledging that Fish had knowledge of a reputation that was not general, but limited, admits that Adams was not successfully impeached, even were Fish uncontradicted, and had no witnesses been called to show that Mr. Adams' reputattion was everywhere good. The authorities are very clear on this point. (See proponents' brief before Ordinary, page 190). The gentlemen who differ from him were neighbors who well knew Mr. Adams, and the circumstances which led Frothingham Fish to come two hundred miles from his own State to impeach the character of a man of whom he spoke as his "friend" are such as to throw grave suspicion upon his fairness and his interest in the cause of truth and justice. When his testimony is flatly contradicted by forty other witnesses in a better position to know than he, the conclusion must be adverse to him. Numbers must prevail, other things being equal.

Kentner vs. Klein, 14 Stew., 422.
Katzenback vs. Holt, 16 Stew., 530.

A great cloud of witnesses came from Orange, where Mr. Adams has lived for thirteen years, men of every

station in life, and gave the most positive testimony as to the excellent character of the witness for truth and veracity in the community in which he dwells. The attention of the Court is invited to this list of citizens, well-known in Orange, who are unanimous in their support of Mr. Adams' character. The learned Ordinary endeavors to break the force of their testimony by saying (fol. 106): "Many witnesses speak of Mr. Adams' reputation for truth in Orange for the last twelve or thirteen years, but those witnesses testify of a man retired from active life whom they had occasion to meet under circumstances which did not try his true character."

It is not true as the Ordinary states that Mr. Adams had retired from active life. He had retired from the active practice of the law, but he was engaged in business, because numbers of these Orange witnesses testified that they met him on business matters, that they saw him often and knew him well and knew his reputation well, and the course of His Honor in rejecting this testimony or treating it in a disparaging way can only be explained when we remember how, at the very outset of his consideration of the case, he erroneously indulged in the presumption that Mr. Adams is a forger and a perjurer.

The Court of Appeals of the State of New York, in a recent case, People vs. Wood (126 N. Y., p. 259), in commenting upon the course of the Judge who tried the case, say: "The record then shows the following most extraordinary proceedings." The proceedings referred to were rulings on evidence and characterizations of witnesses showing that the Trial Judge at the outset presumed the witness guilty of fraud and perjury. At page 269, the Court proceeds:

"The learned Judge, in his zeal for the due administration of justice and for the punishment of crime, stepped wholly outside of his province in stigmatizing, in the language used by him, the character of the witness by whom the counsel for the defendant offered to prove the facts above alluded to. Under the circumstances it was very much in the nature of a charge to the

jury, and it was duly excepted to. It was unfair to the witness * * * The statement that she ought not to be believed if she gave such evidence, and the assumption by the Court that she instigated defendant in the commission of the crime, were most damaging to the witness in regard to the testimony which she did give in the case, for the offer presupposed the willingness of the witness to testify to the very facts which the Court said ought not to be credited even if sworn to by her, &c."

It is a strange and remarkable fact that this same Trial Judge, condemned in such strong terms by the learned Court of Appeals of the State of New York, was the same Frothingham Fish who voluntarily came two hundred miles from his own State to swear away the character of this venerable witness, his own former neighbor and friend.

The whole of this extraordinary proceeding referred to by that learned Court, is found at page 8 of the Court of Appeals, 1891, First Div. Vol. 19, and as the Editor of the New York Sun remarks in the issue of that paper of March 26th, 1893, *a propos* of Judge Fish's rushing into print to criticise the decision of the New York Court of Appeals in the Carlyle W. Harris case: "It is impossi-

"ble to read the report of the Wood case without
"reaching the conclusion that the views of the Hon.
"Frothingham Fish in any criminal case must
"lack that element of judiciousness which alone
"could give them any value or importance."

The same is no doubt true as to his views on the credibility of witnessss.

Sixth.

GROUNDLESS INFERENCES DRAWN BY THE ORDINARY FROM THE CONTENTS OF THE DISPUTED WILL.

The learned Ordinary, in his argument against the validity of the paper propounded considers that the fact that the testator orders and directs (50) that "my entire

estate, both real and personal, owned by me at my decease shall stand pledged as a security and be liable for the payment of such bond or bonds or either of them, with lawful interest upon the same." (The bond or bonds referred to being those that may be given for the purchase of the Adams farm, which purchase the testator directs shall be made in a certain event) indicates that Henry C. Adams was so anxious to be sure his father's farm would be purchased at an enormously high price that he inserted this paragraph in the will which he forged. In the first place it does not appear that this language adds anything to the obligation which the trustees would be under by a simple direction to them to purchase the property and give a bond and mortgage to secure, if necessary, a part of the purchase price. The entire estate would be pledged in that event to the payment as much as it is by the language used.

The learned Ordinary also says (folio 46) "a lower price than $32,000 does not appear to have been contemplated." It is, however, unfair to presume that the executors would have paid $32,000 for the property if it could be bought for $16,000, merely because the will authorizes and directs them to keep the offer of $32,000. The trustees would have no right to squander money of their estate, and besides Doane, and Cuthbert Gordon and Beebe, the executors and trustees under this will, were all interested in the residuary estate. It is incredible then that they would pay three times as much for the Adams farm as it was worth. The price named was one which the elder Adams was not willing to take and at that time all were looking for higher and not lower prices.

Then the learned ~~Chancellor~~ Ordinary finds much that is against the validity of the document and to show Mr. Adams a forger and perjurer in the fact that Cuthbert Gordon, A. Sidney Doane and Charles Beebe, who were named as executors and trustees in the will, were all given a large interest therein, so that each one of them would have a strong personal interest in having the paper probated, and its validity sustained (57 to 60). His Honor says Cuthbert C. Gordon was given a "fixed pecuniary inter-

est in the probate of the disputed paper and a particular interest in the purchase of the Adams farm, &c." "A. Sidney Doane was bound to the will by similar interests in the patents and residue, a liberal provision for his mother, etc." "Neither of those executors would take one dollar if the testator should die intestate. Charles Beebe had been engaged to marry Mary Gordon but he pre-deceased the testator. He was interested, but not so strongly, etc." The inference which the learned Ordinary draws is that these three executors and trustees were each given large legacies by Mr. Adams as bribes to induce them to support a forged, fraudulent and spurious paper. In other words His Honor presumes fraud and not honesty, and here again he has fallen into the gravest error. Worse yet he makes Mr. Adams surpass Machiavel in cunning, for, preceiving as he does, that Beebe was dead at the time he fixed the forgery he concludes that Adams gives *him* an interest also as "ear-mark" of genuineness.

If we turn to the so-called Brooklyn will, we find that in that will the executors named were this same A. Sidney Doane and Henry Du Bois Van Wyck. Mr. Gordon had stated to Mrs. Doane that by reason of his brother Cuthbert's advanced age, he had not named him as an executor in the Brooklyn will. The residue of the estate was not disposed of by this Brooklyn will, but Doane was given a very large interest. The Ordinary admits that this paper showed Gordon's testamentary intention. His Honor, to be consistent, should regard Doane's large interest as an evidence that the Brooklyn will was fraudulent and that the criminal who devised it had bribed Doane by giving him such interest, & If the Ordinary's theory upon this point is correct, and the fact that persons who would not inherit in case of intestacy are left large legacies and made executors is evidence of fraud and perjury.

Great stress is also placed by the learned Ordinary upon the fact that in this disputed paper the legacies to the testator's sisters are to be postponed until after the legacy to his brother Cuthbert C. Gordon, which

legacy includes the purchase of the Adams' farm. It is nothing strange if Mr- Gordon should leave a very large legacy to his only brother who had male offspring surviving, and direct that provision for this legacy should be made before legacies should be paid to his sisters and nephews and nieces. It is admitted by all parties that Gordon was even at the time of this will in 1868 a wealthy man, worth several hundreds of thousands of dollars (1628). He was buying property at very high prices. The experts for the contestants say he paid $500 an acre for some of it (679) and some people thought it worth $1000 (703). The matter of paying $32,000 for a farm for his brother and nephews would not to a man in his circumstances be a remarkable thing.

The learned Ordinary adopts the contention of the contestants that the provisions made for Mr. Gordon's deceased widow was a meager one, and that this provision is an outcropping of Mr. Adams' revenge for an indignity which he suffered at the hands of Mrs. Gordon and also the contestants' argument that Gordon's letters to his wife abounded in such expressions of endearment as to rebut the idea that he was jealous of her and would naturally have made a somewhat meager provision for her. There is no evidence to show that the provision for Mrs. Gordon was a meager one. The law makes a reasonable provision for a wife by way of dower. Adams as a lawyer knew, Gordon as a business man knew that Mrs. Gordon would be entitled to her dower right, if an inadequate provision should be made for her in the will. It is further to be noted that the letters to which the learned Ordinary has recourse for his argument are declarations of the testator offered for the purpose of overthrowing this will, and on the Ordinary's own ruling were inadmissible. Nevertheless he bases an argument upon them against the validity of the paper in question. It is further to be observed, that the love which His Honor finds the testator has shown by these letters to have had for his wife, is entirely consistent with the jealousy which proponents have shown by

numbers of disinterested witnesses that the testator had at the time of Van Wyck's attentions to her (Testimony), pages 760, 1210, 1269—1274, 1453.

The Ordinary's unfair inference from the paragraph of the will directing the purchase of the Adams farm from Mr. Henry Adams or his grantees or assigns:—

The learned Ordinary argues that words the "heirs, grantees and assigns" are an indication that the Adams farm had been conveyed or assigned at the time the disputed paper was drawn, and that it was in view of this fact that the heirs, grantees and assigns are used in the disputed paper. This inference is wholly unfair and unwarranted. On the presumption of honesty of the instrument, the plain inference is that Mr. Gordon wished to buy the Adams farm for his brother Cuthbert, and that it was not essential to his plan to buy from the Adams family. In order to carry out this desire and purpose it made no difference to him who had the farm; he wanted that farm for his brother's family, and was willing that they should be paid a certain price, not then excessive, for it, and so he provides merely that his executors and trustees may buy the farm, not from Henry Adams only, but from Henry Adams or "his grantees or assigns." The natural inference therefore does in no way militate against the integrity of the paper, but strongly supports its honesty and validity. Precisely the same provision is made and the same words used in relation to the Compton lot. (Exhibit P. I, Article V.)

Seventh.

THE LEARNED ORDINARY ERRED IN HOLDING THAT TESTATOR'S DECLARATIONS WERE INADMISSIBLE ON THE QUESTION OF FORGERY *VEL NON*.

Some authorities on this point are cited by the proponents in their brief before the Ordinary (Point IV, p. 179). The Ordinary cites in support of his erroneous position the case of Boylan vs. Meeker (4 Dutch., 274),

but overlooks the fact that the question before the Court then was very different from that before this Court now. The question before the Court then is clearly stated by Van Dyke, J., at page 184, as follows: "Can a will, duly and solemnly made and abundantly proved, be overthrown by such declarations?"

The Court there held with good reason that a will properly made and clearly proved by direct testimony cannot be overthrown in this way. This was the precise point at issue in that case, and the only point there at issue, and that decision applied to the present case would go only so far as to hold that this will produced by the proponents and proved by direct and positive testimony to have been duly executed by the testator, George P. Gordon, as has been done, could not be overthrown by any declarations, if there were any, of the testator, that he had not made a will. In fact, the case of Boylan vs. Meeker does not go even so far as is above indicated, because in that case the contestants undertook to overthrow the will by proving that the testator had made many declarations in regard to sundry other wills, but had never made any declarations about the will in question.

The learned Chancellor also cites the case of Rusling vs. Rusling (9 Stew., 603, 608), where Mr. Justice Dixon enumerates the exceptions to the rule excluding hearsay evidence. The learned Justice on page 608 cites, with approval, these exceptions as enumerated by Jessel, M. R., in Sugden vs. Lord St. Leonards, 1. P. D., 154, 240, and does not find on considering these exceptions that declarations of a testator, offered to show undue influence, are among the exceptions, and holds them therefore not admissible in that case. The Court did not touch upon the questions whether such declarations are admissible where the question is simply forgery *vel non*, but in the case of Sugden vs. Lord St Leonards, cited with approval by Mr. Justice Dixon, and from which he adopts the exceptions to the rule as stated by Jessel, M. R., the question was whether declarations of a testator before and after the execution of his will are, in the event of its loss, ad-

missible as secondary evidence of its contents, and the English Court held that they were admissible, and after enumerating the exceptions above referred to, quoted with approval by Mr. Justice Dixon, proceeds to discuss "the principle which underlies all these exceptions;" the Court says:

"In the first place the case must be one in which it is difficult to obtain other evidence, for no doubt the ground for admitting the exceptions was that very difficulty; in the next place the declarant must be disinterested, that is, disinterested in the sense that the declaration was not made in favor of his interest, and, thirdly, the declaration must be made before dispute or litigation, so that it was made without bias on account of the existence of a dispute or litigation which the declarant might be supposed to favor. Lastly, and this appears to be one of the strongest reasons for admitting it, the declarant must have had particular means of knowledge not possessed in ordinary cases."

"Now all these reasons exist in testifying both as to matters of public and general interest, and as to matters of pedigree, and some, if not all of them, exist in the other cases to which I have referred. They all exist in the case of a testator declaring the contents of his will. Of course, as in the case of pedigree, the courts must be cautious in admitting such evidence from the very nature that it is evidence not open to the test of cross-examination; it is very often produced at second or third hand, and it is therefore particularly liable to lose something of its color in the course of transmission. It is so easily and so frequently fabricated that all courts which have to dispose of such cases, must be especially on their guard."

"But that goes only to the question of the weight to be attributed to the evidence when admitted; it does not go to the question of admitting the evidence itself, and I must say it appears to me that having regard to the reasons and principles which have induced the tribunals of this country to admit exceptions in the other cases to which I have referred, we should be equally justified and equally bound to admit it in this case."

The principles so clearly stated by Jessel, M. R., are exactly applicable in every respect to the question of forgery *vel non*, and the learned Judges of the English Court of Appeals have so held and so applied them in Gould vs Lakes (6 P. D., 1). The question was whether or not a page inserted in or annexed to a will was a part thereof, or had been surreptitiously inserted or attached, and declarations of the testatrix were offered on this question. The Court held on the authority of Sugden vs. St. Leonards, that such declarations were admissible for this purpose; and in considering the question say (page 5):

"The present question is whether these two papers are joined together or were before the testatrix at the time she signed, but the question of law would not be different if the suggestion were that the first sheet was a forgery or an interpolation by somebody after the event, in such a case could it be said that in order to establish that this sheet was a genuine part of the will evidence could not be given of a statement of the testatrix before she made the will, that she was going to dispose of her property in the manner in which it appears to be left in the paper alleged to have been interpolated, and in my opinion it is also the law that statements to the same effect subsequent to the making of the will would also be admissible to show what was the state of of the testatrix's mind and intention just as it would be an ingredient in the consideration whether or no the supposed interpolated sheet were a part of the will at the time of the execution."

It is very clear then that under the above decisions of the ~~Supreme~~ Court ~~of this State~~ in Rusling vs. Rusling, the declarations were admissible to rebut the charge of forgery.

The same thing is also true under the decision of the United States Circuit Court in Stevens vs. Van Cleve (4 Wash. C. C., Rep., 226), which was cited with so much approval in Boylan vs. Meeker. In Stevens vs. Van Cleve, the Court held declarations generally inadmissible, "unless where offered to repel a charge of fraud, circumvention or forgery." The precise question

was before the Court in Turner vs. Hand (3 Wall, Jr., 88, 92, 110), and the U. S. Circuit Court held such declarations competent upon the issue of forgery *vel non*, and in the United States Supreme Court, in Adams vs. Norris (28 How., 353), testator's declarations were held competent as suppletory proof that testator had made the codicil and was acquainted with the contents of the instrument where it was charged that the signature was a forgery.

In addition to these and the other authorities cited by the proponents before the Ordinary, we desire to direct attention to the recent case of Riggs vs. Howell (32 N. E. Rep., 482), where it was claimed that the endorsement upon a note was a forgery, and the holder of the note offered declarations of the deceased endorser's intentions to show that such endorsement was not a forgery. It was held on appeal by the Supreme Court of Illinois that "this proof was competent as directly tending to show that such a gift as here claimed might probably have been made; that it was perfectly consistent with his avowed purpose and feeling. How far it should go in connection with other evidence was for the Court, but we think that it was plainly relevant."

The force of such testimony must, in the very nature of things, always depend upon circumstances. In the case at bar before the Ordinary, the proponents proved Mr. Gordon's declaration showing that he had made a will in 1868, and that Mr. Henry C. Adams had drawn it (Testimony, p. 1277, 1453, 752, 779, 787, 736, 754, 1195, 727, 728, 1043, 1044, 1045 and 1048). Such evidence on the simple question of whether or no these signatures are a forgery ought to have great weight. They make it certain to the mind of an intelligent man that George P. Gordon executed the will in question and that the signatures are genuine, and that the foul and revolting charges of fraud and forgery and perjury which the contestants make against the venerable Henry C. Adams are untrue.

Eighth.

THE BROOKLYN WILL.

The Ordinary endeavors to draw an argument against the validity of the will in question from a comparison of its language and provisions with the so-called Brooklyn will. The latter paper was offered in evidence by the contestants to show a genuine signature of the testator. Proponents thought they saw some similarity of its phraseology to that of the will here in question, whereupon a searching analysis was made by them which resulted in the demonstration that the draughtsman of the one had the other or a copy of the draft before him. This discovery and demonstration were due to proponents and not to contestants. (See Brief before the Ordinary, point 27, p. 115.) It is clear when pointed out, but by no means apparent at a glance, and it escaped notice until some time after the trial began. The argument there presented was the first intimation to the adverse counsel of this feature of the case. The proponents saw its supreme importance, and made a comparison and collation of the similar provisions and phraseology of the two papers for the information of the Court. If it is apparent that Thorne, who drew the so-called Brooklyn will in 1873, had before him a draft of the will now propounded, receiving it, as must have been the case, from Mr. Gordon himself, it becomes apparent that the disputed paper represents the testamentary intentions of Mr. Gordon in 1868.

Of course there was always the alternative that the will now propounded had been built up from the so-called Brooklyn will after the same had been propounded and denied probate in Brooklyn, for it might be argued, that a forger could get success to the document in the Surrogate's office, and with it as a guide, reconstruct a system of testamentary dispositions as of 1868. This alternative we show in our brief before the Ordinary to be absurd, but absurd as it is, contestants' counsel grasped at the shadow and opposed nothing else to our argument,

and the Ordinary accepted it, and has done what counsel for the contestants did not attempt to do—worked out a plausible argument for that theory. Premising that "upon comparing the two papers, it is impossible to escape the conclusion that one of them must have been before the draughtsman of the other," he asks the question (fol. 69) "which was copied from the other," and concludes that the draughtsman of the will of 1868 probably framed it after 1878 (the year in which Gordon died and in which the will of 1873 was propounded in Brooklyn), using this Brooklyn will as a guide and adopting its phraseology.

Henry C. Adams of course drew the will now propounded. The period when he was in close relations with the testator was 1868; therefore, argues the Ordinary, he dates the will he is about to manufacture as of that year, and laboriously proceeds to reconstruct the then existing situation, throwing in provisions intending to make it an object to Cuthbert C. Gordon and others to espouse the will, and all for the pitiful increase that might come to his (Adams') share of his father's estate, if he could bring about a sale of it under the terms of this alleged will. The Ordinary himself sees how inadequate is the motive, but he says that Henry C. Adams was a man to whom a little might mean a great deal, who was needy and hard pressed for money. We have already shown how utterly ridiculous all this seems when we look through the testimony and discern what manner of man Henry C. Adams truly is, and how much more pecuniary advantage he would derive in merely joining in a decree to set aside his father's deed of trust than he could possibly get from consummating this scheme of fraud and forgery and perjury.

If the Ordinary is all wrong, and the inherent evidence shows that Adams did draw a will for Gordon in 1868, that Gordon had a draft of it, and that he himself may have handed it to Thorne as a guide, and directed changes, that Thorne drew the will of 1873 upon those lines, and Gordon signed it, to what extremity are the contestants driven? Absolutely nothing is left for them

except the presumption that Gordon, although he meant to make this will in 1868, for some reason did not sign it, and that Adams has taken the final draft and forged to it the signature of the testator and the signatures of the three witnesses in recent times. This last theory is so preposterous as to need no serious discussion.

Let it be noted that Mr. Gordon mentioned to several persons the fact of this (Adams') will having b en executed by him. He spoke to Mulvaney before its date of the great importance of every man's making a will (1277). Just before the date of the will he declared to Mrs. Burlingame his intention of making a will (1453). He spoke of it also to Baumann (752, 779, 787) in the summer of 1868, both before and after the will was made. In 1870 he told the proponent, his sister Adeline J. Gordon (1195), in 1872 he told Amos P. Barbour, the manager of his business (727–728), and in 1876 he told Mrs. Doane that he had made a will, and that Henry C. Adams had drawn it (1043–4–5–6). These witnesses all stand unimpeached and uncontradicted. No reason is shown why any of them should speak falsely. The Ordinary excludes this testimony, but we submit that it is admissible, as we have shown, where the question is simply forgery vel non. The learned Ordinary in the argument which he had drawn in support of contestants from a comparison of the two papers says (Fol. 71) in reference to two passages cited by him, and also by proponents in their brief before him at pages 117 and 121: "Did Mr. Thorne depart from the accurate statement of Mr. Adams or did Mr. Adams, pursuing Thorne's idea, make accurate a loose and incorrect statement?" "It appears to me to be more reasonable to infer that one who stops to think and change, would do so to make right that which is wrong rather than to deliberately blunder from right to wrong." This is a plausible conclusion, but our observation upon it is that the answer to the question depends on the nature and the habit of the man who is adapting the paper. If he is a blunderer he is pretty certain to make right wrong rather than to do the opposite; if he has a strong tendency

to brevity and conciseness, the chances are that he will regard a careful and comprehensive statement as too prolix, and cut it down. It is obvious that Thorne was inaccurate and a poor lawyer; that he did not understand the law of wills, and was a blunderer, because he used inapt language in his so-called Brooklyn will and did not see to it that it was duly executed. This raises a presumption against his accuracy. His general style is brief and concise, sometimes to a fault, and it would be in keeping with his style to cut down and abridge the more full and rounded and detailed style of Adams. The probabilities certainly are that in the two passages in question he copied from Adams, rather than Adams from him.

In folios 73–75 the learned Ordinary arrives at a similar conclusion in reference to two other passages which we cited before him (see Brief before the Ordinary, pages 116 and 121), but the same observation applies to this comparison as to the preceding one. Thorne has a brief business-like way of putting things, but is a blunderer, not learned in the law nor accurate, and to him the well rounded, accurate full phraseology of the learned lexicographer who knows what he is talking about, and what the proper term is to describe it, seems prolix and verbose, and he proceeds to cut it down in his bungling way, just as he proceeded to have the will executed by some short cut, which was inaccurate and rendered the document invalid. At folio 77–78 the learned Ordinary also infers in reference to other passages cited before him that Adams is copying from Thorne, and refers to the fact that in the draft of the disputed papers the words "and form" are interlined in black in Mr. Adams' handwriting, showing that that interlineation "was an immediate afterthought of a critical copyist." But this is not a fair inference. In making this draft Mr. Adams was copying from a preceding draft of his own, which was imperfect. Moreover one in writing a draft, not copying, might easily omit necessary words or phrases, and immediately there-

after observe the omissions and insert them. Such interlineations do not really show anything.

But there is one point in connection with this comparison that we confidently submit establishes beyond question the proponents' contention that Thorne copied from Adams. It was not drawn to the Ordinary's attention.

In the disputed paper (Article I; see brief before the Ordinary, p. 117) the following language is found, "I give and devise the same to my wife Lenora M. Gordon, her heirs and assigns forever." The legacy left to Lenora M. Gordon in the disputed paper is real estate, and the words "I give and devise" are apt and correct words for such a legacy. The word "heirs," however, is not an apt and proper word, where the gift consists of personalty merely, as in paragraph second of the Brooklyn will. The blunderer Thorne, in the will which he drew, undoubtedly followed the copy. (See Brief before Ordinary, 117.) He says, "I give to my wife Lenora M. Gordon, her heirs and assigns forever, the sum of $100,000." Poor lawyer as he was, he would not have used a word so inapt as heirs in that connection had he not been following copy.

The copy which he is following is undoubtedly the expression in the Adams will, "I give and devise the same to my wife Lenora M. Gordon, her heirs and assigns forever." In the disputed paper we find the following language (Article 1, § 1): "Now in case I secure the title to that piece of land and am the owner of it at my decease, I give and devise the same to my wife Lenora M. Gordon, her heirs and assigns forever." This is perfectly apt language for real estate, but even the merest tyro would not use it for personalty as Thorne does, unless he were following copy and therefore did not observe its glaring inaptness.

Another curious corroboration—not noticed when preparing proponents' brief before the Ordinary—of the theory that Thorne copied from a draft of Adams's will, is in the fifth paragraph of the Thorne will (Record, p. 69, Exhibit D. 65), Thorne writes. "I give to my nephew

A. Sidney Doane, *his heirs and assigns forever*, the sum of ten thousand dollars, also an equal one-fourth part of each, all and every patent or patents granted to me by the United States for improvements in printing presses," &c. No real estate is devised by this paragraph. Turning to Adams's will and draft—for convenience see the will, Exhibit P. 1, as printed in the testimony at page 1712—(Art. IV.) we find Adams writing "I give to my nephew A. Sidney Doane, *his heirs and assigns forever*, one equal one-fourth part of each, all and every patent and patents," &c.

Thorne simply inserts "the sum of ten thousand dollars; also *an*" (instead of "one,") leaving the rest of the quoted words unchanged. He must have known that the word "heirs" was entirely inappropriate as to a money bequest. What he thought about it as to a bequest of patent rights we cannot tell. When he came to the provision for Cuthbert C. Gordon in his paragraph 16 (Record, page 71), he omits the phrase contained in Adams's Art. III., "his heirs and assigns forever." In proponents' brief before the Ordinary (page 123), we suggested a reason for this omission. That may be the true one, or it may be that he discarded the words because of their inappropriateness to personal estate, overlooking the same condition when he copied the Doane bequest.

Now the curious fact is that pedantic Mr. Adams, in applying "heirs" to patent rights, as he did throughout his drafts and will (Arts. II., III., IV., VI. and VII.), was, as usual, correct in diction, for the patent laws have always used this word. True, the courts hold that the use is not technical and that patents are personal property, but the choice of the word by Mr. Adams shows the accuracy of his learning, while Mr. Thorne's use of it in the one case and omission in the other shows that he was "following copy." Where Thorne omitted the word he did so because he thought he had discovered an error; where he used the word he overlooked the supposed error just as in the bequest to Mrs. Gordon above alluded to he failed to note the changed situation and also "followed copy."

Ninth.

INHERENT EVIDENCE DEDUCIBLE FROM THE DRAFT EXHIBIT P. 236.

It is more important to establish what are the facts with regard to the evolution of this paper than to discuss *pro* or *con* Mr. Adams's recollection in that regard. The theory of contestants is, that—having committed him to the position that the paper, in its present state, including the red ink interlineations, existed in 1868, and that from the paper in that state he engrossed for execution the will now in dispute—they demolish proponents' case altogether by proving that the red ink was made from a substance (eosine) not known in the Arts until 1874. Proponents' counsel argued before the Ordinary that to prove that the red ink was eosine, only proved that Mr. Adams was mistaken in his belief that Exh. P. 236 in its present state was the identical paper from which he engrossed the will for execution. Mr. Adams on recall testified that if it were not, it must be a *fac simile* which he must have made when, for some reason, the draft—which he knew he had retained at the time of the execution of the will—had passed out of his possession. He remembered that Mr. Gordon had once asked him where the executed will was, that he had told him that it was among his father's papers but that he had a draft of it, and it may well be that he had given him the draft; if so, he must have reproduced it. This, of course, was sheer argument with himself to account for hypothetical facts, and although under badgering of cross-examination, when sick and feeble, he seems to tell a conflicting story, yet it is very plain when his entire testimony on recall is read, that what he means is this, viz: That the paper Exh. P. 236 in its present state had lain in the drawer of his study table for many years, and he had come to think of it as the original draft from which the will was engrossed, and firmly believed this when he so testified; that in a vague, uncertain way he had been "perplexed" by the fact that while the executed will (first brought to

his view after its execution in 1868 when taken from its envelope to be proved before the Ordinary) was written on blue paper, this supposed draft was on white—but this perplexity did not shake his conviction that it was nevertheless the original draft from which he engrossed the will; that it being suggested that the red ink was eosine, and therefore that Exh. P. 236, so far as red ink is concerned, could not have been in existence in 1868, he can only say that, if such is the case, he must have given up the original draft, and if so, have reproduced it so as to still hold a copy of his work; that he remembers Mr. Gordon asking for the will and his telling him that he had the original draft; that it would be like his habit to make a *fac simile;* that he does not remember any such occurrence, but that such an occurrence was not only possible but very probable—although entirely faded from his mind, and therefore his "perplexity." The white paper matter had been mentioned to Mr. Beckett and Mr. Gordon's request had been incidentally mentioned to Mr. King, and the testimony of these gentlemen can not but be helpful to the court as bearing upon Adams's good faith and sincerity.

A careful examination of Exh. P. 236 made since the Ordinary's decision in this case has led proponents' counsel to a conclusion deduced from its inherent evidence which reconciles all apparent discrepancy in Mr. Adams's testimony, explains everything and greatly strengthens the case in favor of the will.

It will be remembered that Mr. Adams testified that he made two drafts before engrossing the will as finally executed. These he designates as No. 1 and No. 2 and —the one executed—as No. 3. He further testified that after he had drawn No. 1 he gave it to Mr. Gordon who returned it with suggested changes. He then drew No. 2 which Mr. Gordon took and which was supposed to be final, but Mr. Gordon wanted other changes and Mr. Adams noted those in red ink on No. 2 and from that paper drew up No. 3 which was the will afterwards executed. The testimony will be found in the printed volumes at pages 36 and 1455 *et seq.* Mr. Adams's

memory when testifying was that Exh. 236 was his draft No. 2 or (if Mr. Gordon took that away in later years) a *fac simile* or reproduction of it. He says that when Mr. Gordon took No. 2 for examination he took also No. 1 again and, so far as Mr. Adams knew he (Adams) never got back No. 1. It is not necessary to impress upon this Court how easy for unimportant details of a long past transaction to have become confused or even confounded in memory. The purpose of the present paragraph of this brief is to establish by inherent evidence found in Exh. P. 236 the following theory, namely:

Exh. P. 236 before there was any writing done upon it *in red ink*, and minus the signatures, is a first rough draft of Mr. Adams's No. 1, which from that was regularly drawn for execution. The No. 1 so drawn was the paper Mr. Gordon retained, and it became the source of the so-called Brooklyn will drawn by Thorne in 1873. From it (after the changes desired by Mr. Gordon) Mr. Adams drew his No. 2 (that Mr. Gordon took with No. 1) and returned with notes for changes. Mr. Adams made changes in red ink thereon, and then from that drew No. 3, which became the executed will, which Mr. Adams kept his No. 2 as a memento of the affair.

Now, if it be true that Mr. Gordon about 1875 asked for this "original draft" of the old will of 1868—presumably to aid in the preparation of the codicil which in the "Brooklyn Will" of 1873, he says he intends to make —how natural for Mr. Adams, before parting with it, to note in his *first rough draft*, in red ink, the changes shown on this No. 2, then surrendered. The transaction would, just as naturally, fade from his memory, and after long years the paper thus produced would lie in his mind as the "original draft" from which he had engrossed the executed will as to all intents and purposes it is. On the other hand it is just as much a fac simile of the "original draft" and there ceases te be anything extraordinary in Mr. Adams's reproduction taking that form, while the argument of forgery drawn from the use of eosine ink falls to the ground. How strong, too, is the inci-

dental argument for the genuineness of the whole transaction?

We have produced in *fac simile* this Exh. P. 236 so that each member of the court can follow the oral argument which we think will be convincing of our theory. It would serve little purpose to detail it here. Much of it depends on indications plainly perceptible to the eye, but difficult to write down. When attention is called to them the court will take pleasure in following them out as well as in discovering others, for the more the document is studied the more clearly the theory becomes established.

The red ink interlineations would embody both sets of changes unless indeed those first made had been already noted on the rough draft as to which we can only conjecture. If they had been and the later interlineations were made with eosine (or aurine) ink we should expect to find *two kinds of red ink* on this document. Had the present theory occurred to us during the trial this might have been investigated. Now the examinations must be superficial; but there is certainly the appearance of two kinds of red ink. Take the original document (for our *fac similes* of course have only one kind) and hold it so that the light will fall across the lines and it is plain that the "bronze iridescence" characteristic of both eosine and aurine inks is missing. This is particularly true as to the last line but one on the first page, and the words "shall advance" on the last line. The "d" added to "advance" and the concluding words "and completed" are in some sort of aniline ink, but the first part of the sentence seems not to be. Singularly enough the word "improvements" in this sentence was one of the words selected by the Ordinary for the hydrochloric acid test and to the casual observer that word does not seem to have turned orange yellow as have the other words tested. Proponents' counsel would not perceive any change at the time of the test but the expert thought he could (Testimony, page 542). Of course for this observation reference must be had to the original document. If there be two kinds of red ink on the document the case for our theory and incidentally for the

genuineness of the will is incontrovertible, but that condition of affairs is however not at all essential to the theory; for there may have been no red ink interlineations *on the rough draft* at the time of the changes in No. 1.

Another thing to be noted is that while the black in writing in Exh. P. 236 is clearly *original* work showing the operation of the writer's mind (and comparison with Exh. P. 1 will show by slight differences that it was not a copying—assuming P. 1 to be just like Mr. Adams's No. 2) the red ink writing *is* just as clearly *copying*. For example, see the last two lines in red, on the first page, above referred to, where the word "be" is omitted and the last red line on the eighth page where the word "or" is unnecessarily written and then erased. The court will see other instances.

Note also that the attestation clause in Exh. P. 236 differs from that in Exh. P. 1. Of course we don't know how that clause ran in Mr. Adams's No. 2, but if it was the same as Exh. P. 1, we may infer that Mr. Adams enlarged as he wrote and when he came to make his notes on the rough draft did not notice that there was any change; else he would have noted it *in black* as he did such changes as caught his eye—See the interlineation "expr. by deed her" and the change of "elect" to "election" on page two. This is in darker ink than the other black ink writing, and is of the same shade and was doubtless written at the same time as the signatures. Those signatures, written as they are in a different shade of black are a most conclusive proof of our theory, just as their difference in order from Exh. P. 1 (John before Alonzo instead of *vice versa*) is a proof of genuineness of the will. Mr. Adams testified that, on his No. 2, he had a day or two after the execution of the will written the names of the witnesses from memory. The mistake in order is one of those side lights that so often establish a truth. Had he been forging he would have had them alike.

When Mr. Adams hastily noted on his rough draft the changes which made it conform to his No. 2 then surrendered, he evidently purposed to make a fair copy

at his convenience. This is evident from his abbreviation "expr." on the second page and his marginal notes at Articles III and IV "Put this below" and "Put this above," as cautions for copying. Hence there is no significance in the fact that these guide marks are written with aniline ink.

Exh. P. 236 is pregnant with inherent evidence of the genuineness of the will to which it appertains.

Tenth.

COMPARISON OF HANDWRITING.

The learned Ordinary made a most unfair comparison of the disputed signature of the testator with a single one of his admittedly genuine signatures. (Folio 116.)

One of the things most clearly demonstrated on the trial was that the testator's signature showed a wonderful variety. The contestants at first produced only samples of signatures made by testator to checks and attempted to mislead the Court into supposing that such standards represented testator's signature. The proponents, however, showed that Mr. Gordon signed his name in an unusual variety of ways, and instead of limiting their standards to a few checks, produced many letters and documents which the testator had signed, so that the Court might be fully informed in reference to the great variety of testator's handwriting. All these standards are now before this Court as exhibits.

For convenience a large number of the signatures have been photographed in juxtaposition and bound together so that the similarities and diversities between them and the signature may be more readily observed, and the same has been done with the signatures of the subscribing witnesses. Those photographs are numbered Pl. 1 to Pl. 13, inclusively.

A glance at the photographs Pl. 2 to Pl. 6 of the Gordon signatures will show how unfair it was for the learned Ordinary to place the disputed signature beside one of testator's signatures of a special class which differed

widely from his ordinary signatures and then say lo and behold the forgery! This is just what His Honor has done.

If, as His Honor claims, Mr. Adams copied from the so-called Brooklyn will, we should expect to find "the forger" copying the signature of that document, and to see on the disputed paper a signature of Geo. P. Gordon of the same type as that on this Brooklyn will. But we find as a matter of fact on the disputed paper a signature of a different type, i. e., of the type ordinarily used by Gordon in his letters and correspondence. The Brooklyn will signature is the last one on Pl. 6, and is of the same type as are the other signatures on Pl. 6, which are all check signatures, and differ very materially in most important characteristics from the ordinary signatures of Mr. Gordon as shown in the numerous photographs of standards in Pl. 2 to Pl. 5, inclusive. It would seem very strange if "a shrewd and able lawyer," "capable of the most cunning devices consistent with probabilities" and prone "to moral obliquity" engaged in constructing an elaborate fraudulent will, and copying from a rejected will of the testator, for that purpose, did not also imitate the signature thereto which he intended to forge. It is no avoidance of the absurdity to say that Adams may have relied upon a record—since contestants produced the original itself from the files in the Brooklyn Surrogate's office. "A shrewd and able lawyer" would not be satisfied with a copy.

The experts noted that in all four of the disputed signatures there were certain "heavy club like lines," due to a superabundance of ink, or other causes. The proponents' experts showed that this might be due to dampness of the paper or thickness of the ink, or a peculiarity of the pen, or to all of these causes. Contestants' experts in some respects at least corroborated the proponents' testimony on this point (Testimony, pp. 857, 912, 895, 1121, 1123, 1496. Appendix to proponents' brief before the Ordinary, p. 14). See testimony as to condition of paper and the weather at that time (Proponents' Brief before Ordinary, p. 69). It

would be natural to expect that the four signatures written with the same ink and pen and upon the same paper, and under the same circumstances would each show similar characteristics produced by anything extraordinary in the ink, pen or paper. A photograph of the disputed signature of the testator is found at the bottom of Pl. 1, and photographs of the disputed signatures of the three subscribing witnesses at the tops of Pl. 10, Pl. 11 and Pl. 12. Making due allowance for the "heavy club-like" appearance of the lines in these disputed signatures, already accounted for, they bear a very close resemblance to the admittedly genuine signatures. The standards photographed in Pl. 2 to Pl. 7, show that Gordon frequently produced "heavy club-like" lines in his ordinary writing. Good illustrations will be found in the third signature from the last and in the last signature on Pl. 4, where the lines are much more heavy and club-like than in the disputed signature, and in Pl. 8, where a portion of a letter (Exhibit P. 55) is photographed, and the lines are much heavier than in the disputed Gordon signature. And on the same photograph there are reproductions of a portion of Exhibit P. 205, showing numerous "heavy club-like lines," as in the word "good." The photograph Pl. 9 is a reproduction of a letter (Exhibit P. 115) which the testator wrote "with a steel sharp point pen." It will be noted that while the letters are small, the lines are comparatively heavy and the writing cramped, showing that the testator, as he says, bore hard on his pen. If he wrote with a steel *blunt* pointed pen instead of a steel sharp pointed pen he would no doubt make just the sort of signature we have to Exhibit P. 1. Unfortunately this letter was not signed with the testator's full name. In connection with the same photograph (Pl. 9) it will be seen that as a rule in making the letter "o" Gordon, in the upward stroke, brings his pen around and makes a clear decided shoulder before running off to the next letter. Illustrations of this are found in the word "Collingwood" in the address, and in the word "off" in the first line, the words "does" and "pointed" in the second line, in the word "or" in the third line, in the words

"poor" and "work" in the fourth line, in the words "flowing" and "would" in the fifth line, in the words "own" and "dozen" and "would" and "not" in the sixth line, and in the word "woman" in the seventh line. In fact, this shoulder on the "o" is a general characteristic of Mr. Gordon's writing, as shown in that letter, and is a very frequent occurrence in Gordon's other writing, as shown in Photographs Pl. 7 and 8. It is not surprising, therefore, that we find in the disputed signatures these shoulders to the "o's". In Mr. Gordon's admittedly genuine signatures on Pl. 2 and Pl. 6 the decided shoulder on the "o" is frequently found. Good examples are seen in the Exhibits P. 202 and P. 199 on Pl .2.

The letter "G" in the disputed signature was commented upon by the contestants' experts who had only seen check signatures before them, such as are shown on Pl. 6, but a glance at the standards photographed in Pl. 2 to Pl. 5 will show that the type of "G" in the disputed signature was the one the testator ordinarily used in his writing, and many of the G's in these standards bear a very close resemblance to the disputed signature. No one of them is a fac-simile, it is true; if it were so, we should naturally suspect that the disputed signature was a forgery. The type of the "e" and "o" found in the disputed signature is also the same as that which we found in many of these standards. Likewise also the "P" in the disputed signature bears a striking similarity to many of the "P's" in the admittedly genuine writing of the testator. The contestants noted that the loop of the "P" was clear up to the top of the staff, whereas ordinarily in Gordon's signature it cut the staff some distance below the top, but we find numerous "P's in which the loop goes just over the top of the staff, as for example P. 206, in Pl. 2; Exhibit P. 61, Pl. 3; Exhibit 79, 90, and 91, in Pl. 4, Exhibit P. 22. In Pl. 7 we find a number of capital "P's" with the loop crossing just at the top of the staff. In looking at the various examples of the testator's capital "P's," we note the tendency to form a loop or curve at the top of the staff, sometimes a very slight curve and

sometimes quite a decided one, sometimes a connection with the "o" preceding. It is a remarkable fact that the experts pointed out by means of a magnifying glass this same tendency in the disputed signature, the apparent break in the top of the "P" where it crosses the staff being due, in a measure at least, to this tendency. (See Appendix to Proponents' Brief before Ordinary, p. 35.)

The letter "r" in the disputed signature "Gordon" is very similar to many of the "r"s in the admittedly genuine signatures, and in the body writing as shown in these photographs of the standards. The "n" also in the disputed signature "Gordon," including the terminal flourish, shows precisely similar characteristics to the "n's" in these standards. Take Pl. 2, for example, Exhibits P. 205, 202, 206, 73 and 55, and a glance at them will show their close similarity to the "n" in dispute.

Turning now to the disputed signature of Henry Adams, Pl. 10, we find that it closely resembles a number of Henry Adams' admittedly genuine signatures. Even the "heavy clublike lines" are found in Exhibit P. 177, and to some extent in P. 173 and 176. The letter "H" in the disputed "Henry Adams" signature has almost exact counterparts in P. 174, P. 173, P. 176, P. 177. The peculiar method of writing "enry" in the disputed "Henry Adams" is very similar to the "enry" in P. 174 and P. 175 and some of the other standards. Very close resemblance will be noted also between the word "Adams" in the disputed and admittedly genuine signatures. The peculiar method of making the "s" at the end of the word being found not only in the disputed writing but also in several of the standards. (See p. 146, 141, 137 and 177.)

The disputed signature "Alonzo C. P. Adams" has very many like characteristics with the standards as has been pointed out by the proponents' experts. (See summary of testimony on both sides on this point, Appendix to Proponents' Brief, pp. 84 to 88).

Passing now to the John Q. Adams disputed signature, the very close resemblance between the Adams portions of

the disputed and genuine signatures will be noted at once. If we have as the Ordinary suspects here an elaborate scheme of forgery, this portion of it has evidently been well done. The disputed signature of John Quincy Adams is longer and occupies more space than do some of the standards, but it is to be noted that the photograph of Exhibit P. 187 on Pl. 12 shows even a larger type of signature than that found on the disputed paper, and Pl. 13, which is a photograph of a portion of Exhibit P. 187, shows that John Q. Adams sometimes, at least, wrote a large hand in his ordinary writing. We call special attention to the type of the "J" used in the words "Jersey" in Pl. 13, as being very similar to the one in the disputed "John Q. Adams."

On this subject of comparison see our brief before the Ordinary, Points XIX to XXIV, and, for greater detail, see our "Appendix" before the Ordinary.

Eleventh.

DOMICILE.

Assuming that the decree of the Ordinary will be reversed and the probate sustained, it remains to be considered what effect is to be given to the decree. The Ordinary has avoided the subject of domicile on the theory that as admittedly there are assets in New Jersey a valid will could receive lawful probate here even though the testator was domiciled elsewhere, and presumably had he sustained the will he would have avoided that subject. This is an incorrect view, and this Court should meet the question and dispose of it. If the will is to be sustained the Court ought to inquire into the matter of domicile, and if they find it to be in New Jersey, ought to hold the property as domiciliary, so that upon that question we may have the benefit of adjudication. All parties in interest have been before the Court and fully heard, and it would be gross injustice to permit further litigation.

On this subject our brief before the Ordinary is so full that we desire to add nothing here, but respectfully refer the Court to our presentation of the facts and the authorities recited in the Court below.

Twelfth.

RECAPITULATION.

(*a*) The will is carefully and regularly drawn and has a correct attestation clause, and upon its face the execution is valid.

(*b*) The drawing and execution of the will have been proved by the clear, direct and positive testimony of an eye witness.

(*c*) The signatures of Mr. Gordon and the subscribing witnesses who are dead have been clearly proved.

(*d*) All the facts and circumstances surrounding the testator and the parties at the date of the disputed paper in 1868 are in entire harmony with the proponents, contention that the will is authentic.

(*e*) The provisions of the will were reasonable and natural in view of the testator's condition, circumstances and attitude toward the various legatees in 1868.

(*f*) The testimony of Henry C. Adams who drew the will and witnessed its execution has not been impeached.

(*g*) There is no evidence that Henry C. Adams or any one else built up and forged the will.

(*h*) The theory of forgery rests upon unwarranted presumptions.

(*i*) All the facts and circumstances which the contestants and Ordinary argued tend to show that forgery and perjury have been committed are in entire harmony with the integrity of the paper and witnesses; and the established doctrine that honesty and not fraud must be presumed, support the proponents' contention that the will is valid.

(*j*) No adequate motive was shown for forgery and perjury.

(*k*) The draftsman of the Brooklyn will followed the text of the will in question.

(*l*) A forger would necessarily have forged a codicil to the Brooklyn will (Mr. Gordon having declared in the Brooklyn will that he intended to make a codicil thereto) and have simulated the Brooklyn signature.

(*m*) It would have been impossible for any person in or about the year 1879 to have prepared the will in question to fit the circumstances of the year 1868, as this does in infinite detail without some error in fact.

(*n*) Mr. Gordon himself declared that he had made this will.

Thirteenth.

THE PROPOUNDED WILL SHOULD BE ADMITTED TO PROBATE IN SOLEMN FORM AND THE DECREE OF THE ORDINARY REVERSED WITH COSTS TO THE PROPONENTS, AND THE COURT SHOULD DECLARE THE PROBATE TO BE DOMICILIARY.

Respectfully submitted,

COLLINS & CORBIN,

Solicitors and of Counsel with Appellants.

BOORAEM, HAMILTON & BECKETT,

BLACK & KING,

of Counsel.

Dated November Term, 1893.

New Jersey Court of Errors and Appeals.

IN THE LAST RESORT IN ALL CAUSES.

Between Adeline J. Gordon and Augustus Sidney Doane, Proponents, and the said Adeline J. Gordon and William H. Corbin, Administrators *cum testamento annexo* of George P. Gordon, deceased, Appellants, and William W. Old, executor of the last will and testament of Lenore M. Van Wyck, deceased, Pauline Theresa Reitz, and Samuel Richard Ruyssenaers, Respondents.	On Appeal from Prerogative Court. Case.

Petition for Probate.

(Filed, January 17, 1891.)

To His Honor Alexander T. McGill, Ordinary and Surrogate-General of the State of New Jersey:

The petition of Adeline J. Gordon respectfully shows that George P. Gordon, late of the township of Woodbridge, near the city of Raritan, in the county of Middle-

sex, deceased, then residing as aforesaid, died at the city of Norfolk, in the State of Virginia, on the twenty-seventh day of January in the year of our Lord one thousand eight hundred and seventy-eight, having duly made and executed, as your petitioner is informed and believes, his last will and testament, in and by which he appointed Augustus Sidney Doane, Charles Beebe and Cuthbert C. Gordon his executors thereof; that said executors named in said last will and testament neglected, for the space of forty days after the death of the testator, to prove said last will and testament, and have each and all of them departed this life without applying for probate thereof or letters testamentary thereon; that said decedent left him surviving his widow Leonora M. Gordon, who afterwards inter-married with Henry D. Van Wyck and took up her residence in Fishkill, in the State of New York, and subsequently departed this life; that the said decedent also left him surviving as his only heir at law and only next of kin one child, a daughter named Mary Agnes Gordon, and that the said Mary Agnes Gordon departed this life on or about the twenty-ninth day of May in the year of our Lord one thousand eight hundred and ninety, in the city of Paris, in the Republic of France, without having married; that the next of kin of said testator are your petitioner Adeline J. Gordon, who is a sister of said testator, and Wealthy Jane Bogert, who is another sister of said testator.

And your petitioner further shows that the said testator died seized of real estate in the State of New Jersey, of the value of twenty-five thousand dollars, and was possessed of personal property to a large amount, exceeding twenty-five thousand dollars, but how much your petitioner cannot state, and has no means of ascertaining its present value, as the widow and daughter of said testator received the same, or the greater part thereof, and for many years used and enjoyed the same and are now dead.

Your petitioner produces herewith a renunciation of said Wealthy Jane Bogert to any right of administration of the estate of said testator.

Therefore your petitioner respectfully applies for probate of the said last will and testament and for letters testamentary with the will annexed be issued thereon to her and to Guy J. Minton, Esquire, of the County of Morris, whom she desires to be associated with her in said administration.

ADELINE J. GORDON.

Dated January 27, 1891.

STATE OF NEW JERSEY, COUNTY OF HUDSON, s s.

Adeline J. Gordon, of full age, being duly sworn according to law, on her oath says that she is the petitioner within named, and that the matters and things set forth in the above petition are true to the best of her knowledge and belief.

ADELINE J. GORDON.

Sworn to and subscribed at Jersey City, this 17th day of January, A. D. 1891, before me at Jersey City.

ALEX. T. MCGILL,
Ordinary of New Jersey.

With this petition was presented and filed the renunciation therein referred to, and a certificate from the surrogate of the county of Middlesex, dated January 16, 1891, that no caveat against admitting to probate any will of or against the granting of letters of administration on the estate of the said George P. Gordon, appeared on file in his office, and thereupon the paper writing purporting to be the last will and testament of George P. Gordon, deceased, in said petition recited, was propounded for probate in common form before the Ordinary, who on the same day took proofs and admitted said paper writing to probate as the last will and testament of the said George P. Gordon, and ordered that letters of administration *cum testamento annexo* be issued to the petitioner Adeline J. Gordon and to William H. Corbin. The will and proofs and said order will be found printed in volume V of the testimony, pp. 1706 to 1725, the same having

been Exhibit P. 1 in the contest, and are therefore not here again printed.

On January 24th, 1891, letters of administration *cum testamento annexo* were issued in due form to the said Adeline J. Gordon and William H. Corbin, who on the same day qualified before the Ordinary by oath and bond in conformity to said order, which were filed on the same day.

Petition of Henry J. Cullen, Junior, for Revocation of Probate.

(Filed February 13th, 1891.)

This petition sets out, among other things, that said George P. Gordon died a resident of the city of Brooklyn, in the county of Kings, in the State of New York; that after his death an instrument purporting to be his will, dated January 26, 1873, was propounded for probate before the surrogate of said county, and was denied probate, April 8, 1878, and that thereafter letters of administration upon his estate were issued by said surrogate to the petitioner, as public administrator of said county; that the petitioner had learned of the probate in New Jersey above stated, of which at the time he had had no knowledge; that he is a party concerned in the probate, and as such was and is entitled to be heard: charges that parties claiming under the will proved in New Jersey had made settlements which estopped them: charges that the will proved in New Jersey is not genuine and prays that said probate be annulled and revoked, and the parties filing the same be directed to proceed anew with the proposed probate, and that all parties concerned and interested in the estate be cited and made parties to said proceeding, and that the Court make such other and further order or decree in the premises as it shall deem proper and just.

On February 13, 1891, the Ordinary made an order

upon said administrators *cum testamento annexo* of George P. Gordon, deceased, to show cause on February 16, 1891, why the prayer of this petition should not be granted, which order was duly served, and continued from time to time till other parties were admitted as hereinafter stated.

On February 13, 1891, William W. Old, executor of Lenore M. Van Wyck (widow of said George P. Gordon), who died a resident of Virginia, filed his petition praying leave to intervene in the proceeding and join in the prayer of the petition of said Cullen, and on the same day the Ordinary made order to show cause why the prayer of the petition of said Old, executor as aforesaid, should not be granted. This order was filed February 26, 1891, together with an exemplification of the will of said Lenore M. Van Wyck, and letters to said Old thereon, and was duly served.

On February 21, 1891, Pauline Theresa Reitz, of Fort Lee, New Jersey, and Samuel Richard Ruyssenaers, of the Chateau de Valkenberg, Kingdom of Holland, claiming to be devisees and legatees (under a will probate of which is being contested in New York) of Mary Agnes Gordon, daughter and only heir at law of said George P. Gordon, who died May 10th, 1890, presented their petition praying leave to intervene and join in the petition of said Cullen, and the Ordinary on the same day made an order requiring said administrators *cum testamento annexo* of George P. Gordon, deceased, to show cause on February 24th, why the prayer of said petition should not be granted, which order was duly served.

F

Order for Probate in Solemn Form.

(Filed February 27th, 1891.)

PREROGATIVE COURT OF NEW JERSEY.

In the matter of the application of Henry J. Cullen, Jr., to vacate the probate of the will of George P. Gordon, deceased, and for other relief.

The petition of Henry J. Cullen, Jr., verified on the thirteenth day of February, eighteen hundred and ninety-one, praying that the probate of the will of George P. Gordon heretofore granted on the seventeenth day of January, eighteen hundred and ninety-one, by the Ordinary of the State of New Jersey, upon the petition of Adeline J. Gordon, be annulled and revoked, and that the parties offering the same be directed to proceed anew with the proposed probate, and that all the parties concerned and interested in the estate be cited and made parties in such proceedings, and that the Court make such further or other order in the premises as to the said Court might seem just and proper; which said petition among other things alleged the domicile of George P. Gordon, at the time of his death, was in the State of New York and not in the State of New Jersey; that the said instrument probated as aforesaid, as the last will and testament of George P. Gordon, is not genuine and that the said instrument is not his last will and testament; and an order having been made by the Ordinary bearing date the thirteenth day of February, eighteen hundred and ninety-one, directing among other things that the administrator with the will annexed of George P. Gordon, deceased, show cause why the said probate should not be annulled and vacated, and the parties offering the same be directed to proceed anew with said probate returnable at the Chancery Chambers in Jersey City, on the sixteenth day of

February, eighteen hundred and ninety-one, at ten A. M.; and the said order having been duly served on Messrs. Collins & Corbin, proctors for Adeline J. Gordon and William H. Corbin, administrator with the will annexed of George P. Gordon, deceased, and the said petition and application coming on to be heard before the Ordinary at the Chancery Chambers at Jersey City, on the sixteenth day of February, eighteen hundred and ninety-one, and objection having been therein made that said Cullen had no standing as a party concerned in said probate, after hearing William F. Abbett, Esquire, proctor for the petitioner, and Gilbert Collins, Esquire, proctor for the said administrator with the will annexed, the Court having thereupon reserved its decision upon the said question, and thereafter the petition of William W. Old, as executor of the last will and testament of Lenore M. Van Wyck verified on the twentieth day of February, eighteen hundred and ninety one, alleging that the said executor of the said Lenore M. Van Wyck was a party interested in the said probate of the last will and testament of the said George P. Gordon, deceased, and asking for the same relief as was prayed for in the petition of Cullen, and asking leave to intervene as a party petitioner to said proceeding having been presented; and an order having been made thereupon by the Ordinary bearing date the twenty-third day of February, eighteen hundred and ninety-one, directing that Adeline J. Gordon and William H. Corbin as administrators with the will annexed of George P. Gordon, deceased, show cause why the prayer of the said petitioner should not be granted, and that the said petitioner be granted leave to intervene in said proceeding as a party and to join in the prayer of said petition of Henry J. Cullen Jr., on the twenty-sixth day of February, eighteen hundred and ninety-one, at ten o'clock in the forenoon, at the Chancery Chambers in Jersey City; and the petition of Pauline Theresa Reitz of Fort Lee, New Jersey, and Samuel Richard Ruyssenaers verified on the twentieth day of February, eighteen hundred and ninety-one, by said Pauline T. Reitz alleging among other things that the said George P. Gordon,

deceased, was at the time of his death not domiciled in New Jersey, and that his will probated as aforesaid was not a genuine will, and had been proved without proper notice; that the said petitioners are parties concerned as devisees and legatees under the will of Mary Agnes Gordon, deceased, adversely to the said will of the said George P. Gordon, deceased, and praying that the said petitioner be permitted to intervene in said proceedings of said Henry J. Cullen Jr., and to be made parties to the same; and that the probate of the said will of George P. Gordon be revoked and the parties offering the same be directed to proceed anew with the proposed probate, &c., and an order having been made upon said petition to show cause why the prayer of the said petition last referred to should not be granted returnable on the twenty-fourth day of February, eighteen hundred and ninety-one, at the Chancery Chambers in Jersey City, and the hearing of all said petitions having been adjourned until this twenty-sixth day of February, eighteen hundred and ninety-one, and William T. Day appearing as counsel for said petitioners Reitz and Ruyssenaers, and William F. Abbett as counsel for Henry J. Cullen, Jr., and William W. Old as executor of the will of Lenore M. Van Wyck, deceased, in support of said motion, and Charles L. Corbin, Esquire, being heard upon the said application in behalf of the administrators with the will annexed of George P. Gordon, deceased.

And the Ordinary having thereupon among other things decided and determined that William W. Old as executor of Lenore M. Van Wyck, deceased, is a party concerned in the probate of the will of said George P. Gordon, deceased, and that said will should be proved in solemn form, upon notice to the parties concerned as hereinafter provided, to the end that questions raised herein, as to the domicile of George P. Gordon, deceased, at the time of his death and as to the genuineness of said will may be judiciously determined; and that pending the said proceedings of solemn probate, all proceedings on the part of the administrators with the will annexed should

be stayed, except as said administrators may from time to time be authorized and ordered by order of this Court.

It is on this twenty-sixth day of February, eighteen hundred and ninety-one, ordered that the said Adeline J. Gordon or any party interested in said will of George P. Gordon, deceased, do proceed and make further proof of the said last will of George P. Gordon, deceased, in solemn form before the Ordinary on the twenty-eighth day of March, eighteen hundred and ninety-one, at the Chancery Chambers in Jersey City, at ten o'clock in the forenoon; and that the petitioners above named may be heard and take part therein, and that the party proceeding with said solemn probate give notice of such proceedings for such proof by advertisement thereof, which shall be published in the New Brunswick Fredonian, a newspaper printed in Middlesex county, once a week for three weeks.

It is further ordered that Adeline J. Gordon and William H. Corbin as administrators with the will annexed of George P. Gordon, deceased, be and they are hereby stayed and restrained from acting as such administrators except as they may, from time to time, be authorized and ordered by order of this Court, and that the said administrators with the will annexed have leave upon the foot of this order to apply to the Ordinary from time to time for such modification of this order or further order as they may be advised.

But this restraining order shall not apply to the prosecution of two suits in Chancery brought by said administrator and now pending.

The notice required by the foregoing order was duly published and proof thereof appears on file.

Order Fixing Time for Hearing.

(Filed March 28, 1891.)

PREROGATIVE COURT OF NEW JERSEY.

In the matter of the application of Henry J. Cullen, Jr., to vacate the probate of the will of George P. Gordon, deceased, and for other relief.	Order.

This matter coming on this twenty-eighth day of March, eighteen hundred and ninety-one, in the presence of Collins & Corbin, counsel for Adeline J. Gordon and A. Sidney Doane, proponents of the will of George P. Gordon, deceased, and with the administrators *cum testamento annexo* of said George P. Gordon, and in the presence of William F. Abbett, with whom was Mr. Barker Gummere, and Mr. Miller of counsel with William W. Old, executor of the last will of Lenore M. Van Wyck, deceased, and in the presence of Mr. William T. Day of counsel with Pauline Theresa Reitz and Samuel Richard Ruyssnaers, the legatees under the alleged last will of Mary Agnes Gordon, who was the only child and heir at law of George P. Gordon, deceased, and counsel having been heard.

It is by the Ordinary ordered that this matter be set down for oral hearing before the Ordinary at the Chancery Chambers in Jersey City, on the fifteenth day of April next, at ten o'clock in the forenoon, at which time the proponents shall proceed to make solemn probate of said will, and the hearing shall be continued thence from day to day.

And it is further ordered that the Register of the Court do produce at the same time and place the will of George P. Gordon, and the other papers filed in his office respecting the estate of said decedent, and also a sealed package deposited with him by Henry C. Adams, said to be endorsed "subject to the order of Black & King, New York."

K

Decree of the Ordinary.

(Filed March 20, 1893.)

PREROGATIVE COURT OF NEW JERSEY.

In the matter of the probate in solemn form of a paper propounded as the last will and testament of George P. Gordon, deceased.	Decree.

This matter coming on to be heard before the Ordinary in the Prerogative Court, upon the direction of the Ordinary to the proponents of a paper offered to the Court as the last will and testament of George P. Gordon, deceased, requiring the said proponents to make due proof, in solemn form, of the execution and publication of the said paper by the said George P. Gordon, in due form of law, as his last will and testament; in the presence of Collins & Corbin, proctors for and of counsel with the proponents, and Messrs. Black & King and Messrs. Booraem, Hamilton & Beckett of the New York bar, counsel for beneficiaries under said offered will, and of William F. Abbett and Messrs. Edward A. & William T. Day, proctors for, and Barker Gummere, Esq., and Theodore F. Miller, Esq., of the New York Bar, of counsel for the contestants, and the proofs of the respective parties having been duly taken and heard before the Ordinary, in open court, and the arguments of counsel mentioned in the opinion heretofore filed herein having been heard and duly considered; and the Ordinary being now of the opinion that the said paper writing, purporting to be the last will and testament of George P. Gordon, deceased, and purporting to bear date, and to have been executed and published by the said alleged testator on the twenty-fifth day of July, A. D. eighteen hundred and sixty-eight, is not proved to be the last will and testament of the said George P. Gordon, deceased:

It is thereupon, on this twentieth day of March, A. D. eighteen hundred and ninety-three, ordered and decreed by the Ordinary, that the paper writing, propounded by the proponents for probate, in solemn form, be refused probate as the last will and testament of the said George P. Gordon, deceased, and that the said paper is not proved to be the last will and testament of the said George P. Gordon, deceased, and that administration thereunder of the estate, &c, which was of the said George P. Gordon, deceased, at the time of his decease, be and the same is hereby refused; and it appearing to the Court that on the seventeenth day of January, A. D. eighteen hundred and ninety-one, the said paper writing was admitted to probate in common form; and it also appearing to the Court that on the day and year last aforesaid (it appearing that the persons named in said paper writing as executors were dead) the Ordinary appointed Adeline J. Gordon and William H. Corbin to be administrators, &c,of George P.Gordon,deceased, *cum testamento annexo*, upon their giving bond, and that the said appointees have given bond accordingly and have assumed the performance of the duties and trusts thereby imposed upon them, it is thereupon further ordered and decreed, that the aforesaid probate in common form, of the said paper writing, purporting to be the last will and testament of George P. Gordon, deceased, and also the appointment of the said Adeline J. Gordon and William H. Corbin to be administrators, &c., of the said George P. Gordon, deceased, *cum testamento annexo*, be and the same are hereby wholly revoked and annulled; and it is further ordered that the said administrators do account and settle and pass their accounts, according to law.

And it is further ordered that the matter of allowance of costs, expense and counsel fees be and the same hereby is reserved for future determination on notice to said proctors.

C. G. Burgoyne's Printing Business, 146 150 Centre St., N. Y.

1

In the Matter

of

The Probate of a paper purporting to be the Last Will of George P. Gordon, deceased.

2

1. Where personal property belonging to a testator's estate is within this State to be administered, the will may be proved here, though the testator, at his death, was domiciled in another State and the will has not been proved there. 3

2. The correctness of the opinion of an expert in handwriting is usually susceptible of ocular demonstration, and it should be accorded as of little evidential weight when it is not accompanied by such demonstration.

3. The declarations of an alleged testator upon the issue, forgery *vel non*, which make for or against the disputed paper, are not admissible in evidence. 4

The paper in dispute was presented for probate in common form to the Ordinary, on the seventeenth day of January, eighteen hundred and ninety-one, by Adeline J. Gordon, a sister of the decedent. It was then made to appear that the widow and daughter of George P. Gordon were dead, and that each of them had died without issue ; that George P. Gordon, at his death, was domiciled in Woodbridge Township, in the County of Middlesex ; that no caveat had been filed in

the Surrogate's Office of that county against the probate of such a will, and that it would be exceedingly difficult, if not impossible, to ascertain what interests would be affected by the probate desired, and, hence, what persons should be notified of the proceeding for it. The application was urged in behalf of the next of kin and heirs at law of George P. Gordon, all of whom were favorable to it. Under the circumstances, it was considered expedient to permit probate in common form, in the first instance, and, if contest should arise, to thereafter require solemn proof upon such notice to parties in interest as might then appear to be practicable and proper, and, accordingly, the will was admitted to probate, and, the executors named in it being dead, Adeline J. Gordon and William H. Corbin were appointed administrators *cum testamento annexo*, upon their duly giving bond. The practice contemplated is referred to in *Straub's Case, 4 Dick., Ch. 265*, in this language: "There are two methods of obtaining probate known to the practice of the English Ecclesiastical Courts—one in common form, and the other in solemn form or *per testes*. The proof is said to be in common form when the executor presents the will for probate in absence of the parties in interest (to be affected by the probate) and, without citing them, proceeds *ex parte* with his proof, and it is said to be in solemn form when those in interest are cited to be present at the probation or approbation of the will. When a will is proved in common form, the Court, at any time within thirty years after probate, may require the executor, of its own motion, or at the instance of the next of kin or other persons interested, to prove the will in solemn form."

On the thirteenth of February in the same year, Henry J. Cullen, Jr., petitioned the Ordinary for reproof of the will, representing that he was interested because, as Public Administrator of the County of Kings in the State of New York, in which the City of Brooklyn is situate, he had administered upon the estate of George P. Gordon, and made distribution of it, as though Mr. Gordon had died intestate. Subse-

quently, the executor of the will of the widow of Mr. 9
Gordon and two persons, Pauline Theresa Reitz and Richard Ruyssenaers, who are named as the principal legatees in a paper purporting to be the will of the daughter of Mr. Gordon, the validity of which paper is in dispute, made similar application. Whereupon, the Ordinary directed the administrators *cum testamento annexo* to make proof of the disputed will of George P. Gordon in solemn form, after first giving notice to all persons in interest, most of whom resided without this State, and possibly many of whom were and are un- 10
known, by publication for a prescribed time.

Upon the day fixed for hearing, Adeline J. Gordon, a sister, and A. Sidney Doane, a grand-nephew, of George P. Gordon, appeared as proponents of the will, and William W. Old, the executor of the will of Lenore M. Van Wyck, who had been the widow of George P. Gordon, and Pauline Theresa Reitz and Samuel Richard Ruyssenaers, appeared to resist probate.

The case was argued by:

Mr. *Gilbert Collins* for the proponents. 11

Mr. *Barker Gummere*, with whom was Mr. *Theodore F. Miller*, of the New York Bar, for the objectors.

The Ordinary:

The probate of the paper in dispute is resisted upon two contentions—first, that the domicile of George P. Gordon, at his death, was in Brooklyn in the State of New York, and for that reason that this Court cannot, even if the paper be the will of George P. Gordon, admit it to probate, and, second, that the paper is a 12
forgery, and not the will of George P. Gordon.

I have no difficulty in disposing of the first of these grounds of contest. It abundantly appears, if this will be valid, that there is personal property belonging to the testator's estate, within the jurisdiction of this Court, which must be administered under the will. This being the fact, it is fully established that the will may be proved in this State, even though the testator, at his death, were domiciled elsewhere, and the will has not yet been proved at the place of domicile

13 *(Stevens vs. Gaylor, 11 Mass., 255, 263; Varnar vs. Bevil, 17 Ala., 286; Hyman vs. Gaskins, 5 Ired., 267; Jaques vs. Horton, 76 Ala., 238; Woods vs. Matthews, 73 Mo., 477, 483).*

Question as to the domicile of Mr. Gordon, although urged on both sides at the argument, does not appear to me to be necessarily in issue at this time. So far as personalty is concerned, the law of the domicile would determine the capacity of the testator to make a will, and, as well, the formalities to be observed in the
14 execution of the will; but, as there has been no contest upon either of these points, I am not called upon to say what law shall control them, and, therefore, what the testator's domicile was. The competency of evidence belongs to the law of the place of trial, and hence rulings upon its admission or rejection do not raise the question of domicile. It would, therefore, be a work of supererogation and of little value for me at this time to determine this disputed question of fact.

The second branch of the case presents the principal
15 question at issue: Is the paper offered for probate the genuine will of George P. Gordon?

That the discussion of this question may be fully understood and appreciated, it is necessary to shortly state something of the history of the principal characters with which it will deal.

George P. Gordon, the alleged testator, was born in Salem, New Hampshire, in 1810. In early life he was a printer by trade. In 1846 he married Sarah Cornish, by whom, in 1847 or 1849, he had his only child Mary
16 Agnes, who survived him until May, 1890. After this marriage he invented a printing press, which proved so profitable to him that he rapidly amassed a considerable fortune. It does not appear when his first wife died, but it is shown that in 1856 he married Lenore May, who survived him and afterwards became the wife of Henry Dubois Van Wyck, who had been a friend of Mr. Gordon and a constant visitor at his house. This second wife died, after his death, in December, 1890, at Norfolk, Virginia, where she then lived with her second husband.

Prior to 1866 Mr. Gordon lived in Brooklyn. In 17
that year he purchased a place in Woodbridge Township, in the County of Middlesex, to which he removed with his wife and daughter. From Woodbridge he daily went to his place of business in the City of New York at which he sold his printing presses. Until 1872 those presses were made for him by the firm of Nichols & Langworthy, of Hope Valley, Rhode Island.

In 1872 he erected a factory at Rahway in this State, about two miles from his residence, at which he thereafter manufactured his own presses, and of which he 18
died seized and possessed. That factory still exists in operation, as part of his estate, if the paper in dispute be valid. In 1869 he purchased land near the City of Norfolk in the State of Virginia, which he put in charge of Henry Dubois Van Wyck, and upon which he maintained another residence which he and his wife occasionally visited. In 1874 he bought a house known as 155 Columbia Heights, in the City of Brooklyn, and furnished it as a residence. To this house his daughter, who did not live on amicable 19
terms with her stepmother, moved and became its mistress. Mrs. Gordon remained at the house in Woodbridge Township as its mistress. It was Mr. Gordon's custom to occasionally stay with his daughter at the house on Columbia Heights, and from that fact and his conduct there, together with his former residence in Brooklyn, springs the contention that his domicile at death was in Brooklyn. In January, 1878, he died at Norfolk, Virginia. His body was brought to Brooklyn and buried in Greenwood Cemetery, in or 20
near that city. He left the following immediate kindred surviving him: His sister, Mary Ann Doane, who died in 1887. This sister had a son, A. Sidney Doane, since deceased, who was Mr. Gordon's confidential clerk and assistant, and a grandnephew, another A. Sidney Doane, who is now one of the proponents of the paper here in dispute. Also, a brother, Cuthbert Collingwood Gordon, a Universalist minister, who died in 1883, leaving two sons—one, Henry, who is yet alive, and the other, Cuthbert, who died in 1886. I refer to

21 the latter son because of his connection with this case, which will hereafter appear. Also, two other sisters, Wealthy Jane Bogert and Adeline J. Gordon, both of whom still survive.

The paper in dispute is said to have been drawn and executed at the house of Henry Adams in Woodbridge Township. It purports to have been witnessed by Henry Adams and his two sons, Alonzo C. P. Adams and John Q. Adams, all of whom died in the year 1875. The draughtsman of the instrument was Henry C. Adams,
22 also a son of Henry Adams, who testifies that he superintended its execution. So far as appears, this man is the only living person who ever had any connection with or knowledge of the paper in dispute.

Henry Adams and his son Henry C. were both lawyers at Fort Plains, Montgomery County, New York. Prior to 1868, Henry Adams, being possessed of a modest fortune, retired from the practice of his profession and removed to this State, where he purchased a small farm of about sixty-
23 five acres in Woodbridge Township, and erected upon it a dwelling which was his residence for the remainder of his life. He had four sons—the three already mentioned and Edward L. Adams, who is now upwards of fifty years of age, and has been in actual possession of his father's farm at Woodbridge since 1886. Prior to the last-named year, for a time not disclosed, he was in the West; what his occupation there was does not appear. It is shown that during his absence the farm was occupied by a tenant. It does not now appear what
24 business Edward L. pursues, but I gather that he is a farmer, and also a performer upon some musical instrument in a band.

In 1868, Henry C. Adams, being then about fifty years of age, gave up the practice of his profession at Fort Plains and went to his father's house at Woodbridge, where he met George P. Gordon, whose residence adjoined the father's farm. He had very little property; not sufficient to justify his permanent retirement from remunerative employment. His explanation is that he gave up his law practice because he con-

ceived the purpose of compiling a glossary of legal 25
terms and publishing it; that he is a bachelor of frugal habits, and that his means from that which he earned in the practice of his profession, and from that which he has had from his father's estate, have been sufficient to supply his few wants while he has worked upon his book near the large libraries in the City of New York. As the fruit of his labor for the last quarter of a century, he produces a volume of his glossary, stating that the whole work, to consist of three volumes, is finished, but not yet published. He explains that 26
he and Mr. Gordon both had some musical taste and played on the flute, and that their common taste and accomplishment brought them into friendly relations in the summer of 1868, while he was at his father's house; also that an incident cemented a friendship between them. Mr. Gordon occasionally used intoxicating liquors to excess, after which he would frequently suffer from extreme nervous prostration and inability to sleep, and that, upon an occasion of this kind, during the summer of 1868, he, Adams, had prepared a 27
sleeping potion which proved effective where other remedies, prescribed by a physician, had failed, and that thus he had won Mr. Gordon's ardent gratitude and friendship.

After Mr. Gordon's death in 1878, a will was found among his papers which was signed by him and bore date on the twenty-sixth day of July, 1873. It declared him to be of Woodbridge Township; gave his widow one hundred thousand dollars in lieu of dower; put one hundred thousand dollars in trust for his 28
daughter's use for her life, the principal to be divided among her issue at her death; gave ten thousand dollars to each of his sisters, Wealthy Jane Bogert and Adeline J. Gordon; gave ten thousand dollars, together with one-fourth of the patents for his printing presses, and one-fourth of the profits of the manufacture and sale of such presses, to his nephew A. Sidney Doane; provided legacies of three thousand dollars each for for the five remaining children of his sister Mary A. Doane, the three children of his brother Cuthbert,

29 and the two children of his sister Mrs. Bogert; gave general legacies also to relatives of his deceased wife; and to his brother Cuthbert, if living at his death, gave one-fourth of the patents for his printing presses and one-fourth of the profits from the manufacture and sale of such presses. The residue of his estate was put in trust for the benefit of his wife and daughter for their lives, and their issue after their deaths. Henry Dubois Van Wyck and the nephew, A. Sidney Doane, were made executors of the will.

30 This will was offered for probate in Brooklyn, but was refused probate because, among other things, it was shown that the witnesses to it had not signed in the presence of each other. There, however, is no doubt that the document expressed the testator's testamentary intention at the time it was made.

After probate of that instrument had been refused, some time in the year 1879, Henry C. Adams called upon A. Sidney Doane, and told him that Mr. Gordon had made a will in 1868, which might be found, or, if
31 lost, established by means of a draft of it which he, Adams, had retained. Mr. Doane refused to act upon this proposition. Then Mr. Adams presented the matter to Cuthbert C. Gordon, the brother of George P. Gordon, who also refused to enter into the controversy that the proposition suggested, giving as his excuse, according to the testimony of Henry C. Adams, that his health was too frail, and that his niece Mary Gordon made fair promises with reference to the disposition of his brother's prop-
32 erty. Adams then wrote to Cuthbert Gordon, Jr., cautioning him to say nothing to any one, but to come and see him. Mr. Adams says that his purpose in so writing was to bring this young man to him and tell him the history of the paper now in dispute and show him the draft of it, of which he had retained possession. In answer to Mr. Adams' letter, Cuthbert wrote that he had spoken to his father, and that they desired to know what Mr. Adams wanted. Upon receipt of this reply, Adams ceased all effort to interest the Gordon family in the paper in dispute. He did not communicate at all

upon the subject with either the widow or daughter of 33
George Gordon, or with any of the officials or other persons who dealt with Mr. Gordon's estate.

It was not until the year 1890 that Adams again mentioned the disputed paper, and then, noticing, as he says, an account in a newspaper of the contest over the alleged will of Mary Agnes Gordon, before the Surrogate of Brooklyn, he wrote to Messrs. Black & King, a firm of lawyers, who represented the contestants in that suit, that he would give them some information worth knowing if they would call upon him. He was 34
then living at Orange. His letter to Messrs. Black & King was as follows :

"ORANGE, N. J., Oct. 17.

"*(Private and confidential.)*

"DEAR SIR—I this day read an article in the
" 'Telegram' of Wednesday—'*Battling for a Fortune.*'
" It astounds me and grieves me too that such cruel
" injustice has been done.

" If one of you will come over here on Sunday
" morning, Chambers Street Ferry, Erie Depot, 9 : 20 35
" A. M., bringing no brass band, fife or drums, I will tell
" you something worth knowing.

" Yours truly,

" H. C. ADAMS."

After some misunderstanding as to the place of meeting, Mr. David B. King, of the firm of Black & King, called upon Mr. Adams, and was informed by him that Mr. Gordon had executed a will in 1868 which he (Adams) had drawn at Gordon's instance, and that he 36
(Adams) had retained a corrected draft from which the will itself had been copied. He produced a paper which he said was that draft, and permitted Mr. King to copy it. He also told Mr. King that the original will, after its execution, had been left with his father, and that it must then be at his father's homestead in Woodbridge Township, where he would try to find it.

Mr. Adams testifies that late in October or early in November of the same year he visited Woodbridge, and without saying anything about the disputed paper to

his brother Edward, who lived in the homestead by himself alone, took a survey of the premises, and then requested Edward to search the house. He gives this as his language to Edward: "Now, you have posses- "sion of the premises—of all the house; you make a "search of that house from cellar to garret so that you "can testify in court that you have made the search "and cannot find it, in order that they may establish "that will of 1868 as a lost will."

He says that he remembered that the will had been put in a reddish-brown wrapper, sealed with wafers, and that he so told his brother. After a few days he received a postal card from Edward, which informed him that the paper had been found. Thereupon, on the 21st of November, he wrote to Messrs. Black & King that his brother said that he had found the will. On the outside of the envelope in which he sent this letter he endorsed the word "*Eureka*." The next day, with two lawyers, he went to Rahway and identified the package found by Edward as that which contained the will, although it was not then opened, and was not endorsed in any way to indicate the character of its contents, and he had not seen it, if he is to be believed, for more than twenty-two years.

The package remained in possession of Edward Adams for a few days, and then was taken to a safe deposit company, where it remained until it was delivered, unopened, to the Ordinary, at the time the paper it contained was offered for probate. In the meantime the draft of the alleged will, which Henry C. Adams had produced, was deposited with the Secretary of State for safe keeping.

The disputed paper is written upon blue legal cap, while the draft is upon white legal cap. Both papers are written with black ink. There are many interlineations in the draft, all of which with but one or two exceptions, I believe, are written with red ink. The disputed paper is long and complicated, but, shortly stated, makes this disposition of the testator's estate:

It recites that Mr. Gordon expects to purchase a farm from one Laing (this purchase was in fact after-

wards made), and it devises that farm to the testator's 41
wife, and directs that the executors shall erect thereon designated buildings at the cost of fifteen thousand dollars. It also provides for furnishing the dwelling to be erected, and gives the widow an annuity of $1,200, all of which she is to take in lieu of her dower.

It gives to Elizabeth May, the widow's sister, $5,000, together with an annuity of $100. It gives the testator's homestead to his daughter for her life, and, if she shall marry, to her and her husband in fee as joint tenants, and also gives to the daughter an annuity of $3,000 for 42
her life, and to her husband, if she marry, $2,000 a year for his life, and makes provision for their issue. If the daughter marry, she and her husband are to have one-fourth of the printing-press patents, and one-fourth of the profits from the sale and manufacture thereunder. The testator's brother, Cuthbert Gordon, is given one-fourth of the patents and the profits of manufacture thereunder, to which gift is added this, which has much prominence in the present inquiry :

" I now am seeking, and I expect to purchase of my 43
" neighbor, Henry Adams, Esq., his farm, upon which
" he now resides, formerly known as the ' *Thomas*
" *Morris Farm*,' of about sixty-five acres, lying opposite
" to and on the southerly side of my farm,
" which I have offered four hundred dollars per acre,
" or, say, twenty-five thousand dollars, and adding
" thereto the cost of the new dwelling and improve-
" ments now erected and made, which I estimate at
" eight thousand dollars, making in all for said farm
" and its appurtenances the sum of thirty-two thousand 44
" dollars. If the said farm shall not have been pur-
" chased by me before my death, then I order and direct
" my said executors to keep my said offer of thirty-
" two thousand dollars to Mr. Adams or his grantees or
" assigns, for said farm and appurtenances, and if the
" same shall be accepted by said Adams, his grantees or
" assigns, I order and direct said executors to pay to
" said Adams, his grantees or assigns, the said sum of
" thirty-two thousand dollars for said farm, and I
" order and direct that the deed for the same shall be

45 " made from said Adams, his grantees and assigns, to
" and in the name of my brother Cuthbert C. Gordon,
" Cuthbert O., Henry and Lucrecia (or the survivors or
" survivor of them) jointly, and to the survivors or
" survivor of them, in fee simple absolute."

Provision is then made, that if the Adams property shall be purchased for $32,000 that a piece of land called the " *Compton lot* " shall also go to his brother Cuthbert C. and Cuthbert's wife and children, together with ten thousand dollars to be expended in the im-
46 provement of the Adams property. But, if the executors should fail to secure the conveyance of the Adams property for the price of thirty-two thousand dollars, then the devise of the Compton lot and the bequest of ten thousand dollars should be void.

It is perceived, at this point, that the failure to purchase the Adams farm at the price of $32,000—a lower price does not appear to have been contemplated —will reduce the taking of Cuthbert C. Gordon and his wife and children in his brother's estate by the sum
47 of the value of the Adams farm and the Compton lot and the $10,000. As will presently appear, Cuthbert C. Gordon is an executor of the will.

The will next provides for A. Sidney Doane, who is also one of the executors. He is to have one-fourth of the patents and of the profits of manufacture thereunder; and, if the testator's widow shall elect not to take the provision for her in lieu of dower, the Laing property and $12,000 to improve it; and, if the widow accept the provisions of the will, ten thousand dollars
48 in cash. Provision is then made for the purchase of a factory site, in case the testator shall not in his lifetime buy one, at the price of $350 per acre.

One-eighth of the patents and of the profits of manufacture thereunder, together with $6,000, is given to Wealthy Jane Bogert, a sister; ten thousand dollars is given to Adeline J. Gordon, another sister, and one-eighth of the patents and profits thereunder, with ten thousand dollars, is given to Mary Ann Doane, another sister; but all the cash payments here contemplated for

the sisters are directed to be postponed until, among other things, the Adams farm shall be purchased. 49

The residue of the estate is put in trust in the executors to pay one-fourth of the income to the testator's daughter, one-fourth to his brother Cuthbert, one-fourth to his nephew A. Sidney Doane, and one-eighth each to his sisters Mrs. Bogert and Mrs. Doane. The paper then contains a provision that, if the executors shall not have enough money to pay the entire purchase money for the Adams property and the factory site, they may pay one-third of the price and secure the payment of the remainder by bond secured by mortgage upon the purchased property. To this provision he adds this language: "and I hereby order and direct "that my entire estate, both real and personal owned "by me at my decease, shall stand pledged as a security "and be liable for the payment of such bond or bonds, "or either of them, with lawful interest upon the "same." 50

Cuthbert C. Gordon, A. Sidney Doane and Charles Beebe are named as executors. The latter was engaged to be married to Mary Agnes Gordon during the year 1868, but his engagement was broken in 1870. 51

The disputed paper bears date in July, 1868.

In connection with this statement of the contents of the disputed paper, these facts are to be noted: that in the year 1872 the testator erected a factory at Rahway, and hence the direction for the purchase of a factory site is without effect, and also, that in the year 1874 Henry Adams conveyed his farm to trustees, in voluntary settlement for the benefit of his children, and, hence, that the language of the will, which describes the persons from whom the purchase of the farm is to be made as "grantees and assigns," although it purports to have been made in 1868, six years before the settlement by Mr. Adams, is peculiarly appropriate to the present condition of the title of the farm. This language would not have been apt if the trust deed had not been made and the title had descended to heirs at law. It is also to be here noted that the Adams farm is now scarcely worth one-third the price for which it is directed 52

53 to be purchased. It is true that in the year 1868 it was worth a higher sum, possibly two-thirds of the value placed upon it in the disputed paper, and it is also true that to accomplish his wishes Mr. Gordon had paid about that time exorbitant prices for property adjoining his residence, fully equal to the price designated in the disputed paper for the Adams farm.

The only living person who professes to have had knowledge of this disputed paper prior to November, 1890, is Henry C. Adams. His brother, Edward L.,
54 frankly states that prior to that time he had never heard of the existence of such a document. Cuthbert C. Gordon and A. Sidney Doane, who were approached by Henry C. Adams in 1879, are both dead, and, as has been seen, all the witnesses to the instrument itself died in 1875, and even George W. Thorne, the draughtsman of the later will of 1873, who, it is suggested, adopted language from it in the will he drew, is dead, and was dead when Henry C. Adams first approached any one upon the subject of this paper.

55 Under these circumstances the establishment of the document must depend upon the credit which is to be given to the testimony of Henry C. Adams, the proof of the signature of the testator and the subscribing witnesses by that testimony, and by comparison with their admittedly genuine writings, and the inherent evidence which the terms of the disputed paper themselves may afford. All of these matters are seriously disputed.

Henry C. Adams most clearly and positively testi-
56 fied that he drew the disputed paper at the instance of Mr. Gordon. He produced a draft from which he said it was copied, and he narrated with wonderful memory of most particular details how it was executed in exact conformity to law. If his testimony be true, there can be no question as to the genuineness of the paper offered for probate.

Against credence of his testimony it is urged in the first place that he had a pecuniary motive in fabricating such a will as the paper offered, in pursuance of a scheme to secure the sale of his father's homestead for

an exorbitant price. This subject is so involved in the 57
structure of the disputed paper that, as I deal with it,
I am constrained for brevity to deal also with the in-
quiry as to the inherent evidence which the terms of
that paper afford of its validity. In direct terms the
will required the executors to purchase the Adams farm
at the fixed price of $32,000. Those executors were
Cuthbert C. Gordon, A. Sidney Doane and Charles
Beebe. Cuthbert C. Gordon was given a fixed pecuniary
interest in the probate of the disputed paper and also
a particular interest in the purchase of the Adams farm. 58
If the paper should not be admitted to probate, he
would lose one-fourth of the patents and the profits
under them, and one-fourth of the income from the
residuary estate, and a considerable additional fortune
contingent upon the purchase of the Adams farm, and,
as has been already seen, if the executors failed to
make the purchase of the Adams farm after probate, he
and his family would lose about $40,000 worth of prop-
erty. A. Sidney Doane was bound to the will by sim-
ilar interest in the patents and residue, a liberal pro- 59
vision for his mother, and an additional benefaction to
himself, which, in any event, would not be less than
$10,000. Neither of those executors would take a dol-
lar if the testator should die intestate. Charles Beebe
had been engaged to marry Mary Gordon, but he pre-
deceased the testator. He was interested, but not so
strongly in the will, if he should marry the testator's
daughter, by annuity and joint interest with his wife,
but as he died before the testator and before the time
when it is probable that the forgery of a will would 60
have been undertaken, and was living at the time when
the will bears date, standing in relation of prospective
son-in-law to the testator, his executorship at first ap-
pearance becomes rather a badge of the genuineness of
the document than the reverse. When, however, it is
remembered that Henry C. Adams appears by the
proofs to be a shrewd and able lawyer, with keen in-
sight to human nature and many years of experience in
contemplating and weighing the value of evidence, I
quite agree with the insistment of counsel that his acts

61 must be scrutinized and criticised in the light of his ability and upon the intellectual plane upon which that ability will probably put them, so that the most cunning devices consistent with probabilities may be attributed to him if credit is given to the theory of his moral obliquity. It is also to be remembered that the document bears date in July, 1868. If it be a forgery, and Henry C. Adams be the forger, it is not strained and unnatural to expect that the instrument will bear ear-marks of its date—just such ear-marks
62 as the introduction in the will of Beebe, the prospective husband of Mr. Gordon's daughter, his executorship and the provision for the purchase of a factory site, which was shortly after that date made by Gordon himself, would be. Each of these ear-marks, while affording the assistance to be had from specious appearance, in fact does not erect an obstacle to the accomplishment of the draughtsman's purpose. There was no need to strain the will to conciliate the executor and prospective son-in-law Beebe, for he was dead, and
63 the amount to be offered for a factory site, to be bought only in case the testator should not himself purchase it, in view of the fact that such contingency could not happen, might safely be placed at any fancy which would serve to countenance and support the price to be given for the Adams property.

The direction for the purchase of the Adams property unquestionably throws the disputed paper open to suspicion, and exhibits a possible motive in the draughtsman of it; but, standing alone, it is not fraught
64 with the emphasis in that direction which the subsequent provision for the purchase of the farm on credit gives it. There the testator is made to pledge his entire estate for the payment of his bond. Why should he pledge his entire estate? Was his desire to add the Adams property to his landed domain so great that he was willing to risk his entire fortune, including the patents which had brought him both fortune and fame, in its attainment? To have that farm, not while he lived, but after he was dead, for his brother's benefit, did he mean to arrest the settle-

ment of his whole estate? But, further, his sister's 65
pecuniary legacies were subject to the purchase from Adams. Was he so anxious to secure that farm for his brother, for whom he had already amply provided, that he would rob his sisters to do it? Besides, it is evident that the motive could not have been to enrich his brother, for it is noticed that upon failure of the Adams purchase the brother was not to have an equivalent for the $40,000 worth of property he would lose. Nothing but that particular purchase would secure to the brother that small fortune. Thus, it is claimed, a 66
motive for forgery by Henry C. Adams is shown.

The precise interest of Henry C. Adams in his father's farm was this: On the first of June, 1874, the father made the voluntary settlement referred to, conveying his entire estate, real and personal, to trustees, with power of sale, who were to pay the net income to his children in specified proportions during their lives. The share of Henry C. Adams in the income amounted to about seventeen per cent. of it. The trust deed shows that Henry Adams rated the 67
yearly product of the farm, exclusive of taxes and repairs, at $500. It is manifest, upon little calculation, that the income from $32,000 properly invested would be much greater than that sum, and that the share of Henry C. Adams in the increased income would be a little over two hundred dollars a year. It is impossible to either affirm or deny that such a sum would be a sufficient motive to induce the crime charged in this case. To Henry C. Adams that sum, in all probability, appeared large; at all events, it was all-important to 68
him. He had no time to earn money. He had embarked in a literary enterprise which required all his time. In return, after a few years, he saw in it honor, fame and fortune. He could not earn money, yet he must not starve during the intervening years. It cannot be said that an additional annuity of $200 was not a coveted prize.

But, continuing the examination of the disputed paper, an important circumstance is its great similarity in expression to the will of 1873. The latter paper un-

69 questionably was drawn by a lawyer named George W. Thorne, who is now dead. Upon comparing the two papers it is impossible to escape the conclusion that one of them must have been before the draughtsman of the other. The question is, Which was copied from the other? It is noticeable that the paper dated in 1868 is redundant in language, while the paper of 1873 is concise in its terms.

My attention is called to the following expressions in these papers:

70

Disputed Paper.	Will of 1873.
"Which said devise, bequest, sum of money and legacy, hereinbefore mentioned are in lieu of dower, all her dower right by the common or statute law."	"Which said sum of money is in lieu of all her right of dower at common law or under the laws of this State."

71

It is argued that the expression "by common and statute law" is the exact intelligent formula of Mr. Adams which is missed by Thorne, who says, "at common law or under the laws of this State." The authorship of the two expressions is not in doubt. The question is, With whom did the thought they seek to express originate? Did Mr. Thorne depart from the accurate statement of Mr. Adams, or did Mr. Adams, pursuing Thorne's idea, make accurate a loose and in-
72 correct statement? It appears to me to be more reasonable to infer that one who stops to think and change, would do so to make right that which was wrong rather than to deliberately blunder from right to wrong.

A similar instance is found in the description of the patents by the two draughtsmen. They are as follows:

Disputed Paper.	Will of 1873.	
"All and every patent "or patents granted and "issued to me (by the "Commissioner of Patents "under and by virtue of "the Patent Laws of the "United States), for im- "provements in printing "presses, or relating there- "to, and all renewals of "the same."	"All and every patent "or patents granted to me "by the United States for "improvements in print- "ing presses, or relating "thereto, and all renewals "of the same."	73
		74

Here the difference consists in the fact that the will of 1873 rests alone upon reference to the power which granted the patents, while the disputed paper also sets forth the agency through which that power acted. The formula in the disputed paper more exactly describes the patents. Here I make the observation that I made before. It is more likely that Mr. Adams would build out Thorne's imperfect description than that Thorne would abandon the more exact information which the Adams formula gave him. 75

Another significant portion of the wills is the introductory declaration. This declaration in the two papers is as follows :

Disputed Paper.	Will of 1873.	
"I, George P. Gordon, "of the Township of "Woodbridge, County of "Middlesex, and State of "New Jersey, being of "good health and of "sound and disposing "mind and memory "(hereby revoking all "former wills by me "made), do make, exe- "cute, publish and de- "clare this my last will "and testament, in man- "ner and form following, "to wit :	"In the name of God, "Amen. I, George P. "Gordon, of the Town- "ship of Woodbridge, "County of Middlesex, "and State of New Jer- "sey, being of sound and "disposing mind and "memory (hereby revok- "ing all former wills by "me made), do make, "publish and declare this "my last will and testa- "ment in manner follow- "ing ; that is to say :	76

77 It is noted that the formula "In the name of God, Amen," does not appear in the Adams paper, and that the expressions "of good health" and "and form" in the Adams paper do not appear in Thorne's. Upon reference to the draft from which Mr. Adams said that the disputed paper had been copied, I find the words "and form" interlined in Mr. Adams' handwriting. The words "of good health and" are not interlined.

From this fact I am led strongly to the inference that, in the mental process of making the disputed
78 paper, Mr. Adams supplied the last-mentioned words as he followed Thorne, and, upon reviewing his work, thought that the words "and form" should also be added, and thereupon interlined them. Those words were interlined in black ink, not in red, as in case of the other interlineations. Does that fact not indicate that the interlineation was an immediate afterthought of a critical copyist?

In another part of the will of 1873 Mr. Thorne uses this expression, "and hereby direct and empower my
79 said executors." Mr. Adams' paper puts the idea contained more correctly as follows: "I empower and specially direct my said executors"—the power thus being first bestowed and the direction for its use afterwards given. The same observation that I have made in the preceding instances is applicable here. A lawyer whose mind is directed to the right is not apt to deliberately change to incorrect forms of expression. In reviewing another's writing the tendency of his mind is to be critical; and especially would this be the case
80 with such a man as Mr. Adams, who was engaged in preparing a glossary, the very object of which was to exactly define the meaning of terms and words. To such a man it would appear important that the power should be stated before the execution of the power, while such order, to the less precise Thorne, might seem to be insignificant.

It is observable also that, in the will of 1873, Mr. Gordon made provision for the relations of his deceased wife, while in the paper in question no reference is made to those persons. The question is asked, Would

a forger, with the will of 1873 before him, omit those persons? The testimony of Mr. Adams shows that he was not acquainted with them. He did not know upon what terms the testator stood to them in 1868. It would be disastrous to him if he should leave a substantial legacy to one against whom Mr. Gordon cherished open enmity. Such suggestion exhibits that it would be reckless for him to deal with unknown persons. Nor was it safe for him to make inquiry about them, for they were of no concern to him, and his inquiries would seem meddlesome and impertinent, and for that reason attract attention, and might thereafter be proved. In such situation it appears to be suggested with reason that it was best not to deal with such persons at all. 81 82

The elaborate character of the will prepared by Mr. Adams, the mental processes exhibited by frequent changes and corrections in the draft of it, are urged as evidences that it was a genuine work; for why, it is asked, would not a forger content himself with a much simpler and shorter instrument? I think they are evidences of very careful work, which may have been bestowed either upon a genuine instrument or one which was designed to be so plausible as to defy attempts to detect its fraudulent character. It would have been most unwise for a forger to have embodied the elaborate instruction with reference to the Adams property in a short, simple will. Such a provision would gain undue prominence in companionship with that which was simple and plain. Its undue development amidst simple surroundings would at once have drawn criticism; while, if other parts of the will were made equally elaborate, it, at least, would not have suspicious prominence. 83 84

I am satisfied, after careful comparison of the papers of Thorne and Adams, that one was before the draughtsman of the other. Mr. Adams says that he made a draft of his will before the draft which has been put in evidence, and that Mr. Gordon kept that first draft, and he also states, when recalled, almost at the conclusion of the case, that Mr. Gordon had the original or a copy

85 of the last draft for the purpose of using it in drawing a new will. If he speaks truly, then it was possible for Thorne to have had Adams' work. There is no evidence that Adams had access to Thorne's will until after Mr. Gordon's death, *when it became a public record*, and, if he had access to it, it is hardly possible that he would have used it in forging a will while Mr. Gordon lived, and even more improbable that in using it he would have forged an instrument of earlier date than Thorne's. It is not without significance that during the contest
86 over Thorne's will Adams failed to mention the disputed paper to any one. It was not until after that contest had been settled adversely to the will of 1873 that Adams sought Sidney Doane and Cuthbert Gordon. How long afterwards does not appear. It was sometime in the year 1879. I think the inference is very strong that, if the paper in dispute was forged, it must have been forged in the year 1879.

Now, it is to be remembered that, in 1879, a contest between the collateral kindred of Mr. Gordon and his
87 child and wife had just been concluded, in which a will recognizing those collateral kindred had been rejected. The intestacy of Mr. Gordon was most advantageous to the wife and child. The suggestion to them of a will which would require the purchase of the Adams property would not meet with favor. But a will which would provide liberally for this collateral kindred would supply new sinews of war to them, and, even if it should contain direction for a suspicious purchase, would be apt to have their support. The holy avoca-
88 tion of Cuthbert Gordon might disincline him to resort again to litigation unless his interest under the will was made so substantial as to excite a cupidity which would overcome his scruples. Nothing but antagonism could be expected from the child and widow ; hence, provision for them could be reduced to the minimum that a reasonable man would probably put it at. Indeed, the situation was such that the draughtsman of a spurious will might with reasonable safety, to some extent, indulge any feelings of hostility that he entertained against either of those women. It

has been shown that Mrs. Gordon disliked Henry C. 89
Adams, and insulted him by shutting the door in his face; and it is in view of this fact, in connection with the above suggestions, that I am urged to consider the meagre provision for her as the outcropping of Mr. Adams' revenge. That provision has so attracted attention that the proponents have offered evidence that Mr. Gordon was jealous of Mr. Van Wyck, which the contestants have essayed to rebut by letters of Mr. Gordon, which abound in expressions of endearment and devotion to his wife. It is said that of this situa- 90
tion Mr. Adams took advantage by producing the disputed paper. It is claimed that the provisions of the paper accord with this theory, and, combined with the other circumstances of this case, entitle it to credit.

I have already stated that Mr. Adams testified most positively, when the draft of the disputed paper was offered in evidence, that it was the identical document from which the will of 1868 had been copied, and it is to be remembered that the interlineations in that draft are almost all made with red ink, and that Mr. Adams 91
testified that those interlineations existed when the will was copied from the draft. With a view to testing the truth of this testimony, the contestants submitted the draft to scientific experts, who pronounced the red ink to be a product of eosine, a substance invented by a German chemist, named Caro, in the year 1874, and, after that time, imported to this country.

At first it was sold for one hundred and twenty-five dollars a pound, and was so expensive that it could not be used commercially in the manufacture of ink. After- 92
wards the price was so greatly reduced that it became generally used in making red ink. It is distinguished by a peculiar bronze cast that is readily detected. It was recognized in the red ink interlineations in the draft of the disputed paper produced by Mr. Adams by a number of scientific gentlemen, among whom were some of the best known ink manufacturers in the country, and Mr. Carl Pickhardt, who originally imported it.

The effect of this testimony, which was by no means destroyed by opposing witnesses, was to seriously dis-

93 credit the testimony of Mr. Adams; for, if he had interlined the draft as he claimed to have done in 1868, he could not possibly have done so with eosine ink.

In this situation of the proofs, Mr. Adams was again called to the witness stand, and then, for the first time, suggested doubt in his mind whether the draft produced was the identical paper from which the document in dispute was copied. He said that before the opening of the case he had expressed some question upon this subject to one of the lawyers interested for the pro-
94 ponents, because the draft was on white paper, but that his doubt was set at rest by the remark that he may have had white paper at command as well as blue. He also recalled that, after his father's death in 1875, Mr. Gordon had asked him for the will of 1868 for the purpose of using it in making a similar document. He recalled that he had informed Mr. Gordon that the will was among his father's papers, and, if it could not be found, that he, the witness, had retained the original draft of it. The witness added: "I wanted to keep a copy my-
95 "self; I expected to keep the original draft, and I "wanted a copy, a fac-simile, of it; that was a peculiar "job, erasing, interlining and everything, and I wanted "a copy, a fac-simile, of it, so as to show what sort of "a perplexing job we had had to get through with in "that whole matter." * * * "I do not like to tes- "tify with any uncertainty about it; if it is not the draft "of 1868 that was used when the will was drawn, then "it is a fac-simile of that draft of the will, prepared "for Mr. Gordon at some point of time between 1875
96 "and 1877, of which I am not sure."

When the witness was interrogated closely as to his reason for making a fac-simile of the draft, he said that it was in accordance with his habit of mind; that the drawing of Mr. Gordon's will was the most difficult task he had ever performed, and that he desired to preserve that which would show how much work the drawing of that will had required. Later, he said that it was possible he might have made a fac-simile when he decided to see Sidney Doane and Cuthbert Gordon about the will, but that he does not remember that in fact

he did so. He adds that he does not remember of making a fac-simile at all; that he has since been burdened with hard labor, thought and incessant work, leaving it to be implied that for that reason his memory is defective. When asked if he remembered that Mr. Gordon had ever applied to him for the draft, his reply was: "He made the request, but whether he made the de- 97
"mand for it or not, I cannot remember." When asked to say pointedly whether the draft produced is an original or a fac-simile, he replied: "It is very probable that
"this is a fac-simile that I made; it is very probable, 98
"but I have no distinct recollection in my mind that I "did give him that original draft at the time. That "has always been my belief, that I gave it to him, and "I think so now.

"Q. And with that belief you testified that this was "the original draft, when you first testified?

"A. If he called for the original I must have made "this a copy, and copied it from that, and kept it from "that time."

Upon further examination the witness said that he 99
thought the draft produced to be the original until he saw the will on blue paper, and that then he was perplexed, but dismissed his doubt upon the suggestion of counsel, but afterwards he thought upon the subject "in the vigils of the night," but by unfortunate coincidence did not reach substantial doubt enough to correct his previous testimony until after the testimony concerning the character of the red ink he had used in interlining had been produced, although a short time before that testimony was had he was called to reiterate 100
his first testimony that the draft produced was the one from which the will was copied. When he was asked if the testimony concerning the red ink had not created a doubt, he replied that that testimony was "all bosh," but might have waked him up a little.

Two of the counsel for the proponents were sworn to support Mr. Adams, and, without objection, one of them spoke of Adams having stated that he was perplexed by the difference in the color of the papers upon which the draft and the will were written, and as to his hav-

101 ing afterwards satisfied counsel by stating that he guessed his perplexity was the "vaporing of his mind." The other recalled that Mr. Adams had said to him that in 1876 or 1877 Mr. Gordon had told him, Adams, that he wanted to make another will.

It is impossible to study this remarkable case at this point only without grave doubt as to the truthfulness of Mr. Adams, and indeed as to the frankness with which the case was produced to the Court in behalf of the proponents. The difference in color of the papers
102 had been the subject of discussion in the proponents' conferences, and was left without the explanation, which, now coming for the first time, as it does, to break the force of the testimony concerning the red ink, is far from satisfactory. And, as I read the confused answers of Mr. Adams and note his apparent misapprehension of questions that would tend to involve him, and note the apparent failure of his theretofore wonderfully clear and exact memory of the most trivial and unimportant details, I am inclined to reject his whole story
103 as a fabrication that has been punctured and fallen to pieces.

There is another attack upon Mr. Adams' credit which deserves notice. Although standing alone it cannot be said to be successful, yet in combination with other circumstances it has an appropriate place in the circumstantial proofs to which the contestants are obliged to resort. I refer to the proof touching his reputation for veracity while he was in the active practice of his profession and his real character was
104 best known. The prominent witness upon this branch of the case is Frothingham Fish, who in 1891, after nine years' service, on account of his advancing age, was retired from the bench of the Supreme Court of New York. This gentleman was at the bar in Montgomery County during almost the entire term of Mr. Adams' practice there. He appreciated the embarrassment and delicacy of his position as a witness, yet, without hesitation, made oath that Mr. Adams' reputation for truthfulness was formerly bad to such extent that he

would not believe him on oath. He also spoke of an 105
impeachment of that reputation, some years ago, in a
Court of New York. Many witnesses were produced
to break the force of this testimony, and, if numbers
are to turn the balance, they outweigh the testimony
of Judge Fish. I, however, perceive no sufficient
reason for refusing to credit the Judge. He appears to
be dispassionate and without prejudice, and he cer-
tainly had every opportunity to know the reputation
of Mr. Adams. I apprehend that a reconciliation of
the difference between the witnesses must be, if at all, 106
not by throwing out the testimony of the Judge, but by
concluding that he knew of a reputation which did
not become so general as to reach the gentlemen who
differ from him. Many witnesses speak of Mr. Adams'
reputation for truth in Orange for the last twelve or
thirteen years, but those witnesses testify of a man
retired from active life, whom they have had occasion
to meet under circumstances which did not try his
true character. The effect of the attack upon Mr.
Adams' reputation is to leave it in the region of 107
question. It cannot be said that it is beyond question,
either good or bad.

The contestants in the next place undertook to show
by comparison that the signature of George P. Gordon,
Henry Adams, Alonzo C. P. Adams and John Q. Adams
to the disputed paper are not in the handwriting of the
persons they purport to represent.

This comparison was made in two ways—first, by wit-
nesses who had acquired personal knowledge of the
handwriting of those several persons, by having seen 108
them write or by having received writings from them,
and who had thus formed in their minds an exemplar of
the genuine handwriting, with which they compared the
several disputed signatures and thus reached their opin-
ions; and, second, by witnesses who had no previous
knowledge of the genuine handwriting, and made their
comparison by placing that which was established as
genuine in juxtaposition with that which was disputed,
and thus formed opinion whether the writings were
made by the same person. The latter witnesses were

admitted when it was shown that they had special skill and experience in making such comparison.

The theory upon which these expert witnesses are permitted to testify is that handwriting is always in some degree the reflex of the nervous organization of the writer, which, independently of his will, and unconsciously, causes him to stamp his individuality in his writing.

I am convinced that this theory is sound. But at the same time I realize that in many cases it is unreliable when put to practical test. It must contend not only with disguise, but also with the influence of possible abnormal mental and physical conditions existing when the writing was made—such, for instance, as the position of the body, whether reclining, sitting or standing; the height and stability of that upon which the writing rests, and the character of its surface; the character of the paper written upon; the ink, the pen, and holder of the pen; the health of the writer's body and member with which the writing is made, not only generally, but also with reference to the accidents and influences of the moment.

It follows that unreliability is greater when the disputed writing is short or the standards for comparison are meagre or are all written at one time, and also that uncertainty lessens when the disputed writing is long and the standards are numerous and the products of different dates. Handwriting is an art concerning which correctness of opinion is susceptible of demonstration, and I am fully convinced that the value of the opinion of every handwriting expert, as evidence, must depend upon the clearness with which the expert demonstrates its correctness. That demonstration will naturally consist in the indication of similar characteristics or lack of similar characteristics between the disputed writing and the standards, and the value of the expert's conclusion will largely depend upon the number of those characteristics which appear or are wanting. The appearance or lack of one characteristic may be accounted to coincidence or accident; but, as the number

increases, the probability of coincidence or accident will disappear, until conviction will become irresistable. Thus comparison is rated after the fashion of circumstantial evidence, depending for strength upon the number and prominence of the links in the chain. Without such demonstration the opinion of an expert in handwriting is a low order of testimony; for as the correctness of his opinion is susceptible of ocular demonstration, and it is a matter of common observation that an expert's conclusion is apt to be influenced by his employer's interest, the absence of demonstration must be attributed either to deficiency in the expert or lack of merit in his conclusion. It follows that the expert who can most clearly point out will be most highly regarded and most successful.

In this case I have looked to the demonstration of the experts and their answers to the insistments of each other, and at the end of my study, which space and time will not admit of incorporation here, I find myself strongly inclined to the belief that the disputed signatures are not genuine. Certainly that which purports to be the signature of George P. Gordon is very unlike his accustomed writing. Perhaps the most striking feature about it is that it lacks the life of the genuine signature. It presents the appearance of a labored and dead production. This is made conspicuous by placing it beside the signature to the will of 1873—which was made to an instrument of the same solemn character as the paper in dispute. For illustration I here place photographs of those signatures side by side.

Disputed Signature.	Genuine Signature.
Geo. P. Gordon.	Geo. P. Gordon.

Before concluding I should call attention to a class of evidence much relied upon, the admissibility of which is disputed. I refer to declarations of Mr. Gordon which make for and against the authenticity of the disputed paper as his will. I received this evidence under objection, that I might in the determina-

117 tion of the case pass upon its admissibility and use or reject it according to my conclusion.

It is noticed that the question upon which the declarations bear is not as to fraud exercised upon the testator to secure the execution of the will, but as to the fact whether the testator ever executed the instrument. This question was presented in the case of *Boylan vs. Meeker*—first, in this Court, in 1854 *(2 McCarter, 310)*, where Mr. Justice POTTS, of the Supreme Court, sitting for the Ordinary, held that such
118 declarations were admissible, and, several years later (1860), in the Supreme Court *(4 Dutch, 274)*, where, after exhaustive considerations of the precedents, it was held that such declarations were not admissible either to support or overthrow a will. The latter decision I understand to state the law in this State at this day. The declarations of a testator when not offered to show his existing mental capacity are regarded as mere hearsay, and are not admissible unless they come within a recognized exception to the rule which excludes that
119 kind of evidence. The exceptions to the rule have been enumerated by Mr. Justice DIXON in *Rusling vs. Rusling, 9 Stew., 683, 608*, where the principle underlying the question considered is discussed in the Court of Errors and Appeals, and *Boylan vs. Meeker* is cited with approval.

So in other cases the same principle is also applied *(Lynch vs. Clements, 9 C. E. Gr., 431; Kitchell vs. Beach, 8 Stew., 446; Pemberton's Case, 13 Stew., 528; Middleditch vs. Williams, 18 Stew., 726)*. I am unable
120 to distinguish in principle between the question here presented and that which was considered in *Boylan vs. Meeker*, and I therefore decide against the admissibility of the declarations. This extends to the evidence upon both sides.

Taking the entire case in review, I am unable to reach the conclusion that the disputed paper is the will of George P. Gordon. It is not produced from among his effects, but comes, many years after his death, when witnesses have died, and after interests of third persons in the property it gives direction to,

have become settled, and, as well, under suspicious cir- 121
cumstances and from a suspicious source. The genuine-
ness of the signatures of the testator and the subscrib-
ing witnesses is either denied, seriously questioned or
doubted by many entirely disinterested witnesses ; and,
when those signatures are submitted to me and com-
pared with unquestioned standards, I am so far in doubt,
at least, whether they are genuine, that I cannot accept
them. To turn the scale thus poised, my attention
has been directed to the testimony of Henry C. Adams,
and question has arisen as to the credit that is due to 122
him. He is confessedly the draughtsman of the in-
strument, the only living person who, for the last
twelve years at least, was cognizant of its existence
and the virtual producer of it. The paper itself ex-
hibits his interest in its establishment by pledging
the entire Gordon estate to the purchase of a farm, in
which he and his kindred are concerned, at a price
three times its value, preferring that purchase to lega-
cies to the testator's own sisters. Also, the conduct of
this witness with regard to the disclosure of this paper 123
is marked by clandestinity. Prior to or pending the
bitter contest over the will of 1873, of which he was
aware, he did not speak of it ; and when that contest
was finished, and a public official had taken charge of
the estate, he approached only those whose self-interest
under his document would be likely to induce them
to urge its probate. He failed to communicate either
with the presumably impartial and disinter-
ested administrator of the estate, the Surro-
gate at the domicile or other place, or the 124
wife or child of Mr. Gordon. How he approached
Sidney Doane and Cuthbert C. Gordon is not known.
It is quite certain that he did not send his draft of the
will to them, and his letters to Cuthbert C. Gordon
and Messrs. Black & King most significantly suggest
an air of secrecy and mystery calculated to awaken
the suspicion that caused Cuthbert C. Gordon
righteously to demand a straightforward declaration of
the truth and purpose of Mr. Adams. The letter to
Cuthbert bids him to "say nothing," but straightway

125 come to Adams, and Messrs. Black & King are admonished that the communication to them is "private and confidential," and that they are to approach him without "brass band, fife or drums." Were Sidney Doane and Cuthbert C. Gordon approached in the same non-committal way? The demand of young Cuthbert, who acted under the guidance of his father, who had already been visited by Adams, indicates that the object of the visit had not been made known to the father, that the father's patience with mystery was exhausted, and that
126 he had determined that his son should force a disclosure of the mysterious scheme that annoyed them. After the rebuff suffered in 1879, Adams waited eleven years, witnessing passing events—the second marriage of Mrs. Gordon and the transfer of properties controlled by the will of which he alone had knowledge into the hands of innocent purchasers for value. Then the wife and daughter and Sidney Doane and the two Cuthberts Gordon died, and the surviving kindred of Mr. Gordon sought to arrest the vesting of his daughter's
127 estate in strangers. Such a situation offered a new opportunity, and while it existed the disputed paper was brought to light. After Adams had interested counsel to the espousal of the paper, he alone took a "survey" of his father's house (when it became possible for him to have put the reddish envelope in the closet), and then told his brother to search the house, not for the purpose of finding the package—although, if we believe him, he thought the paper must be among his father's effects—but ostensibly to be able
128 to prove that no such paper was there. At this instruction—although, if he speaks truly, twenty-two years had passed since he had seen the package, during which his mind had been engrossed in an absorbing work—he described it so accurately that, while it was not endorsed, his brother had no misgivings when he found it; and the moment Adams himself saw it he was so confident of its contents that he declared it and suffered it to be put away unopened. This wonderful memory stands in marked contrast with the uncertain, groping forgetfulness with regard to the originality of the draft

of the will and Mr. Gordon's real or pretended applica- 129
tion to him for the will itself.

When the disputed paper is read, it betrays so exact a correspondence in terms with the will of 1873, to which Adams could have had access only in 1878 and 1879, that the conclusion is irresistible that one of those wills furnished text for the other, and to my mind, for the reason I have given, the evidence is most persuasive that the changes in that text were *from* the will of 1873, and not *to* it. Besides there stands in it a direction to purchase the Adams farm from " grantees 130
and assigns " and not from " heirs and assigns," fitting a condition of affairs that did not exist until the execution of the Henry Adams trust deed in 1874, and excluding the idea of the transmission of title to heirs which would naturally have been dominant in the year 1868. After repeated and most positive assurance, under his oath, that, beyond question, the draft which he produced, with its interlineations, was the identical document from which the disputed paper was copied, the red ink episode occurred and 131
then he exhibited himself in a sea of confusion, admitting former doubt as to that of which he had testified most positively, evasively answering questions which tended to involve him, and excusing a most defective memory of events ten years more recent than those of which he had before positively given the most minute details. In this ordeal he avowed a mental inclination and a habit to simulate writings. If he is believed, he made a *fac-simile* of the original draft of the disputed paper eight years after that original had been made, 132
merely for the purpose of showing himself the mental process he had exercised in the production of the original. Although his time and mind were engrossed in the production of a law book, which demanded the labor of a score of years, and was of such infinitely greater importance as to demonstrate the insignificance of the work he had bestowed on Mr. Gordon's will, he laid that important work aside and patiently made a *fac-simile* of an intermediate draft for no other purpose than to remind himself of

133 what he had done, and that *fac-simile* did not accomplish his purpose, for it was of a draft that was only intermediate. The first draft he had not retained.

In addition to this, the testimony of Judge Frothingham Fish, upon which I have commented, is considered, together with other circumstances of more or less importance, to which time has not permitted me to refer.

In face of all these circumstances I find it to be impossible to rely upon the testimony of Henry C.
134 Adams. Excluding it, the will is not proved.

I will deny probate, revoking that which I have heretofore granted in common form.

135

136

Appeal.

(Filed, March 24, 1893.)

PREROGATIVE COURT OF NEW JERSEY.

In the matter of the probate in solemn form of a paper propounded as the last will and testament of George P. Gordon, deceased.	Appeal.

Adeline J. Gordon and Augustus Sidney Doane, proponents, and the said Adeline J. Gordon and William H. Corbin, administrators *cum testamento annexo* of George P. Gordon, deceased, hereby appeal from the decree of the Ordinary made and filed in above stated matter on the twentieth day of March, eighteen hundred and ninety-three, and from the whole and every part thereof —to the Court of Errors and Appeals in the last resort in all causes.

COLLINS & CORBIN,
Solicitors for and of Counsel with said Appellants.
Dated March 23d, 1893.

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

GILBERT COLLINS,
Of Counsel with said Appellants.

Petition of Appeal.

(Filed March 28, 1893.)

N. J. COURT OF ERRORS AND APPEALS.

In the Last Resort in all Causes.

Between Adeline J. Gordon and Augustus Sidney Doane, proponents, and the said Adeline J. Gordon and William H. Corbin, administrators, *cum testamento annexo* of George P. Gordon, deceased, Appellants, and William W. Old, executor of the last will and testament of Lenore M. Van Wyck, deceased, Pauline Theresa Reitz and Samuel Richard Ruyssenaers, Respondents.	On Appeal from Prerogative Court. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals, in the last resort in all causes.

The humble petition of Adeline J. Gordon and Augustus Sidney Doane, proponents, and the said Adeline J. Gordon and William H. Corbin, administrators *cum testamento annexo* of George P. Gordon, deceased, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final degree made in the Prerogative Court of the State of New Jersey by His Honor Alexander T. McGill, Ordinary, bearing date the twentieth day of March in the year of our Lord one thousand eight hundred and ninety-three, made in the matter of the probate in solemn form of a paper writing propounded as the last will and testament of George P. Gordon, deceased, which paper

writing had theretofore been admitted to probate in common form as the last will and testament of the said George P. Gordon, deceased, and letters of administration *cum testamento annexo* thereon had been issued to your petitioners Adeline J. Gordon and William H. Corbin—in which proceeding for probate in solemn form the said William W. Old, executor of the last will and testament of Lenore M. VanWyck, deceased, Pauline Theresa Reitz and Samuel Richard Ruyssenaers appeared as contestants—in this respect, that the said decree adjudges that the said paper writing purporting, to be the last will and testament of George P. Gordon, deceased, and purporting to bear date and to have been executed and published by the said testator on the twenty-fifth day of July, eighteen hundred and sixty-eight, was not approved to be the last will and testament of the said George P. Gordon, deceased, and orders and decrees that at the said paper writing propounded by your petitioners Adeline J. Gordon and Augustus Sidney Doane for probate in solemn form be refused probate as the last will and testament of the said George P. Gordon, deceased, and that administration thereunder of the estate which was of the said George P. Gordon, deceased, at the time of his decease, be refused, and that the aforesaid probate in common form and the appointment of administrators as aforesaid be wholly revoked and annulled, and that said administrators account and settle and pass their accounts according to law.

And your petitioners humbly appeal from the whole of said decree and every part thereof upon the ground that the same is erroneous for that it was duly established by the proofs before said Ordinary that the said paper writing propounded for probate in solemn form was the genuine last will and testament of the said George P. Gordon, deceased, and was duly executed and published by him as such on the twenty-fifth day of July, eighteen hundred and sixty-eight, and the said Ordinary should have decreed that the same be admitted to probate in solemn form and should have ratified and confirmed the grant of administration *cum testamento annexo* thereon

Your petitioners therefore pray that the said decree of the said Ordinary may be wholly reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

COLLINS & CORBIN,
Solicitors for and of Counsel with Appellants.

Answer to Petition of Appeal.

(Filed April 22, 1893.)

N. J. COURT OF ERRORS AND APPEALS

In the Last Resort in all Causes.

Between

Adeline J. Gordon and Augustus Sidney Doane, proponents, and the said Adeline J. Gordon and William H. Corbin, administrators *cum testamento annexo* of George P. Gordon, deceased,

Appellants,

and

William W. Old, executor of the last will and testament of Lenore M. Van Wyck, deceased, Pauline Theresa Reitz and Samuel Richard Ruyssenaers,

Respondents.

The answer of the above named respondent William W. Old, executor of the last will and testament of Lenore M. Van Wyck, deceased, to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the matters in the said petition of appeal contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the 20th day of March, 1893, made

and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity, and prays that the same may be affirmed with costs to be adjudged to this respondent.

WM. F. ABBETT,

Solicitor and of Counsel for Respondents, Wm. W. Old, Executor, &c.

EXHIBITS.

There were a great many exhibits offered on the question of handwriting; these it serves no purpose to print. Others sufficiently appear in the testimony and are therefore not reprinted here. The following are the exhibits (or extracts therefrom) to which the arguments will refer.

Proponents Exhibits.

Exhibit P. 39.

New York, July 21st, 1868.

Messrs. N. & L.

Gents: Rainy yesterday—ditto to day—therefore no going to the Valley. I shall stop now, for fair weather. Sid thinks you have a "pretty big shop" and don't see why you can't if you so desire, *rush* any number of presses out. He was much pleased with your *extensiveness* and *arrangements*. I feel desirous to see the *new shop*, and shall, very shortly.

You may, if you will, let *Amos* P. allow in "profile" sent up, for *two rollers* instead of *three*, which will alter the *point* upon which the platten vibrates and bring *it* up higher; this will cause the platten to lie somewhat flatter for the reception of the sheet. This he can do before I *come* up.

Business rather *more* quiet. Cool and pleasant after the great heat.

Yours truly,

GEO. P. GORDON.

Exhibit P. 114.

Nethermuir, Va., March 10, 1876.

Dear Sidney, * * * * * * * *

Mean to reside in Brooklyn, when I return—not Rahway, see if I don't. * * * * * *

I shall return by the first of April, I now think. Warm and beautiful, today. Men hauling the seine just back of the house.

I should like to take a row, but Col is not fit exactly for *rowing*, so shall wait for Van. Love to Mary and kind regards *to all* worthy of them. Write as above, often. We get the N. Y. Herald and so see the news almost daily. Why don't Cuddy send the Post to his father as he promised? Let me hear from you. In haste, as always. Yours, GEORGE.

Exhibit P. 115.

Nethermuir, Va., May 31st, 1876.

Dear Collingwood,

Lenore has run off with my pen, as she always does, and left me to write with a steel sharp pointed pen, as best I may. Now I must have a pen suited to my *hand*, for I make poor work, in writing. I bear heavily, and therefore must have a flowing easily gliding pen! If she would only keep her own pen,—and I have given her dozens, then her husband would not be annoyed in writing, but sich is woman! * * *

In haste,

Aff'y Your bro.,

GEORGE.

Exhibit P. 116.

Norfolk, Va., June 2d 1877.

Dear Collingwood,

* * * * * * * *

I did intend starting for home on the 2d, but shall not leave until Monday or tuesday evg, thus reach Rahway tuesday afternoon or at furthest Wednesday * * *

Affectionately in haste,

Your brother,

GEORGE.

Exhibit P. 117.

Norfolk, Va., March 30, 1877.

Dear Sid,

Got your telegram—"Hall" can move safe to my factory *at his own expense* (For I do not wish to move it at once) if he pleases.

I see that the arrested Crowell—spite and malice—nothing more—for this will not get them any monies that they claim he has taken—besides Crowell has plenty of property and his bondsmen are good—so 't is *spite* contemptible spite.

Rahway is a glorious city! How glad I am I live there !!! * * * * * * * * * *

In haste,

Yours always,

GEORGE.

Exhibit P. 118.

Nethermuir, Va., Sept. 7th, 1876.

Dear Sid,

All moving well here. The new short canal (2,000 feet long) about, or a little more, than half way through—when done I think we shall make this place as healthy as Norfolk—then goodbye to the North! This boy will *settle* for the two, three or four years he *may* live, and let the outside world wag as it will. * * * *

In haste as always,

Yours,

GEORGE.

Exhibit P. 208.

Adams Trust Deed.

THIS INDENTURE, made the first day of June, in the year one thousand eight hundred and seventy-four, between Henry Adams, of the township of Woodbridge, in the county of Middlesex and State of New Jersey, of the first part, and Isaiah C. Babcock, Helen A. Babcock and Ed-

ward C. Babcock, of North Orange, in the county of Essex and State aforesaid, and Edward L. Adams, of Herkimer, in the county of Herkimer and State of New York, of the second part, witnesseth:

That I, Henry Adams, the said party of the first part, in consideration of the natural love and affection which I have and bear to my children, Alonzo C. P. Adams, Henry C. Adams, Edward L. Adams Maria F. Babcock, Helen A. Babcock and John Quincy Adams, and in further consideration of the sum of one dollar to me in hand paid by said partiesof the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and I, the said party of the first part, therewith fully satisfied, contented and paid, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said parties of the second part and to their heirs and assigns forever, all those five certain tracts or parcels of land and premises hereinafter particularly described, as follows:

The first tract, situate in the township of Woodbridge, in the county of Middlesex and State of New Jersey, conveyed to me by deed from Thomas Morris and wife, and recorded in Middlesex County Clerk's office, in Book 100 of deeds, page 603, &c.

The second tract, situate in the township of Woodbridge, in the county and State aforesaid, conveyed to me by deeds from Seymore N. Marsh and wife, and recorded in said office in Book 106 of deeds, page 171.

The third tract, situate in the village of Fort Plain, in the county of Montgomery and State of New York, comprising three lots, one of which is bounded on Canal street and adjoining the National Fort Plain Bank, and the other two lots adjoining it on its rear and binding on Center and Division streets, with the buildings thereon.

The fourth tract, situate in said village of Fort Plain, comprising about two acres of land, with dwelling house and appurtenances thereon, conveyed to me by

sheriff's deed and more particularly described in a mortgage given to me by Augustus Kinneman, which is recorded in Montgomery County Clerk's office, in Book 57 of mortgages, page 148.

The fifth tract, situate in the town of Canajoharie, in the county of Montgomery and State of New York, more particularly described in a deed therefor given by David W. Erwin, Sheriff, &c., to me, which deed is recorded in Montgomery County Clerk's office, in Book 55 of deeds, page 420, &c. Containing one hundred and forty three acres and eight-tenths of an acre of land, excepting, however, therefrom two acres on the southerly side thereof conveyed by me to Casper Reman.

Together with all my personal property, consisting of bank stocks, Central Railroad bonds, mortgages, horses, carriages, cattle, farming utensils and implements, and all other personal property of every kind and description.

To have and to hold, all and singular, the above granted premises and property, together with the appurtenances and every part thereof, unto the said party of the second part, their heirs and assigns forever in fee.

Upon the trusts, nevertheless, and to and for the uses, interest and purposes hereinafter limited, described and declared, that is to say:

First. In trust that the said Isaiah C. Babcock, Edward C. Babcock, Helen A. Babcock and Edward L. Adams, said parties of the second part, the survivors and survivor of them, their, his and her heirs and assigns shall pay and discharge all my just debts and any and all claims that may then be a lien on any of my said real estate, and my funeral expenses as soon after my decease as may be.

Second. In further trust that after my decease my body may be interred in our family cemetery ground in the said village of Fort Plains.

Third. In further trust that my said son Alonzo and his family have reasonable house room and use of my household furniture in my mansion house wherein we now live, together with the use of the homestead farm I purchased of Thomas Morris as aforesaid, with the use

of barns, buildings and appurtenances thereon, so long as he shall work the same to advantage, and in a business and farmlike manner; also the use of horses, cattle, carriages and all farming tools; provided I shall continue the owner of said farm at the time of my decease, and provided that my said trustees or the survivors or survivor of them shall be satisfied with such use and occupation and shall not sell, lease or make other disposition of the said farm.

Fourth. In further trust that so long as my said son Alonzo shall occupy my said farm, my said trustees or the survivors or survivor of them as aforesaid, pay to the said Alonzo, annually, the sum of two hundred dollars, and at that rate for the time he shall so occupy the same, out of the rents, interest, dividends, income, issues and profits of my said estate.

Fifth. In further trust that if my said son Alonzo shall for any reason be deprived of the use and occupation of my said mansion and farm as aforesaid, that then and thereafter my said trustees or the survivors or survivor of them to pay him the further sum of five hundred dollars, making the payments to him annually thereafter the sum of seven hundred dollars, during his natural life, out of the net income of my said estate arising from rents, interest, dividends, income, issues and profits of my said estate, over and above all costs, and charges for taxes, repairs, insurances, the necessary expense of keeping our cemetery grounds and fencing in the said village of Fort Plain in good order, and the necessary and reasonable expense of the execution of this trust.

But the amount to be annually paid to my said son Alonzo, whether it be the above sum of seven hundred dollars, or more or less, must be ascertained and arrived at by correct computation and proper distribution of such net income and according to their respective amounts between him and his brothers Henry C. Adams and the said Edward L. Adams, and his sisters Maria F. Babcock and the said Helen A. Babcock, and the survivors or survivor of them respectively, according to the amount to be paid to each of them as is herein mentioned and provided to be paid to each of them respectively.

Sixth. In further trust that in case my said son Alonzo shall at his death leave a living child or children and a widow him surviving, that then and in that case one-third part of the amount that he, if living, would be entitled to out of the aforesaid net income of my said estate be paid annually thereafter to his said widow and child or children during her widowhood, upon condition that she takes care of and provides for the support and education of such child or children as he may leave. But should he leave no living child and should leave a widow him surviving, that so long as she remains his widow my desire and direction is that one-third part of the annual amount to which he would be entitled to have paid to him out of the net income of my said estate, if living, be paid annually to his widow during her said widowhood.

Seventh. In further trust that my said trustees or the survivor or the survivors of them pay to my said son Henry C., out of the net income arising from my said estate, over and above the charges hereinbefore mentioned and specified, annually, the sum of seven hundred dollars during his natural life.

But the amount to be paid to him annually as aforesaid, whether it be seven hundred dollars or more or less, must be ascertained and arrived at by a careful computation and proper distribution of such net income over and above the charges and expenses aforesaid and according to their respective amounts between him and his brothers, the said Alonzo and Edward L., and his sisters Maria F. Babcock and the said Helen A. Babcock, or the survivor or survivors of them, according to and in proportion to the respective amounts to be paid to each of them annually, as is herein mentioned and provided to be paid to them respectively.

And in case my son Henry C. shall at his death leave a widow and a living child or children him surviving, that then and in that case the amount that he the said Henry C. would be entitled to of the net income of my estate as aforesaid, if living, be paid annually thereafter to his widow and child or children during the life of such

surviving child or children. But should he at his death not leave a living child and shall leave a widow him surviving, that so long as she shall remain his widow my desire and direction is that one-third part of the annual amount which he would be entitled to receive of the net income of my said estate as aforesaid, if living, be paid annually to his said widow during her widowhood and during the time she as such widow shall survive his lawful issue.

Eighth. In further trust that my trustees or the survivors or survivor of them aforesaid pay to my said son Edward L., out of the net income arising from my said estate over and above the charges and expenses hereinbefore mentioned and specified, annually, the sum of seven hundred dollars during his natural life.

But the amount to be paid him annually as aforesaid, whether it be seven hundred dollars or more or less, must be ascertained and arrived at by a careful computation and proper distribution of such net income over and above the charges and expenses aforesaid, and according to their respective amounts between him and his brothers, the said Henry C. and Alonzo, and his sisters Maria F. Babcock and the said Helen A. Babcock, or the survivor or survivors of them, according to and in proportion to the respective amounts to be paid to each of them annually, as is herein mentioned and provided to be paid to them respectively.

But in case my said son Edward L. shall at his death leave a widow and a living child or children him surviving, that then and in that case the amount that he, the said Edward L., would be entitled to of the net income of my estate as aforesaid, if living, be paid annually thereafter to his said widow and child or children during the life of such surviving child or children. But should he at his death not leave a living child, and shall leave a widow him surviving, that so long as she shall remain his widow one third part of the annual amount to which he would be entitled to receive of the net income of my said estate as aforesaid, if living, be paid annually to his said

widow during her widowhood aforesaid and during the time she as such widow shall survive his lawful issue.

Ninth. In further trust that my said trustees or the survivors or the survivor of them pay to my beloved daughter Maria F. Babcock and her children, and to the survivor or survivors of them, annually during the natural life of any of the survivors of them, the sum of five hundred dollars out of the net income of my said estate arising from rents, interest, issues and profits over and above all charges for taxes, repairs, insurances, the keeping my cemetery grounds and fences in order as aforesaid, and the annual expenses of executing this trust.

But the amount to be annually paid to my said daughter Maria F. and her children, whether it be the above sum of five hundred dollars or more or less, must be ascertained and arrived at by a just computation and proper distribution of said net income, and according to their respective amounts, between her and her said brothers Henry C., Alonzo and Edward L. Adams, and her sister the said Helen A. Babcock, or the survivor or survivors of them, according to the respective amounts to be paid to each of them as herein is mentioned and provided for them respectively.

Tenth. In further trust that my said trustees or the survivors or the survivor of them pay to my beloved daughter Helen A. Babcock, one of my said trustees, and her children, or the survivors or survivor of them, annually, during the natural life of said survivors or survivor of them, the sum of five hundred dollars out of the net income of my said estate arising from rents, interest, issues and profits over and above all costs and charges for taxes, repairs, insurances, the keeping of my cemetery grounds and fences in order as aforesaid, and the annual expense of executing this trust.

But the amount to be annually paid to her, my said daughter Helen A., and her children, whether it be the above sum of five hundred dollars or more or less, must be ascertained and arrived at by a just computation and proper distribution of said net income and according to

their respective amounts between her and her said brothers Henry C., Alonzo and Edward L. Adams, and her said sister Maria F. Babcock or the survivor or survivors of them, according to the respective amounts to be paid to each of them as herein is mentioned and provided for them respectively.

Eleventh. In further trust that my said trustees, or the survivors or survivor of them shall pay to my son John Quincy Adams the sum of two hundred dollars annually during his natural life, and under no circumstances shall any less sum be paid to him, whatever the amount of the annual net income of my said estate may be arising from such rents, interest, issues and profits of my said estate, and I direct that the said sum of two hundred dollars be paid annually to my said son John Q. as aforesaid, without making any charge or deduction against that amount on account of any indebtedness for advances of money or any other aid heretofore furnished by me to him the said John Q. Adams.

Twelfth. In further trust that my said trustees or the survivors or the survivor of them, in case my said sons Henry C., Alonzo, Edward L., and John Q. Adams, or my said two daughters Maria F. and Helen A. Babcock, or any or either of them, or any other person for or in the name and behalf of any or either of them, shall make any claim or personal demand against me or my said estate, and shall instigate or institute any legal proceeding, or cause any delay or embarrassment in the proper execution of the trust hereby created by me in my said trustees or the survivors or the survivor of them, that then and thereafter the respective amounts hereinbefore directed to be paid annually to my said sons and daughters respectively be withheld from him, her or them, or any of them who shall make such claim and shall instigate or institute such legal proceedings or cause such delay or embarrassment in the due execution of this trust; and I do further imperatively direct that the amount or amounts hereinbefore directed to be paid annually to my said sons and daughters respectively, as to him, her or them who shall make such claims and shall instigate or institute such legal proceedings or cause

delay as aforesaid, be regarded and treated by my said trustees, or the survivors or the survivor of them, as nugatory, null and void thereafter, and the amount which he, she or they would otherwise have been entitled to receive annually shall be added to and treated as part of the net income, and be distributed among the others of my said sons and daughters, or daughter, and their respective heirs, who do not instigate legal proceedings or cause delay or embarrassment as aforesaid, annually, according to their respective amounts hereinbefore specified, by my said trustees or the survivor or the survivors of them.

Thirteenth. In further trust that this grant and transfer is not to be in force and take effect until after my decease, and is then to embrace, grant and convey all my real estate herein mentioned and described and all the real estate of which I shall or may be seized at the time of my decease, together with all my personal property, now consisting of bank stocks, railroad bonds, mortgages, horses, cattle, carriages, farming tools and implements, and all other personal estate of every kind and description whatsoever; subject, however, to such change, alteration, sale or disposition as I may and do make of any or all of the real estate and personal estate hereinbefore mentioned, during my lifetime.

And for the purpose of fully carrying out and executing the trust herein imposed I do hereby fully authorize and empower my said trustees hereinbefore named and the survivors of the survivor of them, when and as soon as they or any of them shall enter upon the duties of the execution of the trust powers hereinbefore conferred, to take charge and control of all my real estate hereinbefore mentioned and described of which I shall remain seized at the time of my decease, not disturbing the provisions hereinbefore reserved and given to my said son Alonzo, with all other real estate of which I may be seized, together with all personal property of every kind, name and description of which I may be the owner at the time of my decease, and to manage and control the same in their descretion for the preservation and benefit of my said estate and the interest and benefit of all concerned therein, and I hereby

fully authorize and empower my said trustees and the survivors or the survivor of them to lease, sell, grant and convey any and all real estate of which I may be seized and all personal estate I may own at the time of my decease, either at public or private sale, upon such terms and conditions as they or the survivors or survivor of them shall judge reasonable and to the benefit and advantage of all concerned therein.

Also, that my said trustees or the survivors or survivor of them shall invest the purchase money of the sale or sales of any and all of my said estate, real and personal, at lawful interest upon valid security, in bonds and mortgages in government bonds or corporate bonds or stocks, or other valid securities, and that they or the survivors or survivor of them take care of the said investments and add the interest and income thereof to and make the same part and parcel of the net income of my said estate, after deducting the charges and expenses hereinbefore mentioned, and that they my said trustees, or the survivors or the survivor of them, carefully compute and make the proper distribution of the then net annual income of my said estate among my said sons Henry C., Alonzo and the said Edward L. Adams, and my said daughters Maria F. Babcock and the said Helen A. Babcock, and their issue as hereinbefore provided and particularly set forth, in the proper proportion and according to the respective amounts hereinbefore mentioned and provided to be paid to each of them respectively.

This conveyance is hereby made subject to revocation, modification and alteration in any or all its parts, sections or clauses as I at any time may deem necessary or proper, which right and power so to revoke, modify or alter, I hereby expressly reserve.

In witness whereof, I have to this instrument of writing (consisting of eighteen pages, numbered from 1 to 18 inclusive) set my hand and seal the day and year first above written.

HENRY ADAMS. [SEAL.]

Signed, sealed and delivered
in the presence of
THOS. H. SHAFER.

STATE OF NEW JERSEY, COUNTY OF UNION, ss.

Be it remembered, that on this second day of June, in the year one thousand eight hundred and seventy-four, before me the subscriber, a Master in Chancery of said State, personally appeared Henry Adams, who I am satisfied is, and who is known to me to be, the grantor named in and who executed the foregoing deed of trust, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed, executed and delivered the said deed of trust as his voluntary act and deed for the uses and purposes therein expressed.

THOS. H. SHAFER, M. C. C.

STATE OF NEW JERSEY, COUNTY OF UNION, ss.

I, Henry R. Cannon, clerk of the county of Union, do hereby certify that Thomas H. Shafer, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereupon written, was at the time of taking such proof or acknowledgment a Master in Chancery of New Jersey in and for said county, dwelling in said county, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the hand writing of such Master and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county, the second day of June, 1874.

[SEAL.] HENRY R. CANNON,
Clerk.

(Endorsed). State of New York, Herkimer county, ss. Recorded March 9, 1875, at 9 o'clock A. M., in book No. 105 of deeds at page 98 and examined. Edward Simms, Clerk. Received in Middlesex county clerk's office February 24, 1876, at 10:40 A. M., and recorded in book of deeds No. 152, on pages 108, &c. Chas. S. Hill, Clerk. Deed of trust. Henry Adams to Isaiah C. Babcock et al. Dated June 1st, 1874. State of New York, Montgomery County, ss. Recorded on the 18th day of February, 1875, at 12 hours M., in Vol. 93 of deeds at page 382 and examined. A. H. Burtch, Clerk.

Exhibit P. 210.

COUNTY OF KINGS, SURROGATE'S COURT.

In the matter of the goods, chattels and credits of George P. Gordon, deceased.

Sir: You will please take notice that upon the petition of Mary Agnes Gordon, verified March 11, 1878, a copy of which is hereunto annexed, the undersigned will make application to the Honorable Abram H. Dailey, surrogate of the county of Kings, at his office in the County Court House in the city of Brooklyn, on Thursday the 21st instant at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for the appointment of a special administrator for the purpose of preserving the assets of said estate, and in accordance with the prayer of said petition.

Dated New York, March 13, 1878.

Yours, &c.,

JOSIAH PORTER,

Proctor and of Counsel for Mary A. Gordon, Petitioner.

To A. Sidney Doane, Esq.

COUNTY OF KINGS, SURROGATE'S COURT.

In the matter of the goods, chattels and credits of George P. Gordon, deceased.

To Hon. Abram H. Dailey, Surrogate of the County of Kings:

The petition of Mary Agnes Gordon, of the city of Brooklyn, respectfully shows:

That your petitioner is the daughter and the sole next

of kin of George P. Gordon, late of Woodbridge, county of Middlesex, State of New Jersey, deceased.

That a certain paper writing has been propounded for probate as the last will and testament of said George P. Gordon, deceased.

That objections to the probate of said paper writing have been filed by your petitioner, alleging, among other things, that said paper writing is not the will of the said George P. Gordon, deceased, and that some time must elapse before the question in controversy can be determined.

That the property of said deceased consists in part of bonds and stocks, and that it is necessary that immediate steps should be taken for the preservation or disposal thereof. That there are notes and debts belonging to the said deceased falling due, the collection whereof requires early attention.

That to the best of your petitioner's knowledge and belief the personal property of which the deceased died possessed does not exceed in value the sum of six hundred thousand (600,000) dollars.

Your petitioner further shows that the said deceased died possessed of property in the city of Brooklyn, and that she is informed and believes that the surrogate of the county of Kings has power, in his discretion, to issue special letters of administration, authorizing the preservation and collection of the goods of the deceased.

Your petitioner therefore prays that such letters may be issued, pursuant to the statute in such case made and provided.

And your petitioner will ever pray, &c.

(Signed) MARY A. GORDON.

Dated this eighth day of March, 1878.

City and County of New York, ss.

On the eleventh day of March in the year one thousand eight hundred and seventy-eight personally appeared before me Mary Agnes Gordon, the petitioner named in the foregoing petition, who being by me duly sworn, did

depose and say that she had read the foregoing petition by her subscribed, and knew the contents thereof, and that the same was true of her own knowledge, excepting as to the matters therein stated on her information and belief, and that as to those matters she believes it to be true.

[L. S.] T. O'D. O'CALLAGHAN,
Notary Public (8) County of New York.

Service admitted this 13th day of March, 1878, of a copy of the foregoing petition and notice of motion.

CLEMENT D. NEWMAN,
Atty for A. Sidney Doane, Proponent.

It is hereby consented on the part of the within named petitioner and A. Sidney Doane, proponent, that the within motion be adjourned to Tuesday, March 26, inst., at 10 A.M.

Dated New York, March 21, 1878.

JOSIAH PORTER,
Atty for Petitioner.

CLEMENT D. NEWMAN,
Atty for Proponent.

SURROGATE'S COURT.

In the matter of the probate of a paper writing propounded as the last will and testament of George P. Gordon, deceased.

A motion having been made for the appointment of a special administrator and collector herein. It is hereby agreed that an order be entered herein appointing Henry

J. Cullen, Jr., public administrator and special administrator and collector.

Brooklyn, March 29th, 1878.

JOSIAH PORTER,

Proctor for Mary Agnes Gordon, sole child and heir at law.

LENORE M. GORDON,
per H. D. Van Wyck, Atty.
C. C. GORDON.
L. M. GORDON.
MARTHA WINSLOW.
SARAH L. WINSLOW.
SARAH H. CORNISH,
per S. C. Cornish, Guardian.
SARAH E. CORNISH,
EMMA A. CORNISH,
per W. W. M. Cornish.
M. T. CORNISH.
EVA M. DOANE.
LUIGI G. DOANE, M. D.
ADELINE JULIA GORDON.
ESTELLE R. DOANE.
E. G. DOANE.
A. SIDNEY DOANE.
W. R. WINSLOW.

STATE OF NEW YORK, COUNTY OF KINGS, SURROGATE'S COURT.

I, Joseph W. Carroll, Clerk of the Surrogate's Court, in and for the said County of Kings, do hereby certify that I have compared the foregoing copy of the record of the petition, notice of motion and consents for the appointment of a special administrator entitled "In the matter of the probate of a paper writing propounded as the last will and testament of George P. Gordon, deceased," with the original records thereof now remaining in this office, and have found the same to be correct transcripts therefrom, and of the whole of such original records. And I further certify that said exemplification would be received in evidence in all the courts of the State of New York.

In testimony whereof, I have hereunto set my hand

and affixed the seal of the Surrogate's Court, this 9th day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JOSEPH W. CARROLL,
Clerk of the Surrogate's Court.

STATE OF NEW YORK, KINGS COUNTY, S.S.

I, George B. Abbott, Surrogate of Kings County, and presiding Magistrate of the Surrogate's Court, do hereby certify that Joseph W. Carroll, whose signature is affixed to the foregoing certificate, is the Clerk of the Surrogate's Court, and that the foregoing exemplification is attested in due form of law, and that the seal thereto affixed is the seal of said Surrogate's Court.

Witness my hand, and the seal of said Surrogate's Court, this 9th day of April one thousand eight hundred and ninety one.

[L. S.] GEORGE B. ABBOTT,
Surrogate.

STATE OF NEW YORK, KINGS COUNTY, S.S.

I, Joseph W. Carroll, Clerk of the Surrogate's Court of the County of Kings, do hereby certify that George B. Abbott, whose name is subscribed to the preceding certificate, is the sole presiding Magistrate of the Surrogate's Court of the County of Kings, duly elected, sworn and qualified, and that the signature of said Magistrate to said certificate is genuine.

In testimony whereof, I have hereto set my hand and affixed the seal of the said court, this 9th day of April, 1891.

[L. S.] JOSEPH W. CARROLL,
Clerk of the Surrogate's Court.

Exhibit P. 211.

UNITED STATES OF AMERICA.

WAR DEPARTMENT.

Washington City, May 22, 1891.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that it appears from the records of the Signal Office, Washington City, that the annexed extract

copy of the original records of observation taken at Fort Columbus, N. Y. Harbor, on the dates and at the hours specified, has been compared with and is a true extract copy of the original records on file at this office.

H. H. C. DUNWOODY,
Major, Signal Corps, Acting Chief Signal Officer.

Be it known, that H. H. C. Dunwoody, who signed the foregoing certificate, is the Acting Chief Signal Officer of the United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof, I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this 23d day of May, one thousand eight hundred and ninety one.

REDFIELD PROCTOR,
Secretary of War.

Fort Columbus, N. Y. Harbor.

Date 1868	Temperature.			Weather.			Precipitation.			Remarks.
	7 A.M.	2 P.M	9 P.M.	7 A.M.	2 P.M.	9 P.M,	Began.	Ended.	Amount	
	°	°	°						Inches.	
July 19	77	88	78	Fair	Fair	Cloudy	6.45 P.M.	7.30 P.M	0.85	Rain, thunder and lightning from 5.30 to 7.30 P. M.
" 20	76	74	74	Cloudy	Cloudy	Cloudy	2.45 P.M.			Rain.
" 21	71	75	74	Cloudy	Cloudy	Cloudy		7.20 A.M.	2.10	Rain.
" 22	75	84	78	Cloudy	Cloudy	Cloudy				
" 23	75	75	73	Cloudy	Cloudy	Cloudy				
" 24	72	77	76	Cloudy	Cloudy	Cloudy	9.15 P.M.			Rain, slight showers from 1 to 4 P. M. Thunder at 10.30 P. M.
" 25	72	83	78	Cloudy	Fair	Fair		4 A.M.	2.55	Rain, silent lightning at 9 P. M. Rain very heavy f'm 11 P. M. to 2 A. M.

Signal Office,
May 22d, 1891.

For Messrs. Black & King,
Attorneys and Counselors,
No. 71 Wall St., Eagle Building,
New York City.

Exhibit P. 213.

THIS INDENTURE, made the second day of April in the year of our Lord one thousand eight hundred and seventy-seven, between George P. Gordon and Lenore M. his wife, *of the township of Woodbridge in the county of Middlesex and State of New Jersey*, of the first part; and Emma Hall, wife of William H. Hall, of the city of Rahway, in the county of Union and State of New Jersey, of the second part;

Conveys property in Rahway conveyed to Mr. Gordon in 1876; acknowledged in Virginia, April 6, 1877; Recorded May 12, 1877; Lib. 117, p. 86.

Exhibit P. 214.

KNOW ALL MEN BY THESE PRESENTS, That I, James H. Durand, Receiver of the Dime Savings Bank of the city of Rahway in the county of Union and State of New Jersey, party of the first part, in consideration of the sum of six hundred and twenty-one dollars lawful money of the United States of America, to me in hand paid by George P. Gordon *of the township of Woodbridge in the county of Middlesex and State aforesaid*, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part a certain Indenture of Mortgage, bearing date the first day of June one thousand eight hundred and seventy-seven, made by William J. Walsh and wife to me, the said James H. Durand, receiver as aforesaid, to secure the sum of six hundred dollars and interest, which mortgage is recorded or registered in Union county clerk's office in Book 42 of Mortgages, pages 405 and 406., etc., etc., etc.

Acknowledged Nov. 23, 1877 before Thos. H. Shafer, M. C.; Recorded Nov. 28, 1877; Lib. 13, p. 181.

Exhibit P. 215.

THIS INDENTURE, made the twenty-seventh day of January in the year of our Lord one thousand eight hundred and seventy-four, between Joseph T. Crowell and Electa M. his wife, of the city of Rahway in the county of Union and State of New Jersey, of the first part, and George P. Gordon, *of the township of Woodbridge in the county of Middlesex and State of New Jersey*, of the second part:

Conveys property in Rahway, acknowledged January 27, 1874, before B. A. Vail, M. C.; recorded February 21, 1874; Lib. 87, p. 458.

Exhibit P. 216.

THIS INDENTURE, made the tenth day of February in the year one thousand eight hundred and seventy-four, between Seth L. Sprague, of Norwich, New London county, State of Connecticut (late of Lowell, Mass.), and Caroline H. F. his wife, parties of the first part, and George P. Gordon, *of Woodbridge, county of Middlesex and State of New Jersey*, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of twenty-two thousand five hundred ($22,500) dollars, lawful money of the United States of America, etc., etc.

Conveys the property 155 Columbia Heights, Brooklyn, New York; acknowledged February 13, 1874 in Conn.; recorded March 2, 1874; Lib. 1147, p. 441.

Exhibit P. 217.

THIS INDENTURE, made the seventh day of September in the year of our Lord one thousand eight hundred and sixty-nine, between Eden Laing and Sarah E. his wife, of the city of Rahway in the county of Union and State of New Jersey, of the first part, and George P. Gordon, *of the township of Woodbridge in the county of Middlesex and State of New Jersey*, of the second part, Witnesseth that the said party of the first part, for and in consideration of three thousand five hundred and six-

teen dollars 75-100, lawful money of the United States of America, to them in hand, well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, his heirs and assigns, forever, all that certain tract or parcel or parcel of land and premises hereinafter particularly described situate, lying and being in the township of Woodbridge in the county of Middlesex and State of New Jersey, butted and bounded as follows, viz:

Beginning at a stake placed on the southeasterly side of the road leading from the turnpike to the Short Hills, it being the eastermost corner of James Hunt's farm; thence (1) running along said James Hunt's line south thirty-two degrees and twenty minutes west fifteen chains and sixty-one links to a stone planted for said Hunt's southeast corner on a line of lands belonging to the heirs of Samuel Force, deceased; thence (2) south eighty-two degrees and forty-three minutes east seventeen chains along said Force's line; thence (3) south eighty-two degrees and forty-three minutes east seventeen chains along said Force's line and line of James Compton's land to a stone being the southwesterly corner of a lot of land formerly laid out for the use of a school; thence (4) with the line of the school land north twenty-one degrees and twenty minutes east five chains and twenty-five links to the aforesaid road; thence (5) along said road to the beginning; containing by estimation fifteen acres and fifteen hundredths of an acre. Being part of lands conveyed to said Eden Laing by deed from George S. Carmichael and wife dated March 23, A. D. 1866, and recorded in Middlesex county clerk's office in book 101 of deeds, page 603, 604, 605 and 606, etc., etc.

Acknowledged Sept. 7, 1869 before H. Durand, M. C.; recorded Sept. 10, 1869; Lib. 119, p. 257.

Exhibit P. 239.

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the bound volumes of the library of this office, of the Specification in the matter of the English Letters Patent granted Henry Ellis, September 2, 1865, Number 2267, for "Improvements in the Manufacture of Compounds of Silica, and in the production of Silicated Alkaline Inks, Colours and Dyes."

In testimony whereof, I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 22d day of October, in the year of our Lord one thousand eight hundred and ninety one, and of the Independence of the United States the one hundred and sixteenth.

[L. S.] W. E. SIMONDS,
Commissioner.

A. D. 1865, 2d September, No. 2267.

Producing Compound Silicate and Alkaline Colours.

Letters Patent, to Henry Ellis, of Bangor, in the County of Carnarvon, North Wales, Surgeon, for the invention of "Improvements in the manufacture of Compounds of Silica, and in the production of Silicated Alkaline Inks, Colours and Dyes."

Sealed the 23d day of February, 1866, and dated the 2d September, 1865.

Specification in pursuance of the conditions of the Letters Patent, filed by the said Henry Ellis in the Great Seal Patent Office on the 2d March, 1866.

To all to whom these presents shall come I, Henry Ellis, of Bangor, in the county of Carnarvon, North Wales, Surgeon, send greeting.

Whereas Her Most Excellent Majesty Queen Victoria, by her Letters Patent, bearing date the second day of September, in the year of our Lord, one thousand eight hundred and sixty-five, in the twenty-ninth year of Her reign, did, for Herself, Her heirs and successors, give and grant unto me, the said Henry Ellis, Her special license that I, the said Henry Ellis, my executors, administrators and assigns, or such others as I, the said Henry Ellis, my executors, administrators or assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, the Isle of Man, an Invention for "Improvements in the Manufacture of Compounds of Silica, and in the production of Silicated Alkaline Inks, Colours and Dyes," upon the condition (amongst others) that I, the said Henry Ellis, my executors or administrators, by an instrument in writing under my, or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said Invention, and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of the said Letters Patent.

Now Know Ye, that I, the said Henry Ellis, do hereby declare the nature of my said Invention and in what manner the same is to be performed to be particularly described and ascertained in and by the following statement, that is to say:

My said Invention relates to the manufacture of compound silicates containing a larger proportionate quantity of earthy or metallic silicate in solution than is contained in the compound silicates previously manufactured, and which is effected by adding free acid to the neutral earthy or metallic solution which is to be used for the preparation of the compound silicate, and to the production of solutions of ammonio-silicates and tungsto-silicates and also solutions of subsilicates, sili-

cates, supersilicates, and compound silicates, by the addition of moist precipitated silicic acid or of moist precipitated compound silicates to hydrate of potash or of sodas, as hereinafter mentioned.

A further portion of this Invention relates to certain improvements in the combination of certain colouring matters with compounds of silica, the same being effected by causing such colouring matter to become precipitated or gelatinized in combination with silicic acid by the use of supersilicates or compound silicates, and which products may be used in a state of precipitate or paste as valuable colours for various purposes, or by desiccation can be obtained as dry colours. Such compounds of colouring matter with silicic acid being dissolved in solutions of alkalina silicates will yield various coloured inks and liquid dies. The inks thus produced will not exercise any corroding action upon steel or other metallic pens, while they are less delible than other inks now in use. The liquid dyes thus manufactured are also of a permanent nature.

For these purposes all the soluble silicates mentioned in the Specification of an Invention for which Letters Patent were granted to me, bearing date the twenty-ninth day of September, one thousand eight hundred and sixty two, and numbered 2645, as well as the ordinaty commercial silicates may be employed. When a soluble compound silicate is made with a precipitate obtained by the use of any of the neutral earthy or metallic salts, a further quantity of newly precipitated and washed silicic acid may be added to the solutions of such silicates in ordinary commercial alkaline silicates in any proportion desirable up to saturation. The solutions of neutral earthy or metallic salts may be acidulated to any desired degree, and the precipitate obtained by means of such acidulated solutions may be dissolved in solutions of the commercial silicates of soda or of potash in the ways described in my former Specification.

In addition to the soluble silicates mentioned in the said Specification, ammonio-silicates of soda and of potash and of the earths and metals may be employed.

These are prepared by precipitating the commercial silicates of soda or of potash by means of carbonate of ammonia or chloride of ammonium, or by means of ammonia-alum or ammoniated solutions of the earthy salts, or by means of ammonio-chlorides or ammonio-sulphates of the metals, and re-dissolving the precipitates so obtained in solutions of silicate of soda or of potash. Tungsto-silicates may also be used; these are prepared by adding a solution of tungstate of soda to a solutions of silicate of soda, and precipitating by means of an acid, or by means of a solution of an earthy or metallic salt; and afterward re-dissolving the precipitate in the manner described in the said Specification.

For producing compound soluble silicates of lime and magnesia in combination with alkalies, sea water either alone or acidulated may be added to a solution of any ordinary commercial silicate of soda or of potash, the precipitates so obtained being washed and re-dissolved in a concentrated solution of commercial alkaline silicate.

By adding newly precipitated silicic acid or gelatinous silica, or any newly precipitated silicate or compound silicate in the moist state to solid hydrate of potash or hydrate of soda, solutions of subsilicates or supersilicates of potash or of soda, or of compound silicates of various strengths, may be obtained in a purer state than by the process described in the said former Specification, and better fitted for some of the purposes of the present Invention.

Dyes and other substances which yield colouring matter to alkaline solutions, whether such dyes or substances be of an animal, vegetable or mineral nature, are capable of being employed for the purposes of this Invention, the ammoniacal solutions being in many cases preferable.

For the manufacture of inks, the colouring matter of such dyes or substances is precipitated or gelatinized by means of a solution of any one of the soluble supersilicates or compound silicates before mentioned, the precipitate or gelatinous mass so obtained being re-dissolved in a solution of any alkaline subsilicate or commercial silicate

of soda or of potash. When commercial silicates are employed for these purposes, the solutions of those silicates should be by preference of specific gravity 1.2 to 1.5.

Biborate of soda may also be used as a solvent of dyes and substances containing colouring matter, and solutions produced by this agent, and also by ammonia and by other alkaline agents, are in many cases capable of being sufficiently silicated without precipitation of the colouring matter by the simple addition of a supersilicate of soda or of potash.

Aluminates of potash or of soda may be used as solvents for dyes and colours, but when these are added to solutions of the silicates the colours will be precipitated, and will require to be re-dissolved in them anner herein described. Instead of employing a solution of silicate of soda or of potash to dissolve the precipitated silicated colours or dyes, a solution of caustic soda or potash may be used for that purpose; or the colours may be combined first with a subsilicate, and the desirable quantity of supersilicate afterwards added.

The silicated dyes and colours obtained by the processes hereinbefore mentioned are applicable to a great variety of purposes, as, for instance, the colouring of paper hangings. A colour which is well suited for the manufacture of ink is the blue or red archill of commerce. Of this one part by measure may be taken and combined with half the quantity by measure of a solution of supersilicate of soda or of potash, or of any of the compound silicates of specific gravity 1.3, or thereabouts, and half a part of the commercial solution of the alkaline silicates of specific gravity 1.5, or thereabouts. The whole should then be agitated together until the precipitate first thrown down is dissolved, water or alkaline solutions alone, or with gums, resins or colouring or other matters dissolved therein, being afterwards added at discretion, and in any case where precipitates are thrown down such precipitates should be redissolved by addition of solutions of the caustic alkalies or of the alkaline silicates.

For the manufacture of "stock ink" I use a solution of soda silicate of iron, formed by adding a solution of sulphate of iron to a concentrated solution of silicate of soda of about specific gravity 1.3, until the whole of the precipitate is thrown down. This precipitate I wash with water, and after pressing I add it in the moist state to as much solution of commercial silicate of soda of specific gravity 1.5 or thereabouts, as will dissolve the whole. I then take one part of the said solution and two parts of the archill of commerce, and after mixing them together I add as much solution of silicate of soda of specific gravity 1.3 to 1.5 as will dissolve the whole of the precipitate. This I call "stock ink," the colour and consistency of which may be varied in the manner already described and which may also be converted into a copying ink by the addition thereto of a solution of silicate of soda of specific gravity 1.5 in various quantities, and by preference a solution containing an excess of alkali.

Thus copying inks may be produced that will give a copy immediately after writing, or within a few hours, or even days, and either with or without a copying press. The inks containing an excess of silica will dry quickly, and will soonest become unfit for taking a copy after being written with; whilst those silicates containing an excess of alkali in solutions of higher specific gravity, say 1.5, will remain fit for copying for some days after they are written with.

I do not confine myself to any strict limits in the quantities of colouring matters to be added to the soluble silicates, and, as before described, I use other compound silicates besides that of iron for the production of "stock ink," and soluble potash silicates may be used instead of the soda silicates.

An useful compound for varying the consistence of the "stock ink" will be equal quantities of archill and a solution of hydrate of soda or potash containing 15 parts of either caustic alkali in 100 parts of water. This may be added to the "stock ink" at discretion to suit various purposes of writing fluids.

Various forms of carbon may also be used to vary the tint of the archill ink, and also aniline black may be so employed, either of them being added at discretion. The latter colour may be produced by the addition of a solution of magenta to a liquid paste of aniline green, or the various aniline blacks of commerce may be used for the same purpose.

For red ink and for silicated aniline colours, magenta or other aniline colours may be used in the dry state or in the state of solution; but as dry aniline colours will not directly combine with the soluble silicates, it is necessary to use intermediate bodies, such as resins, or gum resins, to effect a combination. Gamboge is well adapted for this purpose, for at the same time that it makes the magenta soluble in a solution of alkaline silicate, it also modifies the colour so as to produce a red silicated ink. Other gums, resins, or gum resins possessing analogous properties may be used in the same way with magenta and other dry aniline colours and thus a large variety of silicated aniline colours may by produced. In some cases a solution of cochineal and other colouring matters in ammonia or other alkaline solutions may be advantageously used to vary the tint of the original ink or dye.

The liquid aniline dyes I treat as follows:-

For red ink I take aureline one measure and add to it an equal measure of commercial silicate of soda in solution of specific gravity 1.5. After stirring or agitating the mixture I let it stand, and then pour out the liquid part for use, leaving the sediment. By varying the quantity of either the silicate or the dye, various shades of red may be produced, and gamboge or other gums, resins or gum resins may be added at discretion, as with dry aniline colours. Various other liquid aniline dyes may be treated in the same manner, thereby producing a great variety of solutions suitable for writing fluids of great permanency, and which will produce no corrosive action on steel or other metallic pens, and which fluids may also serve for other purposes already named.

Documents written with inks prepared as herein mentioned may be rendered still less delible by means of a coating of a solution of supersilicate or compound silicate of potash or of soda, and paper hangings coloured with any of the dyes made in accordance with this Invention may in the same manner be rendered washable without the colours becoming altered. The silicated dyes obtained by means of the before mentioned processes may be used either singly or in combination with each other, or with other dyeing substances, and the desiccated colours may be powdered and mixed with such of the mineral, artificial, and other colouring matters as will not be affected by the solutions of alkaline silicates and used for colouring paper hangings or other purposes.

Having thus fully declared and ascertained the nature of my said Invention, and the manner in which it is to be performed, I would observe in conclusion that what I consider novel and original, and therefore claim as constituting my said Invention are—

First, the methods of producing the soluble alkaline silicates, supersilicates and compound silicates substantially hereinbefore set forth and described, or any mere modifications thereof.

And, secondly, the methods of manufacturing and producing silicated alkaline inks, colours and dyes substantially hereinbefore set forth and described or any mere modifications thereof.

In witness whereof, I, the said Henry Ellis, have hereunto set my hand and seal this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty-six.

HENRY ELLIS. [L. S.]

Defendant's Exhibits.

Exhibit D. 65.

Thorne will of 1873 propounded in Brooklyn, N. Y.

IN THE NAME OF GOD, AMEN.

I, George P. Gordon, of the township of Woodbridge, county of Middlesex and State of New Jersey, being of sound and disposing mind and memory (hereby revoking all former wills by me made) do make, publish and declare this my last will and testament, in manner following, that is to say:

First. I do order and direct all my just debts and funeral expenses to be paid by my executor hereinafter named, as soon as possible after my decease.

Second. I give to my wife Lenore M. Gordon, her heirs and assigns, forever, the sum of one hundred thousand dollars, to be paid to her as soon as possible after my decease, with interest from the time of my decease, which said sum is in lieu of all her right of dower at common law or under the laws of this State.

Third. I give the sum of one hundred thousand dollars to my said executors, in trust nevertheless, to invest the same immediately upon my death in some safe and responsible trust company or companies, and pay all the interests and profit whatsoever thereof, from the time of my decease, unto my daughter Mary Agnes Gordon, half yearly during her natural life, the same to be for her sole use, and upon her sole receipt, free and clear from all demands of her husband, if she should hereafter intermarry, and upon further trust, at her death to pay the principal aforesaid to and among her lawful issue, as each shall respectively become twenty-one years of age, share and share alike.

Fourth. I give to each of my sisters, Wealthy Jane Bogert and Adeline Julia Gordon, the sum of ten thousand dollars.

Fifth. I give to my nephew A. Sidney Doane, his heirs and assigns forever, the sum of ten thousand dollars, also an equal one-fourth part of each, all and every patent or patents granted to me by the United States for

improvements in printing presses or relating thereto, and all renewals of the same, also an equal one-fourth part of all the profits that may be derived from the sale of any and all the presses that may be built under said patents or any of them.

Sixth. I give unto the five (5) other children of my sister Mary Ann Doane, viz., Gordon, Galvani, Estelle, Blanche and Madora, the sum of three thousand dollars each, if living at the time of my decease.

Seventh. I give to the children of my brother Cuthbert C. Gordon, three in number, viz., Cuthbert C., Henry and Lucretia, the sum of three thousand dollars each, if living at the time of my decease.

Eighth. I give to the children of my sister Wealthy Jane Bogert, viz., Ritzmer and Gordon, each the sum of three thousand dollars, if living at the time of my decease.

Ninth. I give to the children of my sister-in-law Mrs. Martha Winslow, wife of Samuel Winslow, two in number, viz., W. E. Winslow and Sarah Winslow, the sum of three thousand dollars each, if living at the time of my decease.

Tenth. I give to the children of Wm. W. M. Cornish, two in number, the sum of three thousand dollars each, if living at the time of my decease.

Eleventh. I give to each of the children of Selah C. Cornish the sum of three thousand dollars, if living at the time of my decease.

Twelfth. I give to my nephew George W. Hussey, the sum of five thousand dollars, and I also release him forever from the payment of any and all sums of money which he may be owing to me.

Thirteenth. I give to Martha Cornish, sister of my deceased wife, the sum of three thousand dollars.

Fourteenth. I authorize and direct my said executors to sell and convey all my real estate and personal property, except as herein otherwise provided, as soon after my decease as the same can be properly disposed of and to pay the above legacies and several sums of money in the order above named.

Fifteenth. I give and bequeath all the rest and residue of my said estate both real and personal whatsoever or whatsoever to my said executors, in trust nevertheless, to invest the same in some safe and responsible Trust Company or Companys, and pay all the interest and profits whatsoever thereof unto my said wife and my said daughter, equally, share and share alike, during each of their natural lives, the same to be for their and each of their sole and separate use, and upon their sole and separate receipt, free and clear from all demands of either of their husbands, if they, or either of them should intermarry, and upon further trust at the death of either my said wife or daughter or both of them, then to pay her share of sum or trust fund, equally to and among her lawful issue share and share alike, when said child or children shall respectively become twenty-one years of age; and failing such lawful issue, then said trust fund last aforesaid is to be disposed of according to the terms of a "Codicil" which I design soon to make to this will.

Sixteen. I hereby give to my brother Cuthbert C. Gordon one equal one-fourth part of each, all and every patent or patents granted to me by the United States for improvements in printing presses or relating thereto and in all renewals of the same, also an equal one-fourth part of all the profits that may be derived from the sale of all said presses that may be built or made under the same or any of them; provided my said brother shall be living at the time of my decease; if he is not so living at the time of my death, then this bequest to him and every part thereof shall be regarded and treated as of no binding force or effect and no part thereof paid or made over to his heirs or assigns.

Seventeen. I hereby give to Timothy Cornish, or to his wife in case of his death before my decease, the sum of three thousand dollars.

Eighteen. I hereby nominate and appoint Henry Du Bois Van Wyck and A. Sidney Doane, executors of this my last will and testament, and hereby direct and empower my said executors to use and exercise great care in the investment of the several sums herein provided to be

invested in trust and to change the investment of all or any portion thereof, from time to time, as its safety and the interests of my said wife or daughter or both may require.

In witness whereof, I have hereunto set my hand and seal this twenty-sixth day of July, eighteen hundred and seventy-three.

GEORGE P. GORDON. [L. S.]

Signed, published and declared by the said George P. Gordon to be his last will and testament in the presence of us who were present at the same time and subscribed our names as witnesses in the presence of said testator.

SOUTH R. FARRINGTON.
GEORGE W. THORNE.

Exhibit D. 99.

New York, September 2, 1869.

Dear Van,

Your 3 page letter received this A. M. I did not know that the Mantles were forwarded—if I read rightly the letter, which was left at home for Lenore to read, you said that you had sent them to Nethermuir by John. It appears that you are driving—the House progresses well, and even *better, very rapidly!* The sawing also seems to use Miner up! Good for the Chinaman! I think that things, from your account, are rapidly getting into a *good, very good* condition. Mutton must be cheap living when served up morning, noon and night! Yet what are you going to do? Beef is *non est:*—chickens, ditto. If you give them meat 3 *times* a day, they should not complain, if the bill of fare, be not *varied.* They live! Well! by and by you will not have such a *goodly family.* I knew, when I left, that you had a hard task before you:—I knew that the making of a new house, *of an old one*, and a mighty *old one*, too, was no everyday work; I only wish I could have aided you in so unpleasant a task. But it seemed that my aid could only be by furnishing *funds.* I hope that you may, *at some future*

time be fully recompensed for all you have gone through, and have still to go through, all the labor, thought and desire to do for and please your friends:—And *I* shall do all in my power to see H. D. V. W. repaid for the sacrifices he has made. I would say, once for all, that I appreciate your labors and privations—and I never shall, *for a moment*, forget or lose sight of them.

The weather has grown *colder* and summer has, indeed, taken its farewell of us. The "glorious *fall*" is here! giving an air, breathing health and strength that we have not known the past 3 summer months. The flow of spirit is *buoyant* and *joyous*, and happiness bounds *dancingly*, through the blood: making the old—young!—and the young, feel the strength of manhood!

Thank God! for the seasons. Each, in its turn, bringing new feelings—each, in its turn, bringing with it, its own blessings: causing the grateful heart to give thanks *spontaneously*, to Our Common Father! for his manifold kindnesses! May we all live long to enjoy and to praise!

Lenore is well and, now, happy—happy as conditions will allow.

She goes home in a week or so and will probably be absent a week.—I may go up to Bridgeport for her, and I may, slyly, run down *to Nethermuir!* She does not wish me to go, but I cannot always follow her wishes.

I shall be happy to see you *at Neathoak.*

I have just been to see the Railing man: he says, he hopes to hear definitely to-morrow. I trust he may. I have ordered, also, a vane, a Horse under full trot—with of course the letters signifying points of compass. This will add a finish to stable and will show strongly from the *Road*, particularly when the *sun*-shines. We will try by slight expenses to make *Nethermuir* look to advantage, should we *ever* wish to sell. More tomorrow.

Your friend sincerely

GEO.

Exhibit D. 100.

New York, Nov. 9th, 1869.

Dear Van:—

We shall start Friday morn, and therefore get into Norfolk Saturday morng.

Shall send the carriage so that it may go by the Steamer of Thursday—thus it will be in season for us to go down *in* it Saturday morn. Mrs. G. is in just such a nervous state, that the sooner we get away the better! if we wish or require anything from N. Y. Sidney or Spears will attend to it and as well, probably as we could ourselves.

I shall be rejoiced to get away from the *turmoil* of business and the thousand other matters outside! and I long for *quiet;* a little social smoking and *friendly chat.* Lenore is very sensitive, now, and I shall be most happy to see that she is herself once more.

Saturday morning therefore, we shall be with you.

Enclosed is Zinn's B of Lading pr Old Dominion Line.

Very busy and *full constantly* of talk—talk—talk! I am sick of it—terribly sick of it. Lenore wishes her kind regards "forwarded." You may expect kind greetings from her when you meet.

Glad to hear that all has been going well, save that *Ira* gets the devil in him at times. No matter you will soon be free *from him;* and, I trust be annoyed no more by any such *antagonistic* nature, as he, evidently, possesses.

Glad to hear so good a report of Brown's *doings.* I have no doubt we shall be pleased with his efforts.

Am obliged and remain your debtor, for your *close attention to all matters* pertaining to Nethermuir and for your ever expressed determination to do all in your power to please yr ever *faithful and sincere friends,*

The "Lord and Lady!!!"
of Nethermuir!"
Most truly yours,
GEORGE.

Saturday Morning, surely!—

Left Lenore in *Bed this morning*—worried out.

Exhibit D. 101.

New York, February 14th, 1870.

Dear Van:

We have decided to leave on Wednesday morning, and shall therefore reach Norfolk, Thursday morn, when we shall be very happy to greet you. We shall bring very little—say a couple of valises which we can easily put into carriage. My stay will be but 4 or 5 weeks at the outside, before I shall be *compell'd* to return here, and to the valley, to carry out my plans. I shall "try out" as *Degener* used to call it, one of my plans *in profile* at Nethermuir—if I can get proper *tools* to do it with which I think there will be no difficulty in doing. Thus my thinking can easily be tested, so that I shall *know* as to proportion and best principles, and movements to operate, thoroughly, before adopting.

It does seem a pity not to enjoy it, after getting everything arranged so very prettily and at such cost, but sometimes, *circumstances* render it impossible, utterly, to do just as we desire. I regret that such has been the case with me—but I must hold fast to the position I occupy—i. e. the *property*, the business as it stands *to-day*, and must, necessarily, look forward to *the morrow:* common prudence would make me *do* the latter as well as either of the others.

Now, Thursday morning, if all moves rightly, which God grant, we shall see Nethermuir *once* more. Mrs. G. is better and is rejoiced at the thought of leaving. I am also better!—in many respects and begin to feel young again and filled with some of my old *energy!* Good—time enough to grow old yet!

I know, as you say, that you must be constantly occupied, and I hope, must devoutly, that you will yet receive a good round recompense for all the "*wear and tear*" you have gone through to beautify, what must soon or late, be

"Beautiful Nethermuir!"

Thursday morning—till then adieu.

Your friend always

GEORGE.

New Jersey State Library

As the South-wind round thee, softly, sweetly blow,
My *latest home—my beautiful Nethermuir!*
My soul would wish with joy, to the calm repose,
And ever dwell in peace and grow more pure!

Heavy Poetry—no matter; it contains the sentiment—if badly expressed.

Exhibit D. 102.

New York, June 27th, 1870.

Dear Van:

Go this A. M. to the Valley—'tis now 1 o'clock; Have got lot of things to attend to and no time to spare before going to write much. Your letter of 25th at hand—contents good! All will do well in Virginia—wish Rahway was as fair looking—Warm! Warmer! Warmest! Too warm even to sleep—Hope that you are not as sweltered as we are.

Mrs. G. *here* to day and sorry she started from home.

Will send agreement; our agreement on Virginia spec. so that in case I should *quit* this *ball* you will have matters straight and the heirs will have to do as *I* promised. By this I do not mean to have you understand that I intend to leave, *intentionally*, *soon*, but we may be call'd at any time. Quiet, save in *heat* which drives one from room to room in search of air.

Will write as soon as I return from Valley.

In great haste,

As ever Yours,
GEORGE.

Exhibit D. 103.

New York, Oct. 31st, 1870.

Dear Van:

Your note of 29th at hand. Glad to hear that you are so well!—long may you continue so. L & self keep in good health. *She* is anxious to leave in *two weeks.* I tell her to have patience—I will go the moment I can get through what *must be done.* I am as anxious as she is to have quiet and *rest.* I will come *the moment* I can do so without injuring the introduction of the new

press. There are *two* or *three* alterations necessary to be made to bring it up to the "top notch", and I shall have to go to the Valley, for a day or two, to talk the alterations over.

Now as to the "Dredging" our end of the Canal. If obstacles are to be thrown in the way, after proceeding as far and *as fast* as we have, I shall regret that I ever listened to any proposal to join the Norfolk Compy. I have never been accustomed to do things by *halves;* but have ever weighed matters fully—looked over all the ground before I decided—but when *once decided*, I have never faltered in carrying my *convictions* out with all the energy inherent in my nature! To hesitate *Now* will be, but to show the *grossest weakness!* For *One*, this weakness is not resident in *me.* I trust every director will respond "nor in *me!*" And I feel that this they *will do cheerfully!* Dont let *us* leave Our Canal to drag its *slow* length along, like *some others* we *wot* of! Urge with all yr "Voice" that this *Dredging* be done and *forthwith;* it will cost no more, *now*, than if postponed a year. Besides, every one is *interested*, to the fullest, in this matter *Now!* Dont let the enthusiasm die, *now*—the fire once out can never again be *rekindled!* I trust sincerely, that when the Vote is taken on the 8th, there will not be a dissenting voice to *finish the work so gloriously begun*, and which thus far, has so energetically prosecuted!

Push it through at all hazards!

Most car time and I must close, but I will say once more, *loudly*

PUSH IT THROUGH!

In haste,
Yours always,
GEORGE.

Exhibit D. 104.

New York, April 4th, 1871.

Dear Van:

Read your letter to Mrs. Gordon last night, and she is much pleased to find you write to joyously! She said of

your letter that it was *excellent!* Good: 'tis very satisfactory to yr. humble servant, that *you* are satisfied; and it gives me great pleasure that your faith is so firm and enduring in "Nethermuir" as to be willing to guaranty its ultimate *success!* I feel in the same way, but I know, at the same time, that *time* will be required to bring it about. This makes me *patient*—for I see the end! Now, *with you*, you have much that is unpleasant:—*a lonely summer*—hard work *mentally* and *physically;* and I trust most sincerely that you may reap roundly and well, in worldly goods for all this, and that you will never have cause to regret the hour that we *made the arrangement to buy a Southern Home!* If I never realize a dollar, it will give me happiness to see that you do! That is, that I wish you to *make by this operation*, more than I *care* about making myself, by it. I can do without it—you *need it*, and should have it—therefore, specially, I pray for your success, tho' in so praying, I cannot help, indirectly, praying for myself, for my success is merged in yr. own.

Sidney has gone to Washington to attend to some of his own and some of my Patent business and will be absent some two or three days. This detains *me* here until his return; when I shall go, with Lenore, once more to the Valley to see if I can move the mountain!

Delay, delay, and delay again—there is no end to it:—Slow is no word for it! When we sell presses *we want them—than* not away of in the future, *after the presses are countermanded!* I shall do my best to *stir* them.

Heavy rain last night, but a bright beautiful day, to-day.

Keep feeling, in the same way, *as in your last letter*, and you will make both Lenore and self happy also. Happiness gives happiness—we can't keep it all to ourselves!—

In haste,

Yours, always,

GEORGE.

Mary home last night, and I was glad to find that they both *behaved well* towards each other, if for no other reason—*for my sake!*

Exhibit D. 105.

New York, April 20th, 1874.

Dear Van:

Tomorrow—ah!—tomorrow I shall be *sixty four* years old! Well, I do feel old!—I must hereafter make the very best of my time—live as I should and build up for the great change that soon must come. It makes me sad —somewhat, to think of so soon leaving this Earth plane!—and yet, I know it is right; and I feel sure the higher life must be immeasurably happier. I know not that one, at my age, *should desire* to remain here:—tho' we wish to keep those that are dear to us—always with us. Certainly, we shall soon have them with us again—for all time! God help us and guide us all, and grant us that spiritual advancement we all so earnestly desire, and that we *so much need!*

Lenore better.—Rain—Rain—and cold rain too.—

The Dredge, it seems, will break—no matter we soon, very soon shall be at the end of the breaks. A little more patience (as you have shown enough of it) and the *reward* will come! Long look'd for, and welcomed most cordially! *Then* you will feel repaid and then too you may justly feel proud. It would never, you may safely claim, have been a success, but for the brain and sinew of H. D. Van Wyck.

The weather, oh! this weather—'tis trying to an *old man* such as I am getting to be:—glad to hear from you so often.

Dinner time. Yours as always, and always too, in a hurry, you will add.

GEORGE.

Exhibit D. 106.

New York, March 24th, 1875.

Dear Van:

Lenore got letter from you yesterday—all right. Don't worry yourself but take all things—*coolly!* We shall come out *rightly*.

Enclosed is cut of a "Steam yacht" built of any size

and drawing any amt. of water from 8 to 9 inches to 2 feet—will carry 20 persons if 60 ft. long without making much difference in dft. If 40 feet long will cost less—Price $1900. This is *propelled* by propeller which can be raised or lowered. It can be made as flat bottomed as desired—*all complete.* The above figure I can get *reduced*—now, the question is, "is it not better to get *everything complete*, so that there shall be no *trouble* after coming in possession of *Yacht*, so as to be sure we are right. I say 40 feet is a good length, and we know the *longer* and *broader* the less water she will draw. I will get the *lowest price*—the time wanted to furnish it, etc. This is an arrangement for my own pleasure and for my friends pleasure and is a *private expense*, and I want something *Right.* It can be used, when necessary, for towing and will therefore come in O. K. for something outside of pleasure. Lenore gone to Rahway—I am going right off. Lenore very well I am ditto. *Snowing* like the "*tyfel*".—Hope to see "Spring, smiling Spring", sometime before next winter.

Business "so, so"! enough doing to live; but not *steady*—God help us all!

Shall try to get matters right this week, and so *run down* for a *short time*, anyway.—

Lenora *likes the South!* So do I. Better than this cold stormy, disagreeable North, which is too much like the *people themselves*, to make one contented.

Write again soon,

In haste,

As ever and always,

Yours,

GEORGE.

Exhibit D. 107.

The pertinent part of this is printed at pages 614, Vol. III, of the case.

Exhibit D. 108.

Neathoak, Aug. 15th, 1875.

Dear Van:

Sunday and still *cloudy!* We have had rain *without fail, every day*, for weeks! It is about time we should be favored with a little *brightness* to cheer us in these troublous times. Biz: continues dull—every one complaining—the outlook dark and ominous *as the heavens!* There *must* come a change!—but when? *Let it come!* Our equilibrium must be preserved. Our end of the scale-beam has been *down* among the *ciphers* a long while; and it must rise, sometime, and I believe—soon! *A live Yankee* would cease, otherwise, to exist; such a thing cant be! A Yankee will never die! My arm is getting better—stronger, and I begin to feel like myself once more—no more Neuralgia for me—d—n it!

We should be happy to see you.—Your little note, written in such a hurry, came to me at "Opera House"—I shall look for you daily. It appears that Mr. May and Patrick, both, fail to find the flange and valve for Pump. This does not *prove* that they can't be found, or that they are lost! it only proves that *they* can't find them.

I intend to "fix things" so as to be in Virginia a good portion of my *next winter, if I live!* Collin has gone home; his wife having returned. Poor fellow, he is not happy—too *nervous*—everything is wrong with him! This life is not good for *anything*—there is no happiness, without employment for body and mind! God has so ordered it, and it must be right—with occupation comes, necessarily, fretting; and fret we must—then follows, without we are Churchmen, swearing! and so we go.—

I think now, that I am well enough to run up to N. Y. and try and start business a little—give it a stirring up! The pudding will *burn* without, and not be fit to eat! Now, we must eat, and the cook must not leave the *fire* to do as it pleases; not much! Gordon must look to the viands or we shall go hungry and naked too, I fear. So wake up George P. and watch the "pot boiling"!—there "them's the facts"! God grant me health, and all else shall be made right—sure!

Opera House going to be greatly improved—Then let her go and earn *interest*, *for me*, if possible.

I had a talk with Ira about Dredge, and he says *he thinks he can fix her.* I think so too, would it not be cheaper to let him try it? or would it add too much to your care?—If it would, then don't do it. You have laboured hard enough for the past 6 or 7 years and ought, therefore, to reap a little quiet—it is "high time" you took things—all things—easier! Enjoy as greatly as you can, the "good things" of this life, and don't *fret* any more than you *must*, necessarily. Eat the *sound* part of the apple, and let the rest go to the pigs! Take the *cream* and let the skim'd milk go! Make the most of all good things that fall in your way, and study how to keep the waters of life—pure and sweet! If *this*, don't bring some happiness, the figures are wrongly set down, and we shall be obliged to invent a new rule!

Sid don't seem to know, exactly, what you require for the top of the flag staff—

Glad that the Fountain looks well—could have bought a more costly one, but tho't this was very pretty. If we conclude to fix up Fox Hall, we will have a *beauty*, there. It seems to me that a neat cottage built house be put up cheaply there—the grounds improved somewhat—a new fence on house side of road—water put in grounds and house, and the place generally improved—laying out money wisely and well, and thus making a really *beautiful* and *attractive* place, without the expenditure of much monies! What do you think? wouldn't it pay well? I think so—It is so near Norfolk and so good a road.—We'll talk this over.

I mean to *live South*—God willing—in the *winter*—sure and perhaps North in the Summer! Would not this be *delightful!*

We'll have a good long talk when you come and *plan* a little.

9 o'clock P. M. Mr. Barker and Mr. Beauman just gone. Very warm—Rained again today—enough to last—ground *full* of water—everthing *green* and thriving in

vegetation.—green enough everthing else, but not thriving! *We* must *thrive*, yet at Nethermuir—so let's be contented in this thought, if in no other—Lenore well.

More soon, as ever and always,

Sincerely yours,

GEORGE.

Exhibit D. 109.

Rahway, Nov. 1875.

Dear Van:

No *Van* to day! Expected to see you—hope to yet. Unpleasant to day—rain last night. Yesterday inaugurated "Temple Hall". Two sermons by Mr. Ayer of Brooklyn. 100 persons in the morning and 300 in the afternoon—*Great Triumph!*—It will set the old "Theologians" rather wild! I should say that the most of the audience was pleased—all that could sing, joined and everything pass'd off pleasantly! Mr. May, when he got out and into his buggy to go home, was so full of joy that he had to *burst into tears!! His dream was realized!* Well so much for the Hall.—Next Sunday we shall preach in the *Opera House* itself. This will do away with the objection that has been raised to the name of *Opera House!*

Glad to hear that the keel of Boat has been laid—good! Go to the city tomorrow—Hurrying to get ready for the south. Clothes, etc. making which takes time—getting everything into line so that I can be easy in mind when once drop'd in Old Virginia. I want to get quiet and *Fat!* I weigh just the same as I did when Col. was there 180 lbs. The gain has remained ever since.—200 lbs. is my mark—when I next leave Va. if I live! If I die, what then? no matter—sufficient &c.—always!

We will occupy the Old House and fit the other, at our leisure.

Lenore gone to see if there is a letter from Van. Hope so. No news—business tolerable.

More tomorrow,

In haste,

Yours ever,

GEORGE.

Exhibit D. 110.

New York, July 5th, 1876.

Dear Van:

Rather annoying must have been your ride to Amboy! —too bad, when you had so little time to spare. So, the "glorious Fourth" with all its attendant *evils*, has past! I went nowhere, but staid in the house all day—Lenore went to hear the oration at the Opera House and in the evening to *see* the Fireworks! but the show was postponed until this evening! Great City—Rahway! ! !

Weather *awfully warm*;—last night I slept with a fan in my hand, and every time I woke, which was very frequent, I kept the fan in motion until I *fell asleep again!* I suppose however, that *everywhere*, the heat has been overpowering. Notwithstanding the heat, I had far rather have it than Winter weather.—I was made for a warm climate, and will try to live in one, shortly.

Lenore pretty well—*pretty*, as I tell her! If she were not so *very nervous*, she would move through life more easily and pleasantly. She, poor girl, cannot help *her* organization any more than *you* and *I!* *We* should have had a hand in the "components" forming our individuality. *How different we should have been!*

Now, you have returned to Nethermuir again, you must remember all I have said regarding your health. *Make others do!* do *not* work yourself—but get everything arranged—and *make Wilson* attend to it—under *written orders;*—then, do you jump on board and run up to Neathoak and take it easily—or if necessary for you to be south, to attend at all to sales, then go to a *hotel in Norfolk*, and stay *there;* for until we get a good flow of salt water into the new inlet, I do not think it will be safe at the New House! The water east of the "causeway" is too *low* to be healthy—and there is no use in trifling with your *health*—it is *wrong* to do so. Pray take my advice—anon and we shall have it all right.—*Very soon*, this will be.—When you see Calson and he gets spec; ready, shall be ready to say what to do. Don't forget Ghent. Feel first rate.

In haste, as ever, yours,

GEORGE.

Do you keep "first rate" too. *Stay in Norfolk!* Let me know when *deed* is ready; will send certified check and balance.

Exhibit D. 121.

New York, July 27, 1866.

My Own Little Girl,

Sidney offer'd to go down to the "Chateau" every night until I came home, but I thought you would not be afraid. I will write back *as quick* as I possibly can. Surely shall return thursday night—perhaps Wednesday night. Do not work, yourself, but take everything *easy*. If you want things done hire the "colored lady"; we can afford it "I reckon." George will behave himself *now and always*, if for no other reason, than his own dear wife's sake. Rely upon me. Sid's baby very sick Saturday; so he says. I thought therefore it would be necessary for him to be at home. He may go if he will. Be a good girl. Your own

GEORGY.

Exhibit D. 122.

New York, Sept. 14, 1869.

My Dear Wife,

Yours of yesterday at hand this A. M. at office. Everything is going on well at home, but seems, to me, very *lonesome*. I miss you beyond anything I might say in words. In truth *I do not exist* or *seem to*, without you; I feel lost and wander from one place to another with no particular object only feeling that I am looking for something—not to be found! I shall be very happy, my own girl, to have you with me again, yet, I would not have you hurry, so that you are happy. I was very glad to read your letter and am sorry that you could not have written *more favorably* of yr father's health. I direct this Bridgeport as yr letter says you will probably be there to-day. If yr visit to yr uncle *is* pleasant, as I know it must be, prolong it a day, and I shall be content even though I desire much yr return. I am very, very, sorry to hear that yr eyes are still inflamed—may they be

blessed by *getting well when they look upon George.* A thousand kisses—and yet, a thousand kisses, from your affectionate GEORGE.

Exhibit D. 123.

New York, June 3, 1871.

Dearest One!

Your last just received, yesterday morn; also one from you and one from Van. Did not write day before yesterday as I thought you would start before the letter could possibly reach you. Yesterday Amos P. came expressly to provide for final price. Talked of changes in press and reach'd no *conclusion.* He will be here again, in a few minutes, and then we shall doubtless come to some understanding *at once.* Talking kept me *yesterday* from writing, but this letter will just reach you before you leave—Monday.

I will see that the carriage is at Elizabeth for you just around the corner at depot and be there myself if nothing prevents. All well at home and anxious to welcome you. 'tis very warm, 80°; not so warm as my affection for my "old woman." How funny that looks! What a *caricature! You will always be young to me, eternally so.* I am glad that I so soon shall have you where I can *talk* to you instead of write to you. One can say so little on paper, and then it is not like the *living voice and tone!* When *gone,* how sad the memory! God help us and make us better! I shall see you tuesday! May nothing intervene to prevent this happiness. God bless you evermore, my own, *always,*

Your own evermore,
GEORGE.

Kind regards to all.

Exhibit D. 124.

My Dear Lenore,

Awfully rainy and unpleasant today. 1-2 past 2 o'cl'k and just got to office. I stayed long eno' to know what has been done, if anything, since I was last here. Very

busy at "works," getting improvements along—everything progressing lively! I have too many things to think of; this is my trouble. If I had but *one* thing on my mind it would be pleasant beyond description. No matter the end is not far off, and I suppose I must e'en continue unto that end! *Very Philosophical* isn't it? If I *must!* why then so be I *must!* Very conclusive? But then it comes up, *must* you? Ah, *that is* the grave question. I shall until I can "*see out*" anyhow. Dash today did not seem improved—steamed his head and by this time his throat is rubbed with ammonia and mustard. The feed is already given as Van suggests. Have just sent for a bottle each of A.A. and C.C. carrots are recommended highly. Ordered some of those particularly for Dash. He, poor fellow, seems to understand that you are trying to do for and are *sympathizing* with him! Hope all will be well with him. I wish you were with me daily. I miss the good spiritual talks we used to have almost nightly! *I miss your society*—miss the kind words and acts. Well, you *will* be away from me! I can't, without the business advancement suffering, be *with* you. If I am not here to supervise things would *hang* and all would go crooked as *Richard* 3rd.

When I return you must come on with me, if you will. I cannot stay long at a time at Nethermuir—*too much* to do, but I can't get away from it, and there is no use in talking.

Your uncle had a poor turn, and imagined he would not see you. I laughed him out of it. He'll live till the proper time and there is no use in worrying about it.

We talk muchly—and good talks too—long ones. Give my regards to all. Wrote you yesterday and have written almost daily since my return. Just 3. Have therefore devoted about 20 minutes to you in this scrawl—minus the talking, God bless you my own dear *girl*, in haste,

Yr. affectionate GEORGE.

Exhibit D. 125.

Rahway, May 12, 1872.

My Dear Wife,

I wrote you yesterday, from, or at, shop. I was ready to start Saturday morning, but that you were considerate in notifying me not to come, as it might have been unpleasant for me, owing to dust and extreme heat; but we had extreme heat here also, tho' not perhaps so much dust; still it was very warm. Saturday 't was all of 30° colder! a very great change, still acceptable, tho' more care was necessary to guard against so great a change. To-day, Sunday, the thermometer, stands in our hall 74°, so you see *how* lovely everything must be save that my Lenore is *away from home.* All the foliage, apple trees, cherry trees, shrubbery, evergreens, look beautiful, and as yr. uncle says, turn the thoughts to—The Giver! I have just been over to see the Mays, and Wm. is now sitting in the office with me! I am enjoying a smoke! so you see that I have not quite "given up" that—still moderate—very. Next *week*, rather *this*, everything it is understood, fully, everything is to be *driven!* I have had a talk with Witter and Barber and they understand that the work is unsatisfactory, heretofore done, not a proper return for the money expended! If they want things pleasant—they have got to change or the weather will grow suddenly *warmer.* Barber is going *right on* with *his* work—now let Witter do ditto and all will be well. This they understand or *he* does. I "raythe" think he'll *do*, too.

You remember our old painter Mr. Jaques; he paid his men off Saturday a week ago, and in three days time was no more! died of a congestive chill! where contracted—must have been Rahway! several have had *pneumonia.* Sudden changes must be guarded against. Tell Van, as I wrote you, to *come home* to Neathoak and stay until he is better—free from ague—and don't let him think of going back to Va. again, save it may be for a day or so at a time —its no use trifling with health! do not expose yourself.

Let all else be subservient—it *should!* Keep within doors, dear, and do not expose yourself. If at home now, you would say with me, beautiful! beautiful! No spot on earth more so! "That's so easy!" Did you note "cure for ague"? I hope there is something in it; 'tis worth trying anyhow. Mary Ann Doane is sick with bilious fever. Blanche Doane also, more nervousness than aught else I surmise. Jane has her headaches every little while. See Gordon occasionally—nothing of C. C. G. or any of his tribe! deserted us entirely. However, I do not go in often, to meet him or see him, if he did call at the office, believe that he does not like his new house; well—no matter; she probably likes it, and that is enough, of course!

The Nichols, so Fred. Degener says, are going to build printing presses, after my patent expires! ! at least he heard so. Let them *beware* of treading on my toes too *hardly;* cause 't will *hardly* do! You bet! Sufficient unto the day, etc.

Just finished dinner—"two"—big two, dinners! A heavy dinner party. Miss'd Mrs. G. Hope to dine with her next Sunday—will keep on hoping till it comes. Lovely indeed is the glimpse, looking May-ward, from my office door! *green* and *white*—beautiful blending! Everything *still*—save the songs of the myriads of birds.

: Roast Beef,
: Potatoes mashed,
: Asparagus,
: Tomatoes,
: Rhubarb pie,
: Custard,
: Coffee,
: Tea, etc.

Feel all right, inwardly, now. Tomorrow a hard day's work—shall go to the city for an hour or two's stay, then back to factory—drive—drive—all the time—I'm only 62 and can stand it—you bet!

Had a long talk with yr. uncle, this morning. He reasons as a jack plane smooths the boards! He don't live "*much*" down here, and he's right.

When I come for you, dear, you must be ready to come back with me; you will induce Van to come with you—talk it over with him before I come.

Next Saturday, if I come at all—I shall come. No rain here yet—a doubtless no rain with you either—too bad! We need it badly.

You said I wrote you a short note—this is a long one! Guess you'll get *tired* of it. If it is an infliction lay it to yourself for complaining of my first, written in a hurry. There is no news for filling up a letter, and perforce I must, if I write at all, fill up with my thinkings My thinkings do not look well upon paper but you may make the best of them—and excuse their *dearth.*

Now one word for and to my dear Lenore; for *herself* from her own George. Kisses by the thousand, dear—*love*, a sea of it, and overflowing ever! Wishes, the highest, and purest, and deepest, too, for my dear, wife's happiness here and hereafter. May God's blessings always rest upon you and his spirit ever enwheel you round.

God help and bless us all
now & forevermore Amen!
Your true husband
GEORGE.

Kind remembrances to all.

Van: Get ready to come back when Mrs. G. comes; arrange everything—never mind "profits"—but look to yr. health; oblige me by heeding me. truly yours
GEO.

Exhibit D. 126.

New York, May 5, 1873.

Dear little wife,

Monday and *another beautiful* day! Here in city to-day. Not much doing in the way of business. Mary has fix'd up the Slay, so the moths won't trouble it—good. All quiet and well at home. Shop this morning —all moving well there. I think from appearances that

I am to go *smooth* at Shop hereafter. I *dictate now and will* have my own way! No Witter 'round now, to have *his* way; no sir! Things are done as *I say* and the difference will be that fault is not going to be found as was formerly the case. I am writing with a pen given me by Mr. Mooney. I think I told you this before but forget.

I hope you and Van will be here to-morrow. Shall I hope right? We shall see. Beautiful, beautiful weather, and beautiful, beautiful wife, when I *see her*. No news to write—life glides poorly when my little wife is absent. Won't it glide merrily when she returns?

Now to finish after "talking" a long time about nothing. Time to return to Rahway and I have yet to get dinner.

God bless you and return you safely to

Your own

GEORGE.

Regards to all in haste.

Exhibit D. 129.

(For Identification.)

New York, March 22d, 1875.

Dear Van:

Cold and unpleasant under foot, but bright overhead! Lenore at Brooklyn—not very well to-day—nothing serious however. Hope to find steam engine that will answer. Must now go and see about a *Sacred Desk* for the *Opera House!!!!* Am slowly getting the Opera House bills in, so that I may pay off the indebtedness and thus get out of debt there.

Business is improving somewhat, and I feel that we shall, anon, got out of the rut and have "a good road to travel."

Have heard nothing of the proposition of the Vere de L'eau people or got statement. However 'tis of no importance, as I shall soon be with you and shall then get posted.

Do not worry over things too much—they will all come right at last. Take all things easily, and spare yourself—

you will come out *ahead*, sure! and 'tis no use to *fret* and push *too fast*. Nethermuir is right—all right—the *stuff* and position—*climate*—health giving—when Canal is through—good, good, all through! No cause to worry. *I* am done with it—*ease* the rest of my life however things may go. Write when you have time—but don't do so if you have more important matters to look after. A week more and I hope to have all arranged so as to whip on and see you *for a time*.

Lenore goes to-morrow to Rahway—thus She lives at R., and I live at Brooklyn! *Pretty* so to live isn't it?

Well, God help us and make us better Amen!

Shall see you soon

Will write again, anon,

In haste, as ever

Yours

GEORGE.

Contents of Brief.

		PAGE.
I.	Preliminary Statement	2
II.	Parties	2
III.	Life of the Testator	6
IV.	Proceedings in Brooklyn Surrogate's Court and subsequent events	9
V.	Testator's Widow	11
VI.	Testator's Daughter	12
VII.	The Will, Exhibit P. 1	13
	The Adams family	14
	The Drafting of the Will	17
	The Execution of the Will	20
VIII.	Custody of the Will	22
IX.	Adams' Course after Gordon's Death	24
X.	The Finding of the Will	27
XI.	Provisions of the Will	33
XII.	Claims of Contestants	36
XIII.	Intestacy	36
XIV.	The Testator's Domicile	38
	(a.) *Alleged adjudication of domicile by the Brooklyn Surrogate's Court*	39
	(b.) *Payment of Taxes by Testator*	43
	(c.) *Attempt to show that the Testator voted in Brooklyn*	46
	(d.) *New York Directories*	50
XV.	The Testator was in fact Domiciled in New Jersey	51
XVI.	The charges of Forgery and Perjury	64
XVII.	Expert evidence in General	66
XVIII.	Brief Review of Surrounding Circumstances	69
XIX.	Standards of Contestants	71

XX. Contestants' Distorted Photographs..... 73
XXI. Proponents' Standards..... 77
XXII. Contestants' Lay-Experts..... 79
XXIII. Proponents' Lay-Experts..... 86
XXIV. The Professional Experts..... 93
The Gordon signature compared with the standards..... 96
Gordon's signature compared with the body of the Will..... 100
The witnesses' signatures..... 101
XXV. Mr Gordon Declared he had made this Will..... 107
XXVI. The Reasonableness of the Will..... 112
XXVII. Comparisons of the so-called Brooklyn Will of 1873, with the Draft and Will of 1868..... 115
XXVIII. The Absurdity of the alleged Forgery 121
XXIX. Attempts to Discredit Henry C. Adams 132
(1.) The War of the Red Inks..... 133
The Draft, P. 236..... 134
Contestants' Red Ink Experts..... 139
Proponents' Red Ink Experts..... 142
(2.) No motive for Forgery and Perjury. 149
(3.) Contestants' Attack on the Reputation of Henry C. Adams..... 153
Contestants' Witnesses..... 153
Proponents' Fort Plain Witnesses.. 155
Proponents' Rahway Witnesses..... 159
Proponents' Orange Witnesses..... 159

LAW POINTS..... 164

Point I. NO ADJUDICATION OF INTESTACY..... 164
Point II. DOMICILE..... 164
Testator was domiciled in New Jersey 165
Point III. Burden of proof of Fraud, Forgery and Perjury upon Contestants.... 176
Point IV. Declarations of Testator are competent evidence where issue is Forgery *vel non*..... 179

Point V. Contestants' Evidence that Testator did not speak of this Will to Van Wyck Incompetent..... 190
Point VI. Henry C. Adams' stand unimpeached and uncontradicted..... 190
Point VII. The credibility of Henry C. Adams having been maintained, the *factum* of the Will has been established... 194
Point VIII. Preponderance of Expert testimony in favor of Proponents..... 194

New Jersey Prerogative Court.

In the Matter

OF

The Probate in Solemn Form of the last Will and Testament of GEORGE P. GORDON, deceased.

Proponents' Brief.

The Plan upon which this Brief is Made.

We have endeavored in the following pages to give a fair and impartial abstract of all the testimony of both sides, and ~~we~~ have not hesitated to incorporate in this brief the testimony of the contestants that might be construed as adverse to our contention, nor have we designedly omitted any such testimony, using the witnessses' own language when we were able; because we believe that a brief prepared upon this theory will, better than any other way, present to the Court the general outline and aspect of the whole case. And furthermore, because we believe that when it is possible for the mind to review all that has been said for and against this will, ~~that~~ its fate will not suffer under such scrutiny; and that the fullest and fairest presentation of all the facts contained in the record furnish an unanswerable argument for its validity.

STATEMENT OF FACTS.

I.

Preliminary Statement.

The will in question, Exhibit P 1., was offered for probate in common form, and the proof thereon taken by the Ordinary in open Court on the 17th day of January, 1891. On the 19th day of January the Ordinary admitted the will to probate, and accordingly Letters of Administration with the will annexed were issued out of this Court to Adeline J. Gordon and William H. Corbin, upon their duly qualifying.

These Administrators thereupon took possession of certain of the property of the estate of George P. Gordon, and by an order made by the Court of Chancery of this state in an action brought by the proponents against Josiah Porter, Henry J. Cullen, Jr., and others, Isaac S. Taylor, Esq., was appointed Receiver of the Gordon Press Works, which are a portion of the property claimed to belong to the estate of the testator.

Thereafter, on February 13th, 1891, an application was made to this Court by Henry J. Cullen, Jr., claiming that as Public Administrator he had been appointed Administrator of the estate of George P. Gordon, deceased, by the Surrogate of Kings County, New York, and asking this Court to revoke the said probate and to require the said proponents to proceed anew with the proposed probate, permitting him to be made a party. The principal grounds for the application, as set forth in the voluminous petition, were :

1.—That the testator at the time of his death was a resident of the State of New York, and that therefore this Court had no jurisdiction.

2.—That the alleged testator had been declared intestate by the Surrogate of Kings County, and that the heirs at law of the testator had all acquiesced in his intestacy.

3.—That the signature of the testator to the will was not genuine.

An order to show cause why the said probate should not be revoked, and the proponents required to proceed anew, was granted by the Court, and before the hearing and determination of the motion thereon, Samuel Richard Ruyssenaers and Pauline Theresa Reitz, claiming to be legatees under the alleged will of Mary Agnes Gordon, the deceased daughter of the testator, and William W. Olds, one of the executors of the estate of Lenore M. Van Wyck, the deceased widow of the testator, petitioned to be allowed to intervene and join inthe application of Henry J. Cullen, Jr., for revocation of the probate and letters of administration.

On the hearing of the motion the Ordinary refused to revoke the probate, but made an order on the petitions and application, proponents consenting thereto, directing that proof of the will be taken in solemn form " and that the petitioners above named may be " heard and take part therein."

II.

Parties.

The proponents are Adeline J. Gordon and William H. Corbin, administrators c. t. a. of the testator, and A Sidney Doane, grand-nephew, and a legatee ; and the other legatees under the will now living and represented by the proponents as appears by the will and evidence are :

Elizabeth Burlingame, formerly Elizabeth May, a half sister of the second wife of the testator.

Adeline J. Gordon, the administratrix above named, and Wealthy Jane Bogert, sisters of the testator.

Henry R. Gordon, a son of testator's deceased brother Cuthbert C. Gordon;

the children of A. Sidney Doane, the deceased nephew of testator, and who was his business manager; and the four surviving children of Mary Ann Doane, who was also a sister of the testator.

All the above mentioned parties were represented at the trial by their attorneys, Messrs. Black & King and Messrs. Booraem, Hamilton & Beckett, and Messrs. Collins & Corbin, their counsel.

The contestants who appeared formally in this proceeding for probate in solemn form, are:

Samuel Richard Ruyssnaers and Pauline Theresa Reitz, who claim to be legatees under an alleged and contested will of Mary Agnes Gordon, the deceased daughter of the testator, and

William W. Olds, the executor of the last will of Lenore, the deceased widow of the testator.

Mr. Henry J. Cullen, Jr., in his petition, alleges that he has distributed the personal estate of the testator to Mary Agnes Gordon and Lenore M. Van Wyck, under the laws of the State of New York, and that he is protected by his appointment and the orders of the Brooklyn Surrogate's Court (Petition, XXII). Nevertheless, he claims and urges "that he is a party con- "cerned in the probate of said paper writing, * * "* * and as such was and is entitled to be heard "upon the proceedings for such probate," (Petition, IV), and prays "that all parties concerned" may be cited and "made parties to said proceedings."

Some light is thrown upon his zeal to have the probate of this will revoked when it is observed that the laws of the State of New York, under which he claims to have been acting (schedule annexed to petition) prescribe it as his express duty that "*he shall make and return an inventory in all cases*," and "one year after having become vested with the right of administering on any estate, he shall account *on oath to the Surrogate*," &c. (N. Y. Rev. Statutes, Eighth Edition, p. 2577, Sec. 35, 3. 9., which are made applicable to Kings County by Laws of 1871, Ch. 335, Sec. 5, cited in Schedule A). Mr. Cullen does not claim in his peti-

tion to have filed an inventory of this estate, or to have accounted in accordance with these positive requirements of the law, and there is no reference to his having done either, in "*the entire record of the whole of the Brooklyn proceedings*" offered in evidence by the contestants. (Testimony, page 536).

When, however, this Court ordered that the proof of this will be taken in solemn form, and that the petitioners, of whom Mr. Henry J. Cullen, Jr., was the first and chief, might be heard and take part therein, Mr. Cullen endeavored to escape from the jurisdiction of the Court by not openly appearing on the taking of the proof, although his attorney who argued the motion on his petition continued in the case throughout and ably conducted the contest. Mr. Cullen's hand is, however, visible in the evidence.

It was "*by direction*" of Mr. Cullen that Van Vleet sent the boxes containing Gordon's checks and papers, "*everything that had come from the New York office*," out of the jurisdiction of the Court (163–166).

It was Mr. Cullen also who gave the notorious detective Jayne, alias "Gastin," $300 for vainly using his lying methods to entrap Mr. Edward L. Adams into making statements which might be wrought into arguments against his credibility (111; 556; 559; 561; 562).

So far as appears, the only other persons, besides these, who have interested themselves in promoting the contest, are Henry Dubois Van Wyck, who married Lenore, the deceased widow of the testator, and is a legatee and an executor named in her will, and interested in defeating this will in order that he may not lose his legacy under his deceased wife's will (657), and Edward S. Savage, one of the counsel for contestants (1409), and the witness Van Vleet, who purchased some of testator's real estate from Messrs. Cullen and Porter (131, 162).

It is very noteworthy that all the heirs at law and next of kin of the testator are provided for in, and interested in upholding this will; while those who are

seeking to overthrow it are all strangers to him and not of his blood, or kindred. The case differs in this respect from most will contests, which are brought by one or more of the heirs at law and next of kin to overthrow wills which are sought to be upheld, either by more favored relatives, or by persons not of the testator's blood.

III.

Life of the Testator.

George P. Gordon was born in Salem, New Hampshire, in the year 1810, and died in Norfolk, Virginia, in January, 1878 (3 ; 618). In his early life he was for a short time an actor (1 ; 195). Afterward he worked at his trade as a compositor and printer, until at length he became an inventor and manufacturer of printing presses (1195). The presses which he manufactured were his own inventions (1 ; 195). Down to the year 1872, Messrs. Nichols & Langworthy, of Hope Valley, R. I., manufactured his presses for him (704). In January, 1872, he purchased a factory at Rahway, in the State of New Jersey, to which he removed, and where he enlarged his business and continued to manufacture his presses, down to the time of his death (706). The title to this factory, which is known as the Gordon Press Works, is still in the name of George P. Gordon ; and the factory is now operated by Isaac S. Taylor, Esq., the Receiver appointed by the Chancellor.

From the *first* marriage in 1846, testator lived in Brooklyn until 1866 (1194), when he purchased property in Woodbridge, New Jersey, and removed his family to this new residence, which he enlarged and beautified, spending a great deal of money on it, and maintaining it as his home until his death (589, 623 ; 728 ; 731 ; 763 ; 768 ; 805 ; 807 ; 1037 ; 1048 ;

1049; 1051; 1052; 1104; 1105; 1168; 1169; 1183; 1195; 1198; 1199). He had great enthusiasm for Woodbridge (697; 703), and a high opinion of the value of his and the surrounding property (697; 702). He enlarged his farm by new purchases from Mr. Compton (1305) and Mr. Laing (638; 1089; 1429–1430), and of the Bramhall place (1037–1038); and desired and attempted to buy another Compton farm and the farm of Mr. Henry Adams (754; 790). In 1869, apparently at the instigation of Van Wyck, he purchased land near Norfolk, Va., (588; 618; 782; 785; 1052), which he placed in charge of Van Wyck (636-637), possibly in order that he and his wife might "*live alone*" at Woodbridge, as he originally intended they should (1269). In February, 1874, he bought and furnished a house at 155 Columbia Heights, Brooklyn, N. Y., for his daughter Mary (731; 1050–1058: 1195–7; 1339) and occasionally spent the night at this house, but continued to live with his wife at the Woodbridge residence, spending some part of his winters, however, in Virginia (1343–7). The claim of the contestants, that his Brooklyn house was his residence at the time of his death, will be fully considered hereafter.

Mr Gordon was married twice, first to Sarah Cornish, by whom he had one daughter, Mary Agnes Gordon, who survived him, but died May 28th, 1890; and secondly, in the year 1856, to Lenore May, who survived him, and who after his death married Henry Du Bois Van Wyck, and died in September, 1890. His relations to his second wife and to his daughter to some extent appear in the evidence. We know that he wrote some loving letters to his wife, Lenore (Exhibits D 121 to D 126, inclusive). His sister, Adeline J. Gordon, says he loved Lenore but that she did not love him (1210). She and Mary gave him great cause for anxiety, and made his life wretched. Between them he was constantly in the habit of saying he had "a hell of a life" (174–9; 1050; 1063; 1345). They were both extravagant (1058; 1277; 1310; 1311) and constantly quarreled with each other and often with him (730; 1063;

1170; 1197; 1338–9). At times they did not speak to each other for weeks. Finally Mr. Gordon became convinced that it was no longer possible for them to "abide under the same roof," and he then in 1874, bought the Brooklyn house as a home for Mary, which house she occupied from that time until his death (730; 731; 1050; 1058; 1195; 1197; 1199; 1339; 1343–5; 1447).

The night quarrel scene in the Woodbridge house which Mulvaney so graphically depicts (1247; 1289); the vigorous language in which Mr. Gordon denounced Van Wyck's attentions to his wife in the presence of the same witness (1270-3); Gordon's melancholy words "Yes—my house—my horse—and my wife," (1453); the stirring incident of his wife's valise containing "fancy letters" which McLaughlin relates (1306; 1313-1314); Van Wyck's statement that Mrs. Gordon put tartar-emetic in Mr. Gordon's beer (642); Henry C. Adams' testimony (80; 81; 82) that Gordon feared poison (79); and the evidence of Gordon's sister, Adeline, and of Mrs. Doane and others that he described himself as "between two fires" (1197) and leading "a hell of a life" (1050; 1068); show that the relations of the testator to his wife and daughter were anything but harmonious and happy.

The testator's relations to his brother, and sisters and nephews and nieces were of a pleasant and in some instances of a very affectionate character (754; 1198-1204; 1205).

There is evidence that Gordon was in the habit of talking with more or less freedom about his personal and financial affairs to those in whom he had confidence. He talked freely to Barber, Ernest Baumann, Henry C. Adams, Mrs Doane, and others about his family affairs, and about his business and his will (742; 757; 759); although in these conversations he does not often seem to have disclosed definitely his intentions and plans.

The witnesses tell us that the testator was "one of the best and noblest men" (1205), that "he hated a lie"

(1059), that he was "kindly to everybody" (1314), and generous not only to his wife and daughter but to other members of his family and to employees as well (1063; 1215; 1376; 1437).

He was fond of music and the drama, played the flute and promoted private theatricals and built opera houses (626; 643; 753; 1037; 1194).

On the other hand they tell us he was very passionate. He would get angry and "swear like a trooper" (761.) "I never saw a man so vexed in my life," s ay McLaughlin (1308.) The carriage quaked under the violence of his angry cane, as the air, and doubtless Mulvaney too, shivered at his expletives on the mention of Van Wyck's coming (1271).

As a result of a visit to a clairvoyant he called his press "The Franklin Press," and Van Wyck says "*he was and was not*" a believer in spiritualism (658.) Occasionally he went on a tremendous spree (725–739), drinking incredible quantities of beer, according to Van Wyck's statements (642-643), and his illness, which so nearly resulted in his death in June, 1868, was the result of excessive drinking" (33–6; 58; 1451-2).

His death occurred in his Norfolk house, in January, 1878, and he was buried in Greenwood Cemetery from his daughter's residence in Brooklyn (618; 761; 781.)

IV.

Proceedings in Brooklyn Surrogate's Court and subsequent events.

Shortly after testator's death a paper purporting to have been executed July 26th, 1873, and to be testator's last will, was offered for probate in the Surrogate's Court in Brooklyn, N. Y. (Cullen's Petition VIII; Testimony, 22). This Brooklyn will was contested by Mary Agnes Gordon, the testator's daughter, aided probably by the widow and Van Wyck (644–5), and

was rejected because it had not been properly executed. If we credit Van Wyck's remarkable statement, Gordon knew before his death of the defective execution of this paper, and was convinced that Mary would make trouble over it because her portion of the property was tied up by its provisions (620–2).

Then it was that Henry J. Cullen, Jr., as the Public Administrator of Kings Co., appears to have been appointed administrator of testator's estate (Petition, VI., VIII., X.). An attempt was made a few years later to open the decree rejecting the Brooklyn will on the ground of fraud (Petition, X., and see application of Ritzema Bogert in Brooklyn record). The records of the Brooklyn proceedings contain no mention of any trial of the issues raised on this application, but there is an order dismissing the application, which order was, as a matter of fact (although this does not appear in the evidence or in the record) made because the widow and daughter of the testator had made terms with the applicant, Ritzema Bogert, and certain other of the legatees under the so-called Brooklyn will, and therefore and as a part of the consideration for the settlement, no evidence was offered, and the application was accordingly dismissed (Petition XIII.). While these facts do not appear on the record, they are necessary to explain the references in the petition (XV. ; XVI. ; XVIII), and in the testimony (1176 ; 1181–2 ; 1206), in regard to suits by some of the family against Mrs. Van Wyck and Mary Agnes Gordon, between whom the personal estate, or a portion of it, was divided (Petition, VI.), and who seem to have got possession of some of the real estate and attempted to convey it to Cullen and Porter (Petition, XVI ; also Testimony, 656). Mr. Olds says in his petition that Mrs. Gordon received more than $150,000 of the personal property. Some of the real estate has recently been conveyed to Cullen and Porter *personally* (Van Vleet's testimony 161–2 ; testimony of Cornish, 1176–1181, and deed, Ex. P., 238 ; 1496) and still stands in their names personally, no declaration of trust having been produced or executed.

V.

Testator's Widow.

Reference has been made in the evidence to the character of Mrs. Lenore M. Gordon, only so far as appeared necessary to show the situation of affairs in the Gordon family and her relations to the testator, and to his daughter by his first wife. It is not necessary here to dwell further upon her quarrels with her step-daughter or her scandalous relations to Van Wyck (See testimony of Van Wyck; 648-652; of Ernest Baumann, 766; 767; Adeline J. Gordon, 1201; 1210; Mrs. Moore, 1265; 1324; 1325; Mulvaney, 1267-1272; 1274; McLaughlin, 1307-8: Elizabeth Burlingame, 1453; and Henry C. Adams, 82.)

After Gordon's death Mrs. Gordon returned with Van Wyck to the Freemason Street house in Norfolk, Va., and the two lived there together, or traveled together, until they married three years later (641; 648-9). Her death occurred in San Francisco in December, 1890 (590).

Her will appears to have been admitted to probate in Norfolk, Va. (Petition of Olds). It does not appear what the provisions of this will are, except that Van Wyck is to receive a legacy of at least $25,000 under it, and that Olds and Van Wyck are named in it as executors (656). It appears from Van Wyck's testimony (656) that he and his wife undertook to convey a large portion of the Gordon Virginia lands to Cullen and Porter. Van Wyck is, therefore, personally deeply interested in overthrowing this will of George P. Gordon, in spite of his disclaimer (656; 657).

VI.

Testator's Daughter.

Mary Agnes Gordon, like her father, seems to have come to the conclusion that she and her stepmother could not "abide under the same roof," for in 1874 we find her living in a boarding house in 14th street, New York City (720; 1169–1198). It was then that the testator bought and furnished the Brooklyn house for her home (730-731; 1195–1199). This house she occupied from 1874 until some time after his death (1173). Her quarrels with her step-mother have already been noticed. Her disposition was such that the testator frequently expressed a fear lest some adventurer—"loafer"—should marry her and get her money (727–8; 766; 786; 1342–5). He wanted her to marry some honorable man (727), and was so pleased with her engagement to Mr. Charles Beebe that he named him as an executor in this Will (764; 1064; 1236). This engagement, which appears to have been made at least as early as October, 1867 (1263; 1326) was broken in 1870 (1264; 1331–2).

Miss Gordon, after the testator's death, contested his so-called Brooklyn Will successfully, and obtained a large share of the estate, including the Gordon Press Works. She is said to have made fair promises to the other members of the family on the setting aside of that "Will" (23,), and litigation evidently grew out of these promises and other matters relating to Gordon's testamentary intentions (Petition of Cullen, XVI; Testimony, 1181).

The record contains practically nothing in regard to her life after her father's death, which, as a matter of fact, was mainly spent abroad. After her death, which occurred May 28th, 1890, her alleged Will was offered for probate in the Surrogate's Court in the City of New York, and a contest over its admission to probate is still pending (19). If that alleged will were admitted to probate, the property of Mary Agnes

Gordon would all go to "a servant girl and a foreigner who resides abroad" (61). The petition of these legatees—Reitz and Ruyssnaers—shows that under that "will" the former is to have one-fifth, and the latter four-fifths of the entire estate of Mary Agnes Gordon (III.), and that Miss Gordon's next of kin have instituted a contest before the Surrogate of the City of New York (IV.) and that should this will of George P. Gordon be sustained the portion belonging to the estate of Mary Agnes Gordon will be less "by at least the sum of one hundred thousand dollars" than the amount distributed to her under Mr. Cullen's administration (VIII).

It was a newspaper account of this contest that first led Mr. Adams to communicate the knowledge of the testator's will, P 1, to the attorney's for Mr. Gordon's heirs at law (19).

VII.

The Will, Exhibit P. 1.

In 1868, when this will, Exhibit P. 1, was drawn, the testator had been living in Woodbridge for two years (1195), and had become settled with his family in his new home. He had laid out the grounds and beautified the place (752-768) and was very enthusiastic over it. He had a high appreciation of the value of land in Woodbridge, and purchased additions to his farm "at enormous prices" (696) "as high as four hundred and five hundred dollars an acre" (702).

The witness, Ernest Baumann, who was very intimate with him and his plans, says he went with Gordon on one occasion when the latter was trying to buy the Compton farm (769), and that Gordon told him he wanted to buy the Adams farm for his brother Collingwood (754; 789; 790), and together they went over the Adams land and discussed the best place for a house for

Collingwood. Nichols & Langworthy were building his printing presses at Hope Valley, but his letters to them show that he was not by any means satisfied with their work and at times contemplated erecting a factory of his own. (See letters ; Exs. P. 66).

Testator's household in 1868 consisted of himself, his wife Lenore, his daughter Mary Agnes, and his wife's half sister, Miss Elizabeth May (79). Van Wyck was there for a part of the year but absent during the summer (79 ; 590). Gordon's relations to his wife and daughter and to Van Wyck have already been referred to. Miss May appears to have been on very friendly terms with him ; later she quarrelled with Mrs. Gordon (1453–4).

The Adams Family :—The nearest neighbors of the Gordons were the Adams family. Curiously enough both families moved to Woodbridge about the same time (2; 3; 805; 808). In the year 1866 Henry Adams, who was a lawyer of eminent standing and character at Fort Plain, New York, retired from the practice of law, having been quite successful, and having amassed considerable property (811; 812). He purchased a farm in Woodbridge (810) just across the road from the Gordon property, and moved thither with his family. At first he thought of building only a cottage, but Mr. Gordon advised him to build a substantial house which would be a credit to the place (1278). Accordingly he erected a commodious house and other buildings on his land (51; 52; 1315; 1321–2). One of the special reasons which led Mr. Adams to establish his home in New Jersey, was his fondness for his daughter who lived in Orange (810). The milder climate, too, than that of the Mohawk Valley, was very agreeable to him at his somewhat advanced age (811). On this Woodbridge farm he lived the life of a retired country gentleman, and was greatly attached to it and refused a high price for it (810).

When the testator's will was drawn in 1868, the

Adams family consisted of four sons, Henry C., Alonzo C. P., John Q. and Edward L. Adams and two daughters (4). The daughters seem to have been at Woodbridge only a portion of the time and Henry C. Adams went to Woodbridge in February 1868 (3), thinking of making his father's house only his temporary abode, but appears to have "tarried" and made his home there until 1875, after his father's death (4; 14).

Mr. Gordon and the Adams family very soon after their arrival at Woodbridge became good friends and continued such throughout all their intercourse (815; 1035; 1146; 1196–7; 1278; 1299; 1310; 1316; 1326; 1341). Gordon found the Adamses good neighbors and some of them at least congenial companions; both families being strangers in the neighborhood they naturally affiliated. Hankins says, "He (Gordon), told me dozens of times, anything they (the Adamses) wanted, to let them have it, and I have done so; and anything we needed from them we got it" (1299; 1305). Edward L. Adams and Gordon were "fast friends, always" (809). There was never a ripple in the friendship which existed between Henry C. Adams and Gordon (32).

Down to February, 1868, when Henry C. Adams went to Woodbridge (16), he had been engaged in the active practice of the law at Fort Plain, Montgomery County, New York, and had practiced with his father until the latter moved to New Jersey in 1866 (2; 16; 566; 866). He had accumulated some money, not a large amount it is true, but enough to supply his frugal wants for a time (16; 55), and concluded to retire from the active practice of his profession and devote his time to his legal literary work "*Adams' Glossary of Legal Terms*" (3; 5; 15; 16; 55; 56; 65; 136; Exhibit P. 9). When he went to his father's house in Woodbridge in 1868, he intended only to make it a temporary abode (3; 65), but he found the place so congenial and so well suited for his work that he made it his home for some years, and until his father's death

(53; 65; 85). Since leaving Fort Plain in 1868 he has been engaged in this work, which upon its face shows extraordinary learning and research (15; Ex. P. 9; 136).

Gordon met Henry C. Adams in February, 1868 (27), shortly after the latter took up his abode at his father's house at Woodbridge. Both Gordon and Adams played the flute (653; 753; 1102), and were fond of music (1426). Both appear to have quickly recognized that they had something in common and became friends. McLaughlin testifies that Gordon commissioned Mr. Adams to purchase cattle for him at the State Fair (1305–6). Mr. Adams says on cross examination (27) "Well, we were friends or rather in-"timate from February (1868) up to June—on friendly "terms. We rode in the cars and sat together and "talked and smoked on his piazza, but in June there "was an occurrence which made that friendship very "close."

The occurrence referred to was a serious illness which Gordon had in June, 1868 (33; 35; 753), resulting, Mrs. Burlingame tells us (1451–2) from excessive drinking. Gordon was confined to the house (1451) for ten days, and would not eat any food, and he had been sustained by hock wine and porter; "it was supposed that he was dying" (133), and Dr. Speer (33; 58), who had been treating him, came down from his room and said, "if that man don't get to sleep before morning he will die." Mr. Adams thereupon very emphatically urged that if a prescription consisting of lactucarium, lupulin and valerianate of ammonia (33; 59; 1452), which he had left several days before, had been used instead of the "trash" which had been given, Mr. Gordon, "would be lifted out of these difficulties." Mary Agnes Gordon, in her distress at her father's peril, insisted that the remedy should be tried, and she sent Mr. Charles Beebe, to whom she was at the time engaged, to the drug store to get the remedies (36); which, by strategic caressing, she induced her father to take, and which brought relief and rest to the sick

man, and probably saved his life (see pages 33–36, where Adams gives a graphic account of the whole incident). Mrs. Burlingame, who was present at the time, confirms Mr. Adams' statement (1452).

Gordon undoubtedly felt that Adams had saved his life.

> "When I saw him," Adams says, "he took my hand and gave it a squeeze and invoked God's blessings on me, and said, 'I shall never forget you,' * * * * and from that time on until the last time I ever saw him, that man would never meet me but that he would squeeze my hands and ask God's blessings on me, and say he would never forget me, and he said, 'if you ever want anything'—and this was the very last time that I saw him—he said, 'come and see me, and anything you want just ask me for it' * * * and so, from that Sunday night on, I was on the best relations with George P. Gordon, and the man seemed pleased and glad whenever I came and visited him on his piazza or in his house "(35–36).

Ernest Baumann speaks (755) of this illness, and Mrs. Burlingame says that Gordon and Adams became "closer friends," "very warm friends after this illness," (1452).

The Drafting of the Will.—After his recovery Mr. Gordon began to talk to Mr. Adams, who had "his heart and confidence," about disposing of his property, and wanted to make a will, and asked Adams to draw it (36). His narrow escape from death deeply impressed on his mind the importance of arranging his affairs. He spoke of his purpose to Ernest Baumann (756), and said to Mrs. Burlingame "after he got up" from his sickness, "I am going to make my will, and am going to remember you in it." "And I always supposed," the witness adds "that it was because I was attentive to him in his sickness" (1453).

The witness Mulvaney, who was Gordon's coach-

man in 1866–7 (1267) tells us an incident (1276–7) that is well worth recalling here, as throwing some light on Gordon's state of mind on the subject of wills. A young man in whom Gordon was interested, whom he had befriended, had come out to Woodbridge and died at Gordon's house without leaving a will, and there seems to have been fear of trouble about his property,and Gordon said, "any sensible man ought to make a will. If I knew any good, sensible fellow, I would straighten up my affairs," to which Mulvaney replied, "There's plenty of good men here," whereupon Gordon responded, "that he didn't like the Jersey men; that they had nothing to talk about but Church. He had more invitations to church than he had since he was born" (1276–7).

Gordon had now found in his neighbor just the sort of "good sensible fellow" that he wanted—a man who was evidently a highly educated and able lawyer, whose father was a man of high standing and a substantial citizen of the community, whose family were good people and good neighbors, who had kindred tastes and sympathies with his own, and whose knowledge and judgment had without doubt saved his life. It would have been strange if he had asked any one else than Adams to draw his will.

Adams told Gordon (36) that he should get a "more competent hand," but the latter insisted that he did not want anybody else, and Mr. Adams accordingly undertook the task. He drafted a will from a memorandum which Gordon left him, "and that he (Gordon) studied for a while and did not like it and changed it and made another from that. That one he carried in his pocket for a week or so and made alterations, and made memoranda here and there of changes to be made and that he carried for probably a week, and after making another, the one produced here, from that after the alterations were made he carried this for a week and he said he was satisfied with that and was not going to alter it again, and he then came down and wanted that executed" (36).

"No. 1 was the first attempt to make a will for Mr. Gordon from memoranda which he gave me, and when he saw it put together and read it he concluded to change it, and did, and gave me the memoranda for changing it, and we made the changes in it, I believe, and from it drew No. 2" (1456). He then gave Gordon both Nos. 1 and 2; Gordon kept No. 1 and brought back No. 2, which was not yet satisfactory, and he wanted to make further changes. These changes, the witness tells us, "were written on slips of paper that looked like a memorandum pad." Then he drew No. 3, incorporating these changes and some changes in phraseology "to make it read smoother," and the result was the will which we now have, Exhibit P. 1.

Mr. Adams' perplexity and doubt as to whether P. 236 was the original No. 2, the red ink interlineations having been made before No. 3 was drawn, or a copy of it made at some later period, and the question whether or not P. 236 may not be the original No. 2, the red ink interlineations having been made from the slips at a later date when Adams expected to turn the draft over to Doane or Collingwood Gordon, although purely collateral matters, will be considered hereafter.

It may be remarked in passing, however, that the will is very complicated in its structure, and its provisions are numerous and detailed. It reminds one very much of some of Gordon's letters of instruction to Nichols & Langworthy, which are in evidence. The testator evidently made many changes as the work progressed. It would be extraordinary indeed if Mr. Adams should accurately remember all the details in respect to the making of these changes, and the various drafts and copies, after so many years spent in absorbing literary pursuits since this work was done. It may well be that the red ink interlineations, which he remembers making at that time, were those made in No. 1 before he drew No. 2 from it, for he says (page 1456) that Mr. Gordon "gave me the memoranda for changing it (No. 1) *and we made the changes in it, I*

believe, and from that drew another, that is No. 2," and that he copied the interlineations into No. 2 from the slips much later.

The Execution of the Will.—The important facts relating to the execution of the will are clearly stated by Mr. Adams. Owing to their great importance they were naturally strongly impressed on his mind.

The testator had carried the will in his pocket for some days (6) when in the afternoon of July 25th, 1868, without any pre arrangement (8; 29; 30) he brought it to the house of Henry Adams. Here he found Henry Adams, the father, and the sons Henry C. and Alonzo C. P., on the piazza.

The paper P. 1 was produced by Mr. Gordon from his inside pocket, and he said that he was entirely satisfied with this and would not alter it (8; 29), and then the execution of it was discussed (8). Previously to this Mr. Gordon and Henry C. Adams had talked about the witnesses (5; 6). Gordon at first thought he could make a will without any witnesses. When convinced that there must be witnesses, Gordon wanted Henry C. Adams to be a witness, but the latter had plans for going south or to California, and as it was understood that Alonzo was to have the Adams farm after his father's death, it was arranged that Alonzo should be one of the witnesses, and it "was supposed that Edward, who was to have a farm near by," should be the third (6).

The elder Adams took the matter of the execution of the will in charge. "And after talking together," Henry C. Adams says, "they all went into the house, father and Alonzo and myself, went into the house in the reception room, where there was a table and a place was made to write on and Mr. Gordon signed the paper" (7). The reception room was about twelve feet square. The table was a "marble top table; one of those centre tables" (7). Mr. Adams thinks "it was a little longer than broad" (28).

There were places on the paper for three witnesses and as Edward L. Adams was not at hand at the time, John Q. Adams, who was "up in his room," "was called down and invited to be one of the witnesses to Mr. Gordon's will." "Then the question of where we should get the ink came up and Alonzo was sent back to father's desk in the back part of the house to his ink-stand and he brought it, and then the execution went on, and Mr. George P. Gordon signed first."

"Mr. Gordon signed the paper," continues Mr. Adams (8), "and then father told him, now, Mr. Gordon, it is necessary to have a little formality about this, and he read this attestation clause; that it was necessary he should sign, and request these witnesses to be a witness to it, and that it ought to be done in the presence of the four, Mr. Gordon and the three witnesses together. He read this over to Mr. Gordon and he says, I request you gentlemen to be witnesses of my will; this is my last will and testament, and he requested them to be witnesses to it, and so they signed, one after the other as such."

Mr. Adams pointed out the signatures made by the testator and the witnesses respectively (8), but could not remember who wrote in the date "25th," which is obviously in a different handwriting from that of the body of the will (563), nor the kind of a pen that was used (30). He does not remember anything about the pen, but does remember that there were steel pens on his father's desk. While he distinctly remembers their sending for the ink, he has no recollection of their sending for a pen (31).

VIII.

Custody of the Will.

When the will had been signed, published and witnessed, Mr. Gordon said: "I want this kept secret, Mr. Adams, and I want you to take care of it." "And so my father took the paper and sent Alonzo after some wrapping paper, and he brought some and father put it up" (9). Mr. Henry Adams then folded the paper up in the form of a "homemade envelope," placed the will in the wrapper and sealed it with wafers. Henry C. Adams spoke of getting his mucilage which he had upstairs, but the senior Adams said "Oh. no, wafers are better," and sent Alonzo to his desk to get his box of wafers. Shortly afterward the party dispersed (10).

The testator left the will sealed up in this wrapper in the custody of Mr. Henry Adams, who kept it "for some time in his safe." It seems to have remained in this safe until shortly before the death of Henry Adams in February, 1875 (84). Just before his death, when Mr. Adams was sick at his daughter, Mrs. Babcock's, house at Orange, he gave this safe, which he still had in his house at Woodbridge, to his son, Edward L. Adams, and directed Edward to pick out certain papers—deeds—that were in the safe and take them to his brother-in-law, A. C. Babcock, at the Adams Express (84–85). Edward took these papers out of the safe and delivered them to Mr. Babcock as directed (85). The other papers were all taken out of the safe and bundled together as miscellaneous papers. (123). Mr. Edward L. Adams does not have any distinct recollection of what he did with them (123). He did not examine them. "I was in too great a hurry," he says, "and wanted to get away" (124). The papers delivered to Mr. Babcock were, Edward thinks, all in one pigeon hole in the safe, and were easily found (124).

The safe was then sent away from the house and never taken back (124).

The disposition of the other papers which were in the safe cannot be shown with certainty. Edward L. Adams does not have any positive recollection of where he put them. Old papers of Henry Adams were kept in a desk that had belonged to him and also in the closet in the hall of the second story and in the garret or attic (90; 91; 92), and there are a great many of these old papers there now (90; 91; 92). It was in this closet among these old papers that the will was found by Edward L. Adams in November, 1890 (83; 90; 91).

At the time of Henry Adams' death, which occurred in February, 1875 (84), the Adams household at Woodbridge consisted of a daughter of Henry Adams, with her husband and children, and of Alonzo, John and Henry C. Adams (85). John died in March, and Alonzo in May, of the same year (84). Edward L. Adams was living at Herkimer, N. Y., when his father died, and soon afterward went to Newark, N. J., and in October of 1876 (86) moved into the Woodbridge house, just when his sister, who had occupied the house ever since her father's death, went away (86). With the exception of one summer, when a tenant of the trustees of the Adams estate put in some furniture and tried to keep boarders in that part of the house, the part of the house containing this closet has, ever since the death of Henry Adams, been in constant possession of Edward L. Adams (86) or some member of the family (53). Ever since Henry Adams' death Edward has had things in the house, and thinks the key of this closet has never been out of his possession (87). He and his sister and her son are trustees of their father's estate, and have had the legal custody of all his papers and effects (26; 87), and one or the other of them has been in possession of the Woodbridge house and its contents since February, 1875 (11; 53; 86; 87).

When his father died in February, 1875, Henry C. Adams was making his home at Woodbridge (53; 85).

In the autumn of '75 he went to Englewood, where he spent the winter (14). The next summer he visited Edward, at Newark, and other friends, and in the fall went to live in New York (13). In the spring of '77 he went to stay in Brooklyn (13). Afterwards he was in New York again, and in April, 1879, removed to No. 145 Main street, Orange, New Jersey, where he has lived ever since (11; 12). In all these years he has been closely occupied with his great literary work, and his changing his abode to New York and Brooklyn appears to have been prompted by a desire to be nearer to the libraries, where he could the better pursue his researches (55). His own library had been destroyed by fire in 1869 (65; 1083–4.)

His friendship with Gordon continued unbroken until the death of the latter (35; 59; 757; 810; 1309; 1316; 1459; 1460). The facts in relation to this friendship are not disputed by the contestants who endeavored in vain in their cross-examination of Mr. Adams to show that some break had occurred in it, but they were unable to show that there had ever been even "a ripple" (28; 32). With Mrs. Gordon the case was different. At one time an unpleasant incident occurred between her and Adams, the latter tells us, and he always seems to have regarded her with distrust and suspicion (59; 74; 80–2; 1210). After Adams went to live in New York subsequently to his father's death, and in 1876 or 1877, Gordon talked with him a number of times about making a new will, asked him about this one, and the draft was spoken of (1625).

IX.

Adams' Course after Gordon's Death.

Henry C. Adams heard of the contest in 1878 over Gordon's Brooklyn will, and communicated with two of the executors named in this will, namely, with A. Sid-

ney Doane, testator's nephew and business manager, and with testator's brother, Collingwood Gordon, and "Cuddie" Gordon, the son of the latter (22–26; 77). Doane, to whom he first went, was smarting under his defeat in his attempt to probate the Brooklyn will, for he was one of the Executors named in and the proponent of that paper, and had no appetite for a suit in Chancery to establish a lost will, or even to try to probate another will against the forces with which he had contended in Kings County, New York (22). Mr. Adams gives a very clear account of the interview. He says: "I told Sidney that I heard of this contest in respect to the will of Gordon, and it was defeated because it was not properly executed; that I heard such a rumor, and I asked him about the will; * * * * Well, said I, Sidney, Mr. Gordon made another will in 1868, and that will was in the custody of my father, but I have not seen it in a long time and nothing has been said about it, and if that will can be found and established, why you can establish that will, and if you cannot do it because it cannot be found, you can establish it by an action in the Court of Chancery of New Jersey, basing it upon the testimony that will be given by myself in regard to the execution of it, for I know all about it and I have an original draft of that will, and in an action in Chancery you can, by the Statutes of New Jersey, establish that will by proof * * * * "Doane said that he had been in Court with one will and that he had enough of it, and he took two or three strides across the room and was very angry, and he said 'Damn that proceeding over there in Brooklyn,' and he was not going into any Court with another" (22–23).

Mr. Adams had a milder but an equally unsuccessful interview with Collingwood Gordon. "He said," the witness states, "I am too old and too frail in health to engage in any further controversy about my brother's property," and he went on to say, in connection with this, that Mary Gordon was the owner of all the property, and that she had made such fair pro-

mises they could not engage in a controversy with her" (23).

Mr. Adams made a further effort to get Mr. Gordon's heirs interested in the estate. "I saw," he says, "there was a young man, a son of Cuthbert C. Gordon, who was a man of considerable stamina, and he had rights and interests in the matter, and I thought I would inform Cuthbert O. Gordon, the son of Cuthbert C, commonly called 'Cuddie,' and I wrote to 'Cuddie' to say nothing to anybody, but come over to see me and I will tell you something; I intended to communicate to him this history, and to show him the draft of the will" (24).

"Cuddie" did not come to see him but wrote in substance: "I have spoken to father about the matter of your letter and father directed me to write to you to know what you wanted." (24.)

The letter of Mr. Adams to "Cuddie" Gordon, who is now dead, was, by a remarkable coincidence, found by his brother among papers of the deceased "Cuddie's" estate and offered in evidence (57; 136; Exhibit P. 3.

A postal card, postmarked December 1, 1879, written by Mr. Henry C. Adams to Collingwood Gordon in reply to "Cuddie's" letter, was also found among the same papers, and to the surprise of Mr. Adams himself, who had forgotten all about it, produced in Court (56; 57; 58). "I did not," writes Mr. Adams on this card, "write to you to come. It was addressed to Cuddie, your son. He should have read it and done just as I requested. A good reason for this. Sorry indeed to hear of your illness since I was there" (57; 58; 136; P. 4).

These rebuffs vexed Mr. Adams (128) and he made no further efforts at that time or for years afterwards, to get any of the heirs to take up the matter. A. Sidney Doane and Collingwood Gordon were the persons most likely to be interested in having the will probated. They and "Cuddie" Gordon were the only male members of the family whom Henry C. Adams

knew (564). Mary would certainly not be interested in probating a will which tied up her share of the property that had just been released by the breaking of the Brooklyn will, and Mrs. Gordon was not the sort of person to whom Mr. Adams would naturally have gone. Besides, Mr. Adams was intensely occupied with his own affairs, and "had hardly any time to look after the affairs of other people" (564-5). On being asked on cross examination whether he felt that he had satisfied his professional duties by what he did in 1879, for the probate of this will, the witness replied, "Yes, I informed the executors named and the only adult male nephew, and that was 'Cuddie' Gordon. He was the only one that I knew of. I don't know of any other of the family except those." (564).

X.

The Finding of the Will.

It is possible that this will would never have been found and brought forward, had it not been for the contest and controversy and the accompanying excitement in New York over the alleged will of Mary Agnes Gordon (78). That contest attracted the attention of the newspapers, and articles were published in regard to it (19). About the middle of October, 1890, Mr. Henry C. Adams met his friend Seymour Marsh, at No. 2 Vesey Street, New York City, who informed him that a contest was going on over the will of Mary Agnes Gordon, and that the *Evening Telegram* contained an account, giving details about it (19).

Mr. Adams obtained a copy of the newspaper, and the article in it recalled to his mind the will which he had drawn for Mr. Gordon. The article stated that Miss Gordon's will gave all of her estate to "a girl who was a servant of hers, and to a

foreigner who was her friend abroad," and not related to her by blood or marriage (61). Mr Adams was a good deal stirred up about Miss Gordon's attempted disposition of the property. On being asked on cross-examination why he should have been stirred up about it, he says (42) "I was a friend of George P. Gordon and liked the man exceedingly well, and such a thing would make me feel distressed that that man's estate should be squandered in the way it would be and his family deprived," as would be the case should Mary Gordon's alleged will stand.

The newspaper article recalled to Mr. Adams' mind the making of this will of 1868 and many of the incidents connected therewith, and on reflection he concluded that "Mary Gordon hadn't any property to give if George P. Gordon's will of 1868 is in existence" (19).

The *Evening Telegram* had mentioned the names of Black & King, as attorneys for the Gordon heirs in the contest over Miss Gordon's alleged will (21), and Mr. Adams concluded to write to them. His letter is dated Orange, Oct. 17th, 1890. In it he invites Black & King to come to see him. Mr. King called upon Mr. Adams at Orange on October 22nd, 1890 (21; 63), and Mr. Adams told him the facts in regard to his intimacy with Mr. Gordon and the drawing and execution of this will (32–37).

Mr. Adams says: "I told Mr. King (34) that I had sent for him—that I had read the article in the *Telegram*, and the article in the *Telegram* stirred me up to writing to them, to Messrs. Black & King, as I had seen their names in the *Telegram*, as counsel for some members of the family of George P. Gordon, and I told him that I would give him a history of my relations with Mr. Gordon. I then told him of my first acquaintance with him in February, 1868; that was an ordinary friendship." Then Mr. Adams related the incident connected with Mr. Gordon's illness in the summer of 1868, and what was done to relieve him. He says, "I told Mr. King all about it very minutely"

(34). After giving an account of Mr. Gordon's recovery, and of the friendship that was made so much closer by this sickness and recovery of the testator, Mr. Adams says: "I told Mr. King that I had Mr. Gordon's heart and confidence, and he began to talk, after he got out of that difficulty on Sunday, about disposing of his property, and he wanted to make a will, and he asked me about it, and he wanted me to draw it, and I told him, 'Mr. Gordon, you should get a more competent hand than I,' and he said, 'No, I don't want anybody else; I want you; you can draw it.' So I drafted one according to a memorandum he left with me, and that he studied for a while and didn't like it, and I made another from that. That one he carried in his pocket for a week or so; made alterations. * * * * And said I, 'Mr. King, here is that draft,' pulling it out of my drawer. I brought out the draft. 'Here is that draft that was altered and from which the original will was drawn, but,' I said, 'I preserved this and when I read the article in the *Telegram*, I hunted it up and here it is.' 'Mr. King' said I, 'this will of 1868, if the original cannot be found, can be established by an action in Chancery, by proving by living witnesses the execution of it, and by the production of this draft, which under the statute of New Jersey is equal to witnesses, and then by producing witnesses to prove corroborative circumstances. Now, Mr. King, you can have this and all the information I have, and all the facilities I have if you want to take up that matter in hand and establish that will by an action in Chancery; you can have all the facilities I have, and you can have the use of that draft. You can have it without money and without price, and don't you offer me any reward. I shall have to be an important witness in stating the case, and I shall go into it untrammeled.' Mr. King sat down and made a copy. He wanted to take it home, but I said 'you cannot take it home. I cannot allow that. I want to be able to say that that has never been out of my possession' and he took a copy of it." (37).

Mr. Adams further on says : (37) "I saw Mr. King afterward—I should say a week or ten days afterward. I cannot say how long. He came out with Mr. Beckett and they looked it over and read his copy with this draft I had, and made an exact copy of it, made an exact copy of Mr. King's copy, his copy was made exact by corrections, if there were any."

Mr. Adams did not know whether the original will could be found at the time of his interviews with Mr. King, but he promised Mr. King that he "would try and find the original will" (38), and thought that it must be somewhere in the house at Woodbridge. Just about that time Mr. Adams was very busy working on something he had to do—"Proceedings in the Surrogate's Court of New York," he says, "and I told Mr. King that as soon as I could get a little relief from that trouble—these engagements, I would go over and see if it could be found" (38). There was some little delay in going to Woodbridge on account of these Surrogate's proceedings in New York, and the attorneys, fearing lest the original could not be found, and thinking it would probably be necessary to probate the copy, and being naturally apprehensive of its safety from fire or accident or death of Mr. Adams, "felt a little anxious about it," and Mr. Adams felt so too. He says (1457 ; 1458) : "It seemed then to grow into importance and I suggested that it should be put somewhere where it would be safe, and it was finally decided to take it to Trenton and deposit it for safety with the Secretary of State, the Clerk of this Court."

Accordingly on October 30th, 1890, Mr. Adams and Messrs. Black and Booraem went to Trenton, and in the Secretary of State's office it was put in an envelope by Mr. Adams and sealed up and deposited with the Secretary of State "for use of Black & King, Attorneys, 71 Wall St., New York, for probate" (1457-8; P. 236 ; P. 237).

In the latter part of October, or early in November, Mr. Henry C. Adams went over to the Adams' homestead at Woodbridge, and saw his brother Edward, and

without telling the latter of his object, took "survey of the premises" (38), but could not find the desired parcel containing the will. He then told Edward. There were visitors at the house, so that the two brothers could not talk much about it. They had five or ten minutes conversation on the subject, however. Henry C. told Edward about the character of the paper and that it was perhaps among their father's old papers (90). He asked him to look for the parcel—to search the house "from cellar to garret," so that if it could not be found and the heirs wished to establish the will as a lost will, Edward could testify that search had been made (38–39). Henry C. described the color of the envelope in accordance with his best recollection. Edward says (83): "He said it (the will) was in a reddish brown package and sealed with wafers." Henry C. says: "I described it very nearly; I was a little mistaken in the shade of red" (10).

Edward, after considerable search during two days, found the parcel in the hall closet on the second floor of the Adams house at Woodbridge. He said: "I first went through a lot of old papers which were up in the garret (90)—they were my father's old papers—and I did not find the package I was looking for; there was nothing there, and then I went down to this closet and searched there and finally found it" (90). The witness is not certain but thinks he looked through his father's desk which also contained old papers, before going to the closet (91). He found the package containing the will on one of the shelves of the closet, which shelf was "about five feet high" (91). There were three or four other packages of papers—other papers belonging to his father (83)—on the same shelf. This package—the will—lay right together with another package which proved to be his father's old register, which he thinks used to be kept in his father's safe, where the will was deposited and kept (91; 92; 129). Edward thinks he always had the key of this closet in his possession (86–87) continuously since 1878, and that the closet was kept locked all the

time (122). Sometimes he would have things in it which he wanted to keep locked up, and while not always very particular to keep it locked, he thinks it was locked all the time (121–3). The package corresponded so closely with his brother's description that Edward recognized it and he notified his brother (87; 93), who thereupon wrote to him that he (Henry C.) and Black & King would come over and see him about it (87).

Mr. Henry C. Adams then, on November 21st, 1890, wrote to Messrs. Black & King: "Edward says, 'I have found it.' He will meet us to-morrow, (Saturday), Rahway Depot, at 1 to 2 P. M., and there we can see" (64; Exhibit P. 7). Henry C. Adams, Edward G. Black and David Bennett King accordingly went to Rahway the next day (39; 40; 61; 93). Edward L. Adams met them at the station, and Henry C. introduced Messrs. Black & King to Edward. The parties looked at the package containing the will. Mr. Henry C. Adams identified it, and there was some talk about what disposition should be made of it. It was, however, left in the possession of Mr. Edward L. Adams (95). Soon, however, he became tired of the responsibility of keeping the package, and says (87): "Afterwards I got tired of the responsibility—I had no safe place to put it in, and asked them to find some safe place for it, and they hired a box in the Deposit Company in Newark" (127).

Thereupon, on December 13th, 1890 (98), Messrs. Edward L. Adams, in company with his brother Henry C., Edward G. Black and Louis V. Booraem, took the package to Newark to the Fidelity Title Guarantee and Trust Co., where the package was deposited by Edward L. Adams in a box hired for the purpose (89). Before placing it in the box of the safe deposit company the package was enclosed and sealed up in an envelope and endorsed by Edward L. Adams and Messrs. Black and Booraem. It had never been opened by Edward L. Adams when it was placed in this envelope (40; 88; Ex. P. 8), and had never been out of Edward L. Adams' possession after he found it until he left it with the

Safe Deposit Company. "When I was at home," Edward L. Adams says, "I put it in the drawer for safe keeping, and when I left home I carried it with me, and when I went to bed I put it under my head" (89). It remained in the Safe Deposit Company's box until on the seventeenth day of January, 1891, when the parties were ready to offer it for probate in common form, when Mr. Edward L. Adams, accompanied by Messrs. Black and Booraem, went to Newark, and Mr. Edward L. Adams obtained from this box of the Safe Deposit Company the envelope enclosing the package and brought it to Jersey City to the Chancery Chambers and handed it to the Ordinary, who, himself, broke the seals of the old reddish brown envelope, and the will was produced and probated in common form (88; 89). The parcel had never been out of Mr. Edward L. Adams' custody from the time he found it in the closet among his father's old papers until he placed it in the hands of the Ordinary (89; 129).

XI.

Provisions of the Will.

The will is a long one, with numerous and somewhat complicated provisions. In general it provides for Gordon's wife and daughter and for all his nephews and nieces and also for his wife's half sister, and her father.

Testator's wife is to have the Laing farm, if it can be purchased; with buildings and improvements worth $15,000, made as she shall direct, and $1,200 a year for her life. A part of the Laing farm was bought by Gordon in September, 1869, a little more than a year after the will was executed (1429; 1430).

Mary Agnes Gordon, testator's daughter, is to have the homestead farm and $3,000 a year, and one-fourth of the interest of the residuary estate for life, and if

she married she and her husband are to have one-fourth of the patents and presses and profits of the business, and her husband is to have $2,000 a year besides.

Collingwood Gordon, testator's brother, is to have the Adams' farm, if it can be bought at Gordon's price, and the "Compton lot" with suitable improvements, and one-fourth of the patents, presses and business, and of the residuary estate.

A. Sidney Doane, testator's nephew and business manager, is to have the Laing farm, if Mrs. Gordon refuses to accept the provisions of the will in lieu of dower, or the sum of $10,000, if she accepts its provisions, and one-fourth of the patents and presses and business and of the residuary estate.

Testator's sister Adeline J. Gordon is to have $10,000.

His sister, Wealthy Jane Bogert, and her children, are to have $6,000, and one-eighth of the patents, presses and business and of the residuary estate.

His sister, Mary Ann Doane, and her children, are to have $10,000, and one-eighth of the patents, presses and business, and of the residuary estate.

Elizabeth May, the half-sister of testator's wife, is to have $5,000, and her father $150 per year for life.

The Compton farm is to be bought and a factory for the manufacture of printing presses to be built thereon if testator does not buy or build a factory before his death. Mr. Gordon, it will be remembered, bought the Rahway factory in January, 1872, three and one-half years after the execution of this will (706; 1037).

The executors named in the will are testator's brother, Collingwood Gordon, his nephew, A. Sidney Doane, and Charles Beebe, who was, at the time, engaged to Gordon's daughter.

The Brooklyn will, which testator attempted to execute five years later, provides for the same persons with the exception of Miss Elizabeth May, and her father. Miss May had quarrelled with her half-sister, testator's wife, in the Autumn of 1868, and the two were not

very good friends afterwards (1454), and she had long ceased to be a member of the Gordon household (1453–4). The Brooklyn Will makes some provision for the family of Gordon's first wife, which this Will of 1868 does not. Like this one, however, it does not give Mrs. Gordon and Mary the bulk of the property to do with as they please. It makes larger provisions for Mrs. Gordon, and does not provide for the purchase of any land or the erection of a factory—the Rahway factory had been bought a year before (706 ; 1037)—and it does not dispose of the residuary estate, but proposes to do so by a codicil ; of the drawing, execution or existence of which there is no evidence.

The testator, during the last few years of his life, seemed to have become more intimate with at least some of his first wife's relations (1177, 1433–4), and some of the latter had perhaps become more friendly to the second Mrs. Gordon. These considerations and his rapidly increasing wealth would naturally account for the first wife's relations being included in the Will of 1873, though omitted from this prior Will of 1868. Increased wealth may also to some extent account for the larger provisions for testator's wife in this later attempted Will, although it seems probable that he had become less suspicious or more tolerant of her relations with Van Wyck, and less adverse to the latter than he was in 1873. The evidence seems to point that way.

Both wills were so framed as to carry out testator's intention of so fixing things that no adventurer could get away with his money by marrying his daughter. This will of 1868 was made when testator thought his daughter would marry Charles Beebe, and he approved of this proposed marriage (1064), and for this reason doubtless made some provision for Mary's husband if she should marry, but as to the bulk of his fortune, he fixed things, or supposed he had fixed things, by this will "so that no loafer could snap his money off his whip by marrying Mary" (728; 765; 766). Before the will of 1873 was drawn, Mary's engagement to Beebe had

been broken (1264), and the testator evidently intended to tie up his estate more closely than by this will of 1868, for in the will of 1873 Mary has only a life interest in a portion of his estate, whereas in this will of 1868 she gets part of her interest outright.

XII.

Claims of Contestants.

The contestants claimed and endeavored to show:

1. That in the contest over the Brooklyn will, the testator had been declared intestate by a court of competent jurisdiction, and that proponents had acquiesced in his intestacy. (See XIII below).

2. That testator's domicile was in the City of Brooklyn, in the State of New York, and that therefore this Court has no jurisdiction. (See XIV below).

3. That the signatures of the testator and of the subscribing witnesses to this will are forgeries. (See XVI below).

XIII.

Intestacy.

The only evidence offered by the contestants in support of their first claim, and on the admission of this the Ordinary reserved his decision (541), was the proceedings in the Brooklyn Surrogate's Court, showing that the alleged will of 1873 had been offered for probate in that Court and rejected, and that Henry J. Cullen, Jr., as Public Administrator of Kings County, was appointed administrator of the estate of George P.

Gordon (538), and that afterwards an application was made on the ground of fraud to reopen the decree rejecting the Brooklyn will, and that this application was dismissed. It was not shown that there was any administration on the property of testator in the State of New Jersey, or that any Ancillary Letters had been granted here. It was not shown that the proponents or any of the parties whom they represent had been guilty of any delay in bringing forward this will of 1868 after they knew it was in existence. Mr. Henry C. Adams did not know that the will was in existence in 1878, when he saw Collingwood Gordon and A. Sidney Doane about it (23 ; 36), and it is evident from the care taken by the attorneys and Mr. Henry C. Adams (1457-8) to deposit the draft with the Clerk of this Court, that they at the outset contemplated a suit in Chancery to establish the will as a lost will (23 ; 36 ; 39), as probably the only remedy for Mr. Gordon's heirs and beneficiaries under the will. Collingwood Gordon and Doane did not contemplate such a chancery suit with satisfaction, and it was no wonder in view of the circumstances that they declined to enter upon it. It has not been shown that any of the other legatees except Mrs. Gordon (1045), ever knew that this will had been made.

Section four of Chapter 335 of the laws of 1871, of the State of New York, cited by Mr. Cullen, in Schedule A. of his petition, provides as follows :

> " Such Public Administrator shall have absolute and sole authority to collect and take charge of the goods, chattels, personal estate and debts of persons dying intestate, and for that purpose to maintain suits as such Public Administrator, as any executor or administrator might by law in the following cases :
>
> 1. Whenever any such person shall die, leaving any assets or effects in the county of Kings, and there shall be no widow, husband or relative, a

resident in the State entitled or competent to take out Letters of Administration on such estate.

2. Whenever assets or effects of any person, dying intestate shall, after his death, come into the county of Kings, and there shall be no person, as aforesaid, entitled or competent to take administration of such estate. In the above cases intestacy shall be presumed until a will shall be proven and Letters Testamentary issued thereon."

It will thus be seen that this very law under which contestants claim Mr. Cullen has been acting specifically declares that "intestacy shall be presumed" only "until a will shall be proven and Letters Testamentary issued thereon." (For authorities see Law Points below). It cannot under any view be claimed that the Brooklyn proceedings have any effect upon persons not parties thereto, and many of the legatees under the will now in question were not parties, for example, A. Sidney Doane (the younger), one of the present proponents.

XIV.

The Testator's Domicile.

The recital of the will propounded begins as follows: "I, George P. Gordon, *of the Township of Woodbridge, County of Middlesex and State of New Jersey*," and the witnesses to the will, as shown by the instrument, also resided at the same place. In other portions of the will such references are made to the testator's residence and "homestead farm," and adjoining property, as indicate that testator's domicile was, at the date of the execution of the will, in the Township of Woodbridge, New Jersey (2; 3; 6; 11; 32–36).

Mr. Henry C. Adams states (2) that his father, to-

ward the end of his life—"in June, 1866,"—took up his residence in the Township of Woodbridge, County of Middlesex, State of New Jersey, and that his father's "nearest neighbor" was the testator, George P. Gordon (3). It is evident from the testimony of the same witness on other points, that the testator was actually living in his own house in Woodbridge Township in the year 1868. The will was executed at the house of Henry Adams at Woodbridge (6), and left in his custody there for safe keeping (11). At the time of Gordon's sickness in June of 1868, he was evidently living in his own house in Woodbridge Township (32–36).

It was in view of this recital and facts shown in the testimony of the witnesses that the Ordinary properly held that the proponents, when they rested, had made sufficient *prima facie* proof of domicile in New Jersey and denied contestants' motion to dismiss the application for the probate of the will on the ground that the Court had not jurisdiction (137 138).

Contestants' evidence on domicile.—The contestants endeavored to prove that testator's domicile at the time of his death was in the City of Brooklyn, in the State of New York, by trying to show :

(*a.*) That the Surrogate's Court in Brooklyn had so adjudicated.

(*b.*) That the testator paid personal taxes in Brooklyn as a resident of that City.

(*c.*) That the testator registered in Brooklyn as residing at 155 Columbia Heights, in that City, and voted therein in November, 1876.

(*d.*) That the testator was represented by New York City directories as living in Brooklyn, New York.

(*a.*) *Alleged adjudication of domicile by the Brooklyn Surrogate's Court.*—Contestants proposed to read in evi

dence "the entire record of the whole of the Brooklyn proceedings," in order to show, among other things, that the Brooklyn Surrogate's Court had decided that testator's residence was in the State of New York, and that the question of the testator's domicile was therefore *res adjudicata* (536–9).

The Ordinary on the proponents' objection to this record as evidence, reserved his decision as to its admissibility (541) and the copy of the record was marked Exhibit D. 98 for identification.

The legality of such evidence will be considered hereafter (See Law Points below.)

This record contains what purports to be a petition for the probate of the alleged Brooklyn will, which petition recites that George P. Gordon was of the City of Brooklyn, State of New York, and is verified by A. Sidney Doane, one of the executors named in said Brooklyn will. It also contains the testimony given on this attempted probate of the Brooklyn will, in which Mr. Doane is represented as saying that the testator resided in Brooklyn, but no facts are stated which would justify Mr. Doane's expression of opinion. Mary Agnes Gordon, the daughter of the testator, contested this Brooklyn will, and it was rejected on the ground that it was not properly executed. In her objections to the probate the testator's daughter swears that his residence was in the Township of Woodbridge, County of Middlesex and State of New Jersey, and the will itself contains the following recital: "*I, George P. Gordon, of the Township of Woodbridge, County of Middlesex and State of New Jersey.*" The contest did not turn, however, upon the question of domicile, and that question was not litigated, even by the parties who were then before that Court, as appears from the testimony.

Letters of Administration were issued upon the estate of Gordon by the Brooklyn Surrogate to Henry J. Cullen, Jr., as Public Administrator.

The Statute of the State of New York which authorizes the Public Administrator of Kings County to

administer on the estates of deceased persons (See Laws of New York of 1871, Chapter 335, Sec. 4, cited by Mr. Cullen in his petition, Schedule A), has been cited under the preceding head. It will be seen from this statute that the fact of the issuance of letters of administration to Mr. Cullen as Public Administrator of Kings County, New York, was not an adjudication that Mr. Gordon's domicile at the time of his death was in the County of Kings, and State of New York, because this very statute expressly provides for the issuance of letters of administration on the estates of non-residents as well as residents of the State of New York.

The New York Code of Civil Procedure, Section 2476, offered in evidence by proponents (1086; Exhibit P. 283), says:

> "That the Surrogate's Court of each county has jurisdiction exclusive of every other Surrogate's Court.
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> * * * * * * * *
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> 2. Where the decedent, not being a resident of the State, died within that county leaving personal property within this State, or leaving personal property which has since his death come into the State and remains unadministered.
>
> 3. Where the decedent not being a resident of the State, died without the State, leaving personal property within that county and no other, or leaving personal property which has since his death come into that county and no other and remains unadministered."

The next section of the Code—namely, No. 2477—provides that two or more Surrogate's Courts have concurrent jurisdiction to grant letters of administration upon the estate of a decedent, who was at the time of his death not a resident of the State, "*Where personal property of the decedent is within or has come into two or more counties.*"

Mr. Cullen's letters were issued upon the petition of testator's only daughter, Mary Agnes Gordon, who knew, if anybody living at the time knew, where testator resided at the time of his death. She knew that he did not reside at 155 Columbia Heights, Brooklyn, for she herself resided there. The petition of Mary Agnes Gordon, on which Mr. Cullen's letters were granted, begins as follows: "The petition of Mary Agnes Gordon, of the City of Brooklyn, respectfully shows: That your petitioner is the daughter and sole next of kin of *George P. Gordon, late of Woodbridge, County of Middlesex, State of New Jersey, deceased.*"

* * * "Your petitioner further shows, that the said deceased died possessed of property in the City of Brooklyn, and that she is informed and believes that the Surrogate of the County of Kings has power in his discretion to issue special letters of administration authorizing the preservation and collection of the goods of the deceased."

"Your petitioner therefore prays that such letters may be issued pursuant to the statute in such case made and provided."

The petition is verified by Mary Agnes Gordon on the 8th day of March, 1878. And this very important paper was singularly omitted by contestants when they offered "*the entire record of the whole of the Brooklyn proceedings*" (536), and was therefore offered in evidence by proponents (1085; Exhibit P. 210).

It was on this petition that the Brooklyn Surrogate's Court acted and the matters therein set forth gave it whatever jurisdiction it had. If then the granting of letters of administration to Cullen on this petition was an adjudication as to domicile, it was decided that George P. Gordon, at the time of his death, was domiciled in the Township of Woodbridge, County of Middlesex and State of New Jersey.

Chapter 6, Part II., of Article II. of Edmund's 2nd Revised Statutes, page 75, Section 23, referring to the powers of the Surrogate before the year 1880, in the State

of New York, relative to the estates of decedents, and offered in evidence by the contestants, page 534, has similar provisions, and provides that where an intestate not being an inhabitant of the State has died outside the State, leaving assets in any particular county or where assets shall come within such county, the Surrogate shall have jurisdiction to grant administration.

It is obvious therefore that the granting of letters of administration upon the estate of a deceased person in any county in the State of New York does not by any means establish the fact that decedent was a resident of that county or of the State of New York.

The proceeding for the probate of the Brooklyn will terminated with a decree rejecting the will. An entirely new proceeding was then begun in the same Court for the appointment of an Administrator. Under the Brooklyn letters, Mr. Cullen assumed to administer the entire estate of George P. Gordon *wherever* situated, and presumed to come into the jurisdiction of this Court and sell the real and personal property of the testator and take mortgages in his own name, and secure conveyances of testator's real estate to himself in his individual capacity, and this without even the courtesy of asking for ancillary letters, and now he claims the right to remove the testator's domicile from the jurisdiction of this Court to that of his own Brooklyn Surrogate's Court, and has the arrogance to assert that he has estopped testator's family and heirs and everybody else for all time from doing anything in regard to this estate, in opposition to his views and interest.

(*b.*) *Payment of taxes by Testator.*—The contestants offered in evidence certain alleged records which they asserted were the assessment rolls of the First Ward of the City of Brooklyn for the years 1875, 1876, 1877 and 1878 (239; 248; 515; 519; 592; 595). These alleged records (Exhibits D. 77; 78; 79; 80; 111; 112; 113) it is claimed show that George P. Gordon,

the testator, was assessed as a resident of Brooklyn, New York, residing at 155 Columbia Heights, and that he paid taxes as such resident there in the years 1875, 1876 and 1877. These same alleged assessment and tax books of the City of Brooklyn show (testimony of Roche, 595) that George P. Gordon was assessed in the same way and for the same sum as a resident of the City of Brooklyn, residing at 155 Columbia Heights, and that he paid taxes in the same manner on December 31st, 1878, $278.44 ; on December 4th, 1879, $269.71, and on December 13th, 1880, $273.03 (595).

The contestants' witness Roche (594-5) swears in answer to the question : " So that the same sort of assessment was made as against George P. Gordon after 1877 that had been made before that date ?" A. " Yes, sir."

Q. " No difference at all ?" A. " No, sir, no difference." Gordon died in January, 1878. The testimony is that he was buried in Greenwood Cemetery, Brooklyn (618). It will hardly be claimed by contestants, unless perhaps by Mr. Henry J. Cullen, Jr., that after his burial in Greenwood Cemetery, Brooklyn, he continued to reside at 155 Columbia Heights, and paid taxes as a resident of Brooklyn. This Brooklyn record of taxes and assessments is evidently wholly unreliable so far as indicating residence is concerned. The contestants realizing the embarrassment of this situation undertook to show that after Gordon's death the taxes for one of the subsequent years were paid by Henry J. Cullen, Jr., (596; Exhibit D. 80), but even if it were shown that Mr. Cullen paid these taxes in all three of these years in which the testator, although quietly sleeping in Greenwood Cemetery, is represented by these assessment and tax books as residing and paying taxes in Brooklyn, it is difficult to see how the reputation of these books for truth and. veracity as evidence of Mr. Gordon's domicile would be mended.

Contestants endeavored to show by the witness Roche that non-residents were not assessed for personal taxes in Brooklyn, but the witness could go no further than to

say that he had examined the books of the office to ascertain whether any person had been assessed in Brooklyn for personal property as a non-resident and that he had found none. The witness did not seem to be very certain about the matter (516), and in view of the assessment and payment of taxes by Gordon after his death, as shown by these same records, it is very evident that the witness was wrong, and that the claim of the contestants that these books show whether the person assessed and paying taxes is a resident or not, is not supported by the facts.

Testator Paid Personal and Poll Taxes in New Jersey.—The proponents called Charles M. Fink, township clerk of the Township of Woodbridge, New Jersey (1095), who produced the original tax duplicates provided by law to be kept for that township for the years 1877, 1878 and 1879. These books were offered and the entries relating to the taxation of George P. Gordon in that township for those three years were read and received in evidence (1096–8; Exhibits P. 218, 219, 220).

It is shown by these entries that in 1877 the testator was assessed not only for his real estate, *but also for personal and poll taxes* (1096), and that the amount of testator's tax for that year, *including one dollar poll tax, was $282.65;* that in 1878—in the early part of which year Gordon died—and in the year 1879, the tax is entered against *the estate of George P. Gordon*, and that in the two latter years the poll tax is omitted. This record is evidently more accurate than the alleged Brooklyn record, which goes on representing Gordon as residing and paying taxes in Brooklyn for three years after his death.

The proponents also called Charles C. Dalley (1239), who was tax collector for the township of Woodbridge, in the year 1877, and for some years thereafter. The witness produced a memorandum book which contained the original memoranda of the receipt of taxes, received by him away from his office. When he received a tax

away from home he made an entry thereof in this book (1239). The witness having refreshed his memory by a reference to the book testified that the taxes assessed for the year 1877 against George P. Gordon amounting to $282.65 (this it will be remembered included *personal and poll taxes*), had been paid by check. The witness thought from reference to other memoranda before and after the one relating to Gordon that the date of the payment was between December 1st and 6th, 1877 (1240; 1241).

It thus appears that while the testator, if any reliance can be placed on these Brooklyn records so-called, may have paid personal taxes in Brooklyn for three years before and three years after his death, he paid personal taxes and poll tax in the township of Woodbridge, in the year 1877, the year before he died.

The preponderance of evidence on this point is undoubtedly in favor of proponents' contention, that testator was at the time of his death domiciled in New Jersey.

(*c.*) *Attempt to show that Testator voted in Brooklyn*—Contestants claim that testator voted in Brooklyn in 1876. Fifteen years only have elapsed since then. Nevertheless no witness was produced by the contestants who could testify that he saw Gordon vote, or that he knew that he voted in that year, or that he took any part or interest in the campaign in Brooklyn in that or any other year. All the evidence offered consisted of alleged records of the Brooklyn election for the year 1876, and statutes providing for making and keeping of some such records. The contestants called George Sandhuson, who for nearly five years had been a clerk of the Board of Elections in Brooklyn, N. Y., and who produced a book which he said was the poll list for the year 1876, from the First to the Fifth Wards of the City of Brooklyn (140; Exhibit D. 11). The contestants also read in evidence against proponents' objection an entry (141) purporting to show that one George **B.** Gordon, whose residence was 155 Colum-

bia Heights, voted at the election. The same witness testified that he had made an examination in the office of the Board of Elections in the City of Brooklyn for the original registry of voters, but had been unable to find it, and had been informed that it had been destroyed by water, and that a printed copy of the original list had been made in pursuance of an act of the Legislature. The witness produced what purported to be a printed copy, but admitted that he had never seen the original and did not know certainly that it was a copy (145). One of the old clerks had told him the original was destroyed by water. He also stated that it was the custom to collect and bind the original poll lists after election (148). This alleged copy of the original register contains an entry purporting to show that one George P. Gordon resided at 155 Columbia Heights, Brooklyn ; that he was sixty-six years old ; that he had been a resident of New York State, of Kings County and of the First District of the Second Ward for *three* years.

This testimony was objected to by counsel for the proponents and was allowed to be read, the Court reserving the question of its admissibility (148). The same witness was recalled (596) and produced what purported to be the minutes of the Bureau of Elections of the City of Brooklyn for 1876, containing an entry relating to the appointment of inspectors of the First, Second and Third Wards, etc., and referring to the registers' and inspectors' books (597 ; D. 114, 115).

The witness produced the two books, one showing the Democratic inspectors' appointments for the First District of the Second Ward, and the other showing the Republican inspectors' appointments (597 ; Exhibits D. 115, 116). He read what purported to be entries alleging that in 1876 A. L. Read, 101 Willow street, was an inspector of elections. The contestants offered in evidence the alleged registry book D. 97, and especially the entry "Page 5, under the heading 'Columbia "Heights,' the first column—under the heading 'Resi-"dence,' number, or other designation, if not num-

" bered ;" under that the " figures ' 155,' with a pencil " mark drawn through them and a pencil check mark " on the left. The next column, ' Name of voter,' " ' George P. Gordon ;' next column headed ' Age ;' " under it the figures ' 66 ;' next column headed " ' Length of time resident in State,' the figure ' 3 ;' " the next column headed ' Length of time resident in " County,' the figure ' 3 ;' the next column headed " ' Length of time resident in Ward,' the figure ' 3 ;' " the next column, ' Length of time resident in Dis- " trict,' the figure ' 3 ' " (598–599).

The witness stated that figure " 3 " purported to say that Mr. Gordon had been a resident for *three* years prior to the time he went to register in the 2d District of the First Ward of Kings County, in the City of Brooklyn (600).

John S. Cohen, a clerk in the County Clerk's office in Brooklyn, produced what purported to be an official poll list from the County Clerk's Office relating to the 2d District of the First Ward of the City of Brooklyn for the election of 1876 (150; D. 15). Witness stated that the lists came in in loose sheets (152); that no one in particular received them or had charge of them, some one of the clerks, any one; but a couple of the clerks were detailed to take the returns. The binder subsequently bound them and witness thought the deputy clerk attended to having them bound (152–157; D. 15).

The special entry referred to seems to indicate (158) that one George *B.*Gordon resided at 155 Columbia Heights and voted for State and City offices.

Robert B. Bussing, who had been a poll clerk in the First Ward, Second District of the City of Brooklyn in 1876, testified (152) that he had made a record of the voters in his own handwriting on the election day and identified Exhibit D. 15 as such record. In answer to the question " Did George P. Gordon of 155 Columbia Heights vote on that date ?" the witness, against proponents' objection, answered " I will say yes to that" (153). The witness said that he did not know Gordon

personally and had never seen him to his knowledge, but in a very labored explanation of his saying yes to the question whether Gordon had voted, explained that he did not think that it was possible for Gordon not to have voted as "it is registered in the book." The Court's attention is called to this remarkable explanation on pages 154 and 155 of the testimony. The witness further stated that the entries had been made *seriatim*, one after another, as they voted. No evidence was given to show that the George *B.* Gordon who was alleged to have voted, was the testator George *P.* Gordon.

John M. Knox, a son-in-law of Aaron L. Reid, one of the inspectors of the Second District of the First Ward of the City of Brooklyn, for the election of 1876, produced a book which he said was the Register's book of voters for the Second District of the First Ward of the City of Brooklyn, for 1876, and said that in his opinion the entry George P. Gordon, Columbia Heights, was in the handwriting of Mr. Reid, who is now dead. He knew Mr. Reid's handwriting (520), but did not know whether this was a copy or the original, but from his knowledge of Mr. Reid he thought it must be the original (522).

The proponents subsequently showed that the testator was residing at Rahway or Woodbridge during the Tilden and Hayes campaign of 1876, and that he took a very lively interest in the campaign at Rahway, illuminating his factory and contributing $2,000 to campaign expenses there. and that he was at Rahway constantly (781 ; 807 ; 1316).

Exhibit P. 114 shows that in March, 1876, he did not live in Brooklyn, and, therefore, if he voted there that year, he did so illegally.

Contestant's witness, Bussing, in his effort to show that Gordon must have voted in Brooklyn, says, that the First Ward of Brooklyn is made up largely of men who have lived there most of their lives, and are consequently known to each other more than in any of the other Wards

(155.) If, therefore, the testator voted in Brooklyn and resided in this "high-toned district," where men know each other so well, is it not remarkable that contestants failed to produce a single man who saw testator vote, or knew of his taking any part in the Brooklyn campaign? And if there was any colonization in this "high-toned district" in the year 1876, what house in that ward would have furnished a more likely selection than the one which George P. Gordon owned, and from which the contestants allege that George *B.* Gordon voted?

Proponents submit that this evidence falls far short of proving that the testator voted in Brooklyn in 1876.

(*d.*) *New York Directories.*--Contestants offered in evidence various City Directories for 1874–5, 1875–6 and 1876–7 (601; 602; Exhibits D. 118, D. 119 and D. 120), and in particular the entries in D. 118 and D. 119, which read as follows: "Gordon, Geo. P., Presses, 17 Beekman, h. 155 Columbia Heights, Brooklyn," and endeavored to show that the information for Trow's City Directories was collected with care. For the latter purpose they called a clerk of Trow's City Directory Company, who testified that the canvasser for information "*is supposed to see the head of the house, if it is a dwelling house, and if it is a business street they are supposed to see the head of the firm or of the store, the proprietor. If they are not accessible, then they take the next one in authority, the one in charge; that is the one, in case neither one of the proprietors are present, to get the information from, then they get it as best they can*" (601; 602).

There was no evidence that the information on which these entries were based was obtained from testator or any one authorized to speak for him, nor how it was obtained. This was the merest hearsay and is of no value whatever.

XV.

The Testator was in Fact Domiciled in New Jersey.

The testimony clearly proves the fact that the testator removed to Woodbridge township, Middlesex County, in the State of New Jersey, in June, 1866, and established his residence there at a place which he called "Neathoak," and that he never afterwards abandoned that residence or established his residence elsewhere Prior to going to Woodbridge he lived in Adams street, Brooklyn (1194). In 1866, in the month of June, he went to live in Woodbridge at Neathoak (531; 757; 804–5½; 1037; 1194). He fitted up and furnished this house at Woodbridge and made it his home and ever after he regarded it as his home and residence (212; 538), as is abundantly shown. He frequently declared it to be his home in the papers which he executed and in the letters which he wrote.

The alleged will of 1873 which contestants offered in evidence begins with the recital "*I, George P. Gordon, of the township of Woodbridge, County of Middlesex, and State of New Jersey.*" The contestants have now here undertaken to prove that this solemn declaration which they offered in evidence is an error. They are bound by it so far as testator's domicile on July 29th, 1873, the date of this alleged declaration, is concerned; and it is for them to show clearly that he afterwards abandoned this domicile at Woodbridge and established his domicile elsewhere. No doctrine of the law is more clearly established than that when a man once acquires a domicile he is presumed to retain it until he abandons it and actually makes some other place his domicile. There must be an *actual change and an intention to change.* (See Law Points below.)

The testator continued to describe himself and to respond to the description in solemn deeds and instruments that he was of the township of Woodbridge,

County of Middlesex and State of New Jersey, down to the time of his death. He is so described in a deed executed and delivered to him by Joseph T. Crowell, dated February 27th, 1874 (1088; Exhibit P. 215), and in a deed from Seth L. Sprague and wife to him, dated February 10th, 1874, conveying to him the property, 155 Columbia Heights, (1088; Exhibit P. 216).

The testator describes himself as of the Township of Woodbridge, County of Middlesex and State of New Jersey, in an assignment of a mortgage by him to James H. Durand, Receiver of the Dime Savings Bank of Rahway, dated and acknowledged Nov. 23d, 1877, just before he went South to die (1088; Exhibit P. 214), and also in a deed executed by him to Emma Hall, in the same year. The date of this deed is April 2d, 1877, but it was not acknowledged until about the close of the year and within a few weeks of testator's death (1087; Exhibit P. 213).

Testator also described himself in his letters as residing at Woodbridge. In P. 116 he writes from Norfolk to his brother Collingwood, under date of June 3d, 1877, "I did intend starting for home on the 2d, but shall not leave until Monday or Tuesday ev'g., thus reach *Rahway* Tuesday afternoon, or at furthest Wednesday." In a letter to A. Sidney Doane from Norfolk, dated March 30th, 1877; (Exhibit P. 117), testator writes "Rahway is a glorious city! How glad I am I moved there!!!" In Contestants' Exhibit D. 129 ~~for Identification~~, a letter to Van Wyck, dated March 22d, 1875, testator writes "Lenore at Brooklyn—not very well to-day. * * * * Lenore goes to-morrow to Rahway—thus—she lives at Rahway and I live in Brooklyn! *Pretty* so to live, isn't it?" (Exhibit D. 129, ~~for identification~~; 1061). This is the letter in which Mrs. Doane thinks testator's reference to his living in Brooklyn is a joke (1061), and that he refers to only a temporary separation, which is obviously the fact.

In P. 114, in a letter to A. Sidney Doane, from

Nethermuir, dated March 10th, 1876 (1085), testator says: "I mean to reside in Brooklyn when I return—not at Rahway. *See if I don't?*" Nevertheless, he returned to Rahway very shortly and continued to live there, as the above letters and the testimony of many witnesses clearly show.

Contestants' claim appears to be that the testator went to reside at 155 Columbia Heights, after he purchased that property, and they attempt to establish this claim by the alleged records of the Brooklyn Bureau of Elections. Gordon bought the Brooklyn house on February 13th, 1874 (1088; Exhibit P. 216), and in October, 1876, the alleged official poll-list, offered by the contestants, represents George *B.* Gordon as having lived in the State, city and ward for three years (579; 600). This alleged record is evidently unreliable, even on the supposition that Mr. Gordon removed from Neathoak to the Brooklyn house after the purchase of the latter in 1874, which is clearly contradictory to the declarations in his own letters above cited for he could not have been living there *three* years in October, 1876.

The testator did not, however, as a matter of fact, change his domicile from Woodbridge township to 155 Columbia Heights, but kept it at Woodbridge just the same as before. He bought the Brooklyn Heights house for his daughter Mary, and she lived there, while he and his wife continued to reside at Woodbridge. Occasionally, but rarely, he would spend a night with Mary in Brooklyn "when he did not want to go home to Rahway," contestants' witness Van Wyck tells us (591).

Mrs. Doane, whose husband was testator's nephew and business manager, went down to Neathoak when testator bought the place early in the summer of 1866 (1043; 1048), to consult with testator's wife about the furniture and carpets for the house. She was there on visits at intervals down to almost the time when testator went South previous to his death. The witness says this was the home of testator and his wife till the

time of his death, "they lived there" (1048). When he, testator, went to Norfolk he would only stay a short time. Afterwards, when he bought the Brooklyn house, he would only stay there for a few days at a time, never for long (1048). After they bought the Brooklyn house Mr. and Mrs. Gordon continued to live at the Woodbridge house; "they had their carriages, horses and everything there; they lived there just the same as before" (1049). Testator's daughter, Mary, lived in the Brooklyn house and had her own servants. She and her stepmother could not live together. The witness never saw Mrs. Gordon in the Brooklyn house when Mary was there, and only when Mary was away, and this was very seldom. The witness' last long visit to the testator's house at Neathoak was in the summer of 1876, when she remained four or five days, perhaps a week. Testator and his wife had horses and carriages, two woman servants, a coachman, gardener and farmers on the place (1051–1052). They cultivated the place, had a beautiful kitchen garden, shrubbery, etc., and Mr. Gordon appeared to take a great deal of pleasure in it (1052). He went to New York on business every day and came home in the evening. The witness says (1053) that Mr. Gordon went to Brooklyn oftener in 1874 and 1875 than afterwards. He went there "*very seldom.*" He and Mrs. Gordon went there when Mary was away and that was usually in the summer time (1034–1035).

Ernest Baumann, a landscape gardener, who laid out Mr. Gordon's place at Woodbridge, and was an intimate friend of the Gordon family, testifies to facts which show clearly that Gordon's residence and home was at Neathoak in 1868 (756). In 1876, at the time of the Tilden-Hayes campaign, the witness had returned to Rahway, and Mr. and Mrs. Gordon were then living at their house in Woodbridge and continued to live there (760–762). The witness was there several times a week, and visited Mr. and Mrs. Gordon. He was there day times and evenings. Some-

times testator was there and sometimes he was not, but he would be there at supper (763). Sometimes he would be away in Virginia. He saw the testator around Woodbridge just as much after he bought the Brook lyn house as before. In the fall of '76 the witness was constantly at testator's house at Woodbridge (781), and found Mr. and Mrs. Gordon there—Mr. Gordon was living there (762–3). After testator bought the property in Virginia he was away from Woodbridge a good many times in the winter, but not many times in the summer (784). The witness was absent from Rahway a portion of the time after 1873, but kept up a correspondence with testator and knew of his whereabouts (762; 784; 785; 786).

Edward L. Adams, the testator's nearest neighbor, became acquainted with Mr. Gordon in 1866, shortly after the latter had bought Neathoak (804; 805), which was in Woodbridge Township, Middlesex County, one and one-half miles from Rahway. The testator was then just getting the place in order. He came and lived there with his wife and daughter, and later on Miss May came (805). There was no change in Gordon's household or manner of occupancy from 1866 to 1873, (when witness left Rahway), except that he had bought land in Virginia and used occasionally to go down there to stay (876). The witness was away from Woodbridge from 1873 to 1876, but was frequently there on visits, and in the autumn of 1876 returned to live on the Adams homestead, and saw the testator almost every day at his house and saw him evenings. "There were servants there and horses and carriages and a coachman" (807). There was neighborly intercourse between the witness and testator in 1876–7. He and Gordon were 'fast friends always'" (809).

Amos P. Barber, who had charge of the practical working of the factory at Rahway from 1872 down to testator's death, and with whom testator often talked about his family and affairs and business (705), says that before the testator purchased the Brooklyn house, he, the testator, told the witness that "there was

trouble between his wife and Mary, and that they did not get along well together; that Mary had left her home at Rahway and was boarding in New York, and that he proposed to buy a house for Mary so that she would have a home, and he told him that he was looking or negotiating for a place on Columbia Heights" (730). At a subsequent interview he told the witness "that he had purchased a house on Columbia Heights for a home for Mary" (731). That it was testator's habit on leaving the factory at Rahway to go to the Woodbridge house, to say "that he was going home" (731).

In the fall of 1877, shortly before the testator made his last journey to Norfolk, Va., he had been away with Van Wyck and Mrs. Gordon to Niagara, and after his return when at Rahway he told the witness that he was tired out; that the ride from Niagara to New York nearly killed him, and "he said he was glad to get home" (730).

Mr. Cornish, a brother of testator's first wife, says testator resided at Rahway from the time when he went out there until his death (1168); "he had a place of residence there, resided and had his home there" (1169). He owned a farm and had a house and everything connected with the household, his wife and daughter, most of the time, and he had servants and everything of that sort (1169). The witness visited testator at Rahway after he had bought the Brooklyn house quite a number of times (1170), and did not observe that his manner of life at Rahway was different from before he bought the Brooklyn house. The Rahway house had just the same furniture there; there were horses and carriages and servants, the same as before. After testator bought the Brooklyn house, the witness says: "I frequently walked with him from his office to the ferry" (the Cortlandt Street ferry). "I presume he went to Rahway; I did not go with him" (1171). Testator's daughter Mary first went to board in New York opposite to the Academy of Music, and then moved to 155 Columbia Heights,

Brooklyn (1169). She and her stepmother, testator's second wife, could not agree, and testator told witness that they could not, and that it was better for Mary to go to New York. "Mary and the servants" composed the household at 155 Columbia Heights, and witness thinks, but does not seem to be positive about it, that testator and his wife spent a part of one Winter in the Brooklyn house several years before testator's death (1169; 1172). The witness was frequently in the Brooklyn house during the three years preceding testator's death. Mary was living there at the time he died. She lived there alone (1169; 1173). Witness was there every few weeks.

Mulvaney, who had been Gordon's coachman for the first year after he went to live in Rahway, tells about the family of Gordon and who composed it, and of Gordon's statement that they went out there "to live alone" (1269).

Michael Hankins, who was testator's coachman from 1870 to 1876, and took all his meals in the Gordon house (1297), says the Gordon family consisted of the testator, his wife and daughter. They lived about a mile outside of Rahway. Mary went away to live permanently the last year or two witness was there (1298). Mr. and Mrs. Gordon remained there. Witness saw no change in the manner of life while he was there. The horses and carriages remained, and Gordon went and came as before (1294). The witness drove Gordon to the depot in the mornings and brought him back in the evenings, in general every night, except when he was South in the Winter, and occasionally when he would miss a train (1299; 1301; 1302). When testator was not South he spent his Sundays at Rahway. He spent his nights and Sundays at home (1303).

Mortimer Jacques lived at Woodbridge down to the fall of 1877, and used to see Gordon there very often (1315), and saw no difference in the testator's manner of life there during the few years prior to 1877, from what it was at an earlier period. Testator gave $2,000

toward the Tilden-Hayes campaign. The witness says: "He was living there. I saw him two or three times a week. I lived on the road where he used to come down to the place in Seminary Street. He used to pass my house * * * * about ten o'clock in the morning, going to his factory before going to New York" (1317).

Mr. Woodruff, who was President of the Union National Bank of Rahway, when Gordon was a director and depositor there from 1867 to the time of his death, and who knew Gordon intimately, says: "Gordon resided just outside the city limits in Woodbridge (1407) from the time he came out there in 1866 until he went down South and was taken sick and died" (1407). The witness visited him at his house and never observed or knew or heard of any change in the manner of conducting his establishment at Woodbridge after he went over there to live until he went to Norfolk and died (1407). Testator was accustomed to stop at the bank of which the witness was President. He and his wife used to come down in his carriage very frequently (1408). Testator would come into the bank and stop a while and send his horse and carriage home and take the train to New York. This he continued to do every two or three days until he went South. He made the bank a sort of headquarters (1408).

William E. Winslow, Gordon's nephew by his first wife, saw a great deal of testator during the last five or six years of his life (1439). He says the testator's home was at Rahway, "that was his home and his wife lived there." The witness used to go down with him to the Cortlandt Street Ferry when he left New York to go to Rahway. When he left the office "if he was going home, he would say 'I am going home.'" Then he would go the Cortland Street Ferry. "If he were going to Brooklyn he would say 'I am going to Brooklyn,'" or "'I guess I will go over and see Mary'" (1436). This occurred from 1875 to 1877 "around there" (1436). Mary lived at the Brooklyn house.

Gordon went there sometimes and witness went with him when they were going to the theatre (1438). Mary was there alone except when she had some company (1437). Witness saw Mrs. Gordon at the Brooklyn house only twice; once at her husband's funeral, and once when Mary was away.

Mr. Brewster, who was cashier of the Union Bank of Rahway when Gordon was Director and depositor there, and down to the time of his death, and knew Mr. Gordon well, says (1244): "I know Mr. Gordon resided just beyond the Six Roads near Rahway. It was just outside of Rahway. I know it as well as I know my own residence." The witness often was at Mr. Gordon's place and used to see Mr. Gordon coming and going from and to his place, and the bank, in his carriage very often (1244-5). The witness knew of no change in Gordon's habit of coming in from the country in his carriage in the morning and taking the train for New York, before he went South and died (1245). He has seen Mrs. Gordon with Mr. Gordon in the carriage when they came into town, and it was so in the winter as well as in summer.

Mrs. Athley was living in one of the Gordon houses at Woodbridge when Gordon went South just before his death, and had been living in that house for four or five months. For the three or four months before Gordon went South, the witness knew he had been at his house at Woodbridge (1184), and when Mr. and Mrs. Gordon went South witness and her husband moved into the Gordon house (the large house) to take care of it. In 1875 the witness saw testator pass her house in his carriage and saw him in his house (1186). She had heard that he used to go to Brooklyn where Mary was (1186-7), but when he went to Brooklyn Mrs Gordon stayed at Neathoak and the house would be kept open just the same. The testator's furniture remained in the Woodbridge residence after his death until Mr. Savage bought the property (1190).

Mr. Hicks, a clerk of Gordon, who was in the New York office from 1876 to the time of the testator's

death, testifies to Gordon's habit of speaking of Rahway as his home. He would say if he was going to New Jersey "I guess I will go home" (1442), and if he was going to Brooklyn he would say: "I am going to 155 Columbia Heights; going to stay with Mary." That was "habitual with him" (1442). Witness knows he went to New Jersey when he said he was going *home*, because he heard him tell the boy where he wanted the cabman to drive him (1442).

Mrs. Case who knew Gordon well and visited the family often, testifies that in November, 1875, which was the only time she ever saw testator in the Brooklyn house (1447), she told him she thought it was dreadful to leave Mary alone in the Brooklyn house, and the testator replied that it seemed to be necessary; that he could not be there very often (1447); that his home was in Rahway with Mrs. Gordon.

John Chitty, who delivered newspapers at 155 Columbia Heights during the years when Mary lived there, says the papers were delivered on Mary's order and paid for by Mary Agnes Gordon (1257; 1260).

John Day, a plumber who worked at Columbia Heights, in 1876 and 1877 (1253; 1255), testified that his dealings in connection with the house were always with Mary. The orders were sent down by a girl and sometimes Miss Gordon came herself (1253). He thinks the bills were made out to Mr. Gordon, because he, the witness, formerly did work for Gordon's office and were commonly paid by A. Sidney Doane (1252–4), but he knows Miss Gordon paid one bill herself (1254). He never saw Gordon at the house but once, and never found anyone at the house who gave him any orders except Miss Gordon, and she was "very particular" (1256), which doubtless accounts for his remembering it well.

Mrs. Moore, who was very intimate with Mary Gordon and knew the Gordon family well and visited them at their house in Adams Street, Brooklyn, before they went to Woodbridge to live (1262), and afterward at Rahway (1262–3), numbers of times while Mary lived

at Rahway (1262–1264), says that in the earlier years the Gordon household was composed of Mr. and Mrs. Gordon and Mary. Charles Beebe used to be there when he was engaged to Mary (1262–4). Later Mary went to Brooklyn. Witness visited Mary at 155 Columbia Heights and generally made long visits, taking meals there and spending the night (1327). She saw Mr. Gordon there twice, and has an indistinct recollection of seeing him there a third time (1337). She remembers once distinctly because Mary was surprised to see him on account of the infrequency of his visits. Mary managed the house and selected the servants, and all the expenses were put down to her (1338–9). She attended to having repairs done, and had the entire control and management of the house, and was sometimes afraid her father might object to the bills (1330–1331). Her visits to Mary were commonly as often as once in two weeks, but sometimes the intervals were longer (1330), and Mary visited at her house. The witness saw Mrs. Gordon at the Brooklyn house only twice, and Mary was not there at the time (1331). Gordon's home was always in Rahway (1332).

Mrs. Elsie Bogert, who married Mr. Gordon's nephew, made a visit at the Gordon house at Woodbridge on October 8th, 1875. She says the house was "furnished handsomely and luxuriously." Mrs. Gordon presided at the table, Mr. Gordon sitting opposite. There were horses and carriages and servants (1335). Mr. Gordon pointed out improvements he intended to make, and said it would be a very nice place when he got through with his improvements (1336). Mrs. Gordon spoke of it as her home (1336). The witness found Mary living alone at the Brooklyn house (1336) on making a call some weeks later.

Adeline J. Gordon, testator's sister, testifies that testator, somewhere in 1866, went to live in Woodbridge and she visited him there a number of times. Testator told this witness that he had purchased the Brooklyn house for a home for his daughter and

"asked me," she says, "what I thought of it, if it would be a nice home for her, and I said 'Yes, it will be a very comfortable home,' and he said 'I think so too. It will do for Mary,'" (1195). Testator's wife and daughter were on bad terms and testator said to witness: "I am convinced that they cannot abide under the same roof" (1197). Mary had been boarding in 14th Street, New York, and went from there to live in the Brooklyn house when it was in order (1197–8). After the purchase of the Brooklyn house, the Rahway house went on just the same as before; there was no change, "that was his home" (1199). The witness was at the Rahway house two or three times after testator purchased the Brooklyn house (1199.) Testator "said distinctly and decidedly that he had bought that house (155 Columbia Heights) for Mary's home" (1199).

Miss Doane, testator's niece, visited and spent considerable time at his house at Rahway from 1868 down to 1877, sometimes spending several weeks at a time (1337). She visited Rahway (1339) after the purchase of the Brooklyn house, and found it just the same as before and saw no difference between testator's mode of life at Woodbridge after 1874 from what it was before —saw "no difference in the establishment."

Mary Gordon left Rahway and went to Brooklyn to live in 1874, after Mr. Gordon bought the house there. Witness visited Mary there and frequently stayed with her. She was alone except one winter when a friend stayed with her (1338). Mary had two servants (1338). After Mary went to the Brooklyn house she told witness that had she known her father was going to buy a house for her, she would have preferred to have been consulted about the furniture (1339). The witness' visits to Mary were sometimes as often as two or three times a week, and "constantly once a week" (1341). Sometimes she stayed all night. She never saw Mr. Gordon in the house but once, and that was in June, 1877 (1338; 1345), and never saw him there at night. She has heard Mary say, "It is strange father does not come and see me" (1342). Sometimes

but "*very seldom*," Mary would say, "Father was here last night or last week." Testator did not go as often to Brooklyn in the fall as in the summer, and he went "*very seldom*" (1343). Mrs. Gordon and Mary were on bad terms (1344; 1345).

These numerous witnesses establish beyond any shadow of doubt that Mr. Gordon regarded Woodbridge as his home, and his residence; that he never abandoned and never intended to abandon that domicile; that he never after his removal to Woodbridge established or intended to establish his domicile in Brooklyn.

His own account of his acts and intentions in regard to his home and residence, as related in his conversation with Mr. Henry C. Adams in September, 1877, is evidently accurate. Mr. Adams says (1460): "Then I said: Mr. Gordon, I heard the other day that you have bought a house over in Brooklyn. Are you going to move back to Brooklyn? 'No', he said, 'I bought that for Mary. It is a sort of a home, if I want to stay there over night from bad weather I can go over and stay there. I have got another home down in Virginia; I have got three homes, but' says he, 'that is my home over there,' (pointing to New Jersey), 'that is my home over there.'"

This testimony tallies exactly with the sworn statements made by the testator's daughter, Mary Agnes, shortly after his death, in her objections to the probate of the Brooklyn will and in her petition for Letters of Administration. In both of these sworn statements Mary Agnes says her father, the testator, resided in the township of Woodbridge, County of Middlesex and State of New Jersey, at the time of his death.

The testator was unquestionably domiciled in the State of New Jersey at the time of his death.

XVI.

The Charges of Forgery and Perjury.

The contestants charge that this will is a fraud; that Henry C. Adams, who drew the will, forged the signatures of the testator, of the subscribing witnesses to it, and has committed perjury in this Court in swearing that he heard the testator declare it to be his last will and that he saw the testator and the witnesses sign it, and in swearing to the various other matters relating to its execution. The charge also, of necessity, includes Edward L. Adams as a party to the fraud; for, although it is not claimed that he committed the alleged forgery, still he is by implication an accessory to the crime of forgery, and also guilty of perjury, if contestants' charges are true. And if these charges are true, the skill and ability with which this most marvelous scheme of alleged fraud and crime has been thus far conducted is astonishing beyond anything in the records of the Courts.

The testimony of Henry C. Adams, it will be remembered, is very explicit and positive that he drew the will under Mr. Gordon's instructions and saw Mr. Gordon sign it and heard him declare it to be his last will and ask the witnesses to sign it as witnesses, and that he saw them sign it and saw his father, at Mr. Gordon's request, take charge of the will and seal it up in the package in which it was brought before this Court. The testimony of Edward L. Adams to the facts relating to the custody and finding of the will is likewise positive and explicit. The testimony of neither of these witnesses was shaken in the least as to any essential fact by the very rigid cross examination to which both were subjected, nor has either of them been contradicted on any material point. The feeble attempt of the contestants to impeach the character of Mr. Henry C. Adams by the testimony of Cushney and Fish and the eosine experts

was wholly unsuccessful. It is doubtful whether the character of any witnesses was ever supported in this or any Court by so large a number of men of high standing and character in the various communities, and covering the whole period of the life of a man who is now past his three score years and ten.

The contestants met with no better success when they tried to show that Mr. Henry C. Adams had a motive for these gigantic crimes, for it was shown that his interest in the will, if any existed, was exceedingly slight and remote, and that he is so far from being a man actuated by mercenary motives that he has for years been fighting on principle to uphold his father's deed of trust under which he can have but a small life interest (Exhibit P. 208), whereas by permitting this deed to be set aside he would at once inherit one-fifth of his father's estate amounting to $140,000 (127 ; 812 ; 813 ; 814).

After the above testimony had been brought out by the contestants, in answer to a remark of the Ordinary on the insignificance of the motive shown, the attorney for the contestants replied "*Every man has his price.*" This then is their "motive ;" all men are corruptable, "we are, you are, they are, hence Mr. Adams is a forger and perjurer! "

The attempt to discredit the testimony of Edward L. Adams by the notorious three hundred dollar (561) detective Jayne, was equally ineffective.

The contestants did not undertake to contradict the testimony of Henry C. Adams, as to his intimate relations with the testator (34-7), nor to disprove the many other strongly corroborative circumstances surrounding the execution and preservation and finding of this will, as related by the Adamses and many other witnesses, including Mr. Gordon's own statement, that he had made a will and that Mr. Adams had drawn it, and that A. Sidney Doane and Collingwood Gordon were executors (787 ; 1045). Of all which things more will be said hereafter.

XVII.

Expert Evidence in General.

Contestants have undertaken to overthrow this direct and positive testimony of the proponents, and to establish their charges of the grossest fraud and forgery and perjury by what has always been regarded by Courts and Judges as testimony of a very low order, namely, the opinion of paid experts in handwriting:

> "My own experience," says Mr. Justice Miller, of the United States Supreme Court in Middlings Purifier Co. *v.* Christian (4 Dillon, 448, 459) "both in the local Courts and in the Supreme Court of the United States is that, whenever the matter in contest involves an immense sum in value, and when the question turns mainly upon opinions of experts, there is no difficulty in introducing any amount of them on either side."

The New York Court of Appeals, in a case decided in October, 1891 (Roberts *v.* Manhattan Elevated R. R. Co., N. Y. Law Journal, Oct. 27th, 1891), says:

> "Expert evidence, so-called, or, in other words, evidence of the mere opinion of witnesses has been used to such an extent that the evidence given by them has come to be looked upon with great suspicion by both Courts and juries, and the fact has become very plain that in any case where opinion evidence is admissible, the particular kind of opinion desired by any party to the investigation can be readily procured by paying the market price therefor."

The late Surrogate Hutchings, of New York, in a case in many respects resembling the one at bar, after a most exhaustive examination of the voluminous expert testimony given in the case, makes the following most interesting comments on expert testimony:

"In the first place, it appears to me that the mental condition of an individual must necessarily have an important influence upon the character of his writing. * * * The momentary vexations of life are sufficient to produce appreciable alterations, while even such commonplace occurrences as the pressure of business or the state of the weather are not without influence. * * * Is it improbable that a man of Mr. Taylor's years who, so far as it appears from any evidence, had never before affixed his signature to so solemn a document as a will, an act which brought vividly before him, as it brings to all men, the certainty of death, and that death is necessary to ratify the decrees therein expressed, should write that signature with more deliberation than the many signatures he was in the habit of hastily and automatically affixing to checks, notes, letters, bills, &c.?

"Of equal importance are the physical circumstances surrounding an individual; the height of the table at which he sits, the differences between sitting and standing, when he has to write in a posture to which he is unaccustomed; the flexibility and peculiar character of the pen or quill, the kind of ink, and the substance supporting the paper. A trial will speedily convince any one of the radical differences perceptible between two successive signatures when the only circumstance altered has been to write one on marble and the other on cloth; or when the difference is in the kind of paper, those accustomed to ruled paper may write badly on unruled, and the same may be said as to the peculiar quality of the paper, whether sized or unsized, the amount of light in the room, etc.

"The circumstances affecting handwriting are almost numberless. The state of bodily health is another point. A natural condition of the parts of the body used in writing is of prime importance. A trifling blow on the arm, the effects of a slight fall, a rheumatic or neuralgic pang, or a gouty

twinge may either completely annul or greatly modify the power and facility of writing.

"*Any one of these circumstances may completely vitiate all the learned disquisitions of these experts on what should be the exact uniformity of hair-strokes, base lines, loops and sloops.*"

The Courts of this State have expressed similar views on the subject.

In Mutual Benefit Life Association v. Brown (3 Stew., 193, 201), Vice Chancellor Van Fleet says:

> "It (the evidence of experts on handwriting) still must be estimated as evidence of a very low degree. Very learned judges have characterized it as much too uncertain, even when only slightly opposed, to be the foundation of a judicial decision.

Scudder, J., in delivering the opinion of the Court of Errors and Appeals in affirming the decision of the Vice Chancellor, took a similar view of such testimony.

And the Supreme Court in Boylan v. Meeker, 4 Dutcher, 458, has pointed out in a very apt way circumstances which may readily set at naught the opinions and theories of experts on handwriting.

Nevertheless, the contestants relied wholly upon such testimony and called a large number of experts and the proponents called others in rebuttal, and it is necessary on the argument to examine this expert testimony in detail. The Court, during the progress of taking the testimony, frequently reminded counsel and witnesses that the mere opinions of experts, unless the attention of the Court were called to facts which supported such opinions, were of very little weight. We may therefore dismiss with a passing notice the special theories of some of the experts, as well as their opinions based on such theories without being supported by facts distinctly pointed out (223).

XVIII.

Brief Review of Surrounding Circumstances.

In the examination of expert testimony all the circumstances connected, or claimed to be connected, with the execution of the document, should be kept in mind. In this case, it will be remembered, the testator carried the paper around with him in his inside pocket for a week before it was executed (6). The date of the execution (8; 29) was July 25th, 1868, and the weather for a week before that time had been hot and damp, as appears from the certified copy of the Weather Report (1086; 1100; 1101; Exhibit, P. 211), and Mr. Gordon's letter of July 21st, 1868, (720; Exhibit, P. 39), which Van Wyck was compelled to produce on cross-examination. The testator when he desired to execute the paper took it to the house of Henry Adams (6; 7), his nearest neighbor (3), in the afternoon or evening of July 25th, 1868, and found Mr. Henry Adams and his two sons, Henry C. and Alonzo C. P., together on the piazza (30). On Mr. Gordon's expressing his wish to execute the paper, the four went into the reception room of the Adams house (71). In this room there was a marble top centre table (7, 28), "a little longer than broad" (28), on which a "place was made to write on." Then Alonzo Adams was sent into his father's room in the rear of the house for the ink, and he brought into the reception room the inkstand containing ink from his father's desk. It is uncertain where the pen used was obtained, and Mr. Adams does not remember what kind of a pen it was (30), but there were steel pens on Henry Adams's desk in this rear room (31) from which the ink was brought, and the fact, admitted by experts on both sides, that the signatures were all written with a steel pen (288; 1013; 1018), renders it highly probable that Alonzo

brought a steel pen from his father's desk along with the inkstand.

Experts on both sides agree also that the paper was damp or moist when the signatures were made (278; 857; 859; 912; 1121–3; 1136–7), and that the ink was thick (281; 1006) from standing open and evaporating, or that it was an extraordinary kind of ink (279), and that these circumstances, or the peculiar character of the kind of paper (359), account, to a great extent at least, for the heavy strokes and "club-like" lines in the signatures and for the spreading of the ink through the paper (278; 279; 509; 828; 829). Mr. Henry Adams ordinarily used a gold pen (707; 1134–5), and the testator "always used a gold pen (707; 1134–5) in writing in his office" (1173). We know that Mr. Gordon greatly disliked writing with, and was unable to write well with a steel pen, for, in a letter to his brother, he writes (Exhibit P. 115):

> "Lenore has run off with my pen, as she always does, and left me to write with a steel sharp-pointed pen, as best I may. Now, I must have a pen suited to my *hand*, or I make poor work in writing; I bear heavily, and therefore must have a flowing, easily gliding pen."

The paper on which the signatures are written was an unsized paper (369), or a paper with very little sizing (402; 1350).

Testator was upwards of fifty-eight years old at the date of the execution of the will (1190). Henry Adams, the first subscribing witness to the will, was seventy-three years old at the date of the execution, and Alonzo C. P., and John Q. Adams, the other two subscribing witnesses, were respectively about thirty-three and forty-six years old. (54; 82). Henry C. Adams, who was present at, and an eye witness of, the execution, was about fifty years of age (11). Alonzo C. P. Adams was a man of very intemperate habits and frequently intoxicated (509; 1431; 1449).

XIX.

Standards of Contestants.

Much of whatever value the testimony of experts in handwriting, who testify only from comparison, has, depends upon having proper standards accurately and fully representing the genuine handwriting of the person whose writing is alleged to be forged.

Contestant's experts Carvalho and Ames, both bear witness to the obvious fact that different standards often cause experts to arrive at different results. Mr. Carvalho (on page 269) explains his having sworn that he believed that the notorious Morey forged letter was genuine by saying he relied on standards given him, and further along explains that the reasen why he and Mr. Ames and other well known experts differ, is that different standards are submitted. Mr. Ames also says that there are various reasons why he and Messrs. Carvalho and Hagan sometimes differed in the past, and among them " that different standards have been placed before us " (398) before the trial, and the fact *that all see the same standards on the trial* does not prevent the disagreement (399), and he thought the reason why he and Hagan differed in the Myra Gaines case, was, that different standards were submitted to them (453).

The standards employed by both sides in this contest were all admitted by both proponents and contestants to be genuine. It was also admitted by both sides that there was a wonderful variety in the handwriting of the testator (291; 302; 881; 975; 1127), especially in his letters; and that he had a special check signature which differed from his letter signature and was far more nearly uniform (529; 531; 576; 604) than his writing in and signatures to his letters (270; 271; 436; 1449).

The contestants produced as their standards of testator's handwriting at first forty-four checks (Exhibits

D. 16 to D. 54 and D. 58 to D. 60 inclusive), and, later on, when the extremely narrow range of their standards had been made apparent to the Court, they brought forward a deed (Exhibits D. 97, 534) and the so-called Brooklyn Will, both of which had signatures resembling those on the checks, but their experts were confined to the check standards in testifying. A large number of testators letters came into the possession of the contestants some time before the trial. Van Wyck had obtained from Nichols & Langworthy all the business letters written by testator to that firm in 1868 (658), and the contestants only produced a few of them, and these not until called upon in open Court to do so (659), instead of proffering them voluntarily in the first instance to assist the Court in discovering the real characteristics of testator's handwriting. Van Wyck also produced a few letters of testator written to him and his wife, stating that he had destroyed all the "trunkfulls" of other letters from Gordon to his wife, except these few, which *providentially* were for his interest (657). None of these letters were, however, offered as standards by contestants, nor were the opinions of their experts based upon them.

"*By direction*" of Mr. Henry J. Cullen Jr., who is fated in this case, it would seem, to be forever juggling with the jurisdiction, the boxes of Gordon's letters and papers which had been sent over to Rahway from the New York office, and some which might greatly have assisted the Court, were speeded away to New York so as to be safely out of the jurisdiction before the trial began (164–5).

The contestants' experts did not have a word to say about any other of Gordon's signatures, except the forty-four checks, although contestants had quantities of Gordon's letters in their possession. Their experts did not see them. Mr. Carvalho says with uncertain air, "I think possibly I may have seen several, but I don't remember enough about that to be able to say so" (301); and Mr. Ames is "under the impression" that he has seen three or four (434). But they were

not produced here for the assistance of the Court. The conclusion is inevitable, that contestants were well aware that these letters, then and still in their possession, if produced in Court would show such characteristics of testator's handwriting as would make it impossible for them to maintain their theory of forgery.

XX.

Contestants' Distorted Photographs.

Having examined these check signatures only, or a duplicate of the distorted photograph D. 63, and concluded that the signature in question was so unlike them that it must be a forgery, and having expressed such views, committed themselves, taken their retainers, and gone on the stand and pronounced the signature a forgery, they were hardly in a condition, and were not to be expected, to change their testimony when the proponents showed them letter signatures differing greatly from their narrow standards, although the former often closely resembled the signature in question; which is quite in keeping with their previous record (See Ames' testimony, 398–9).

The contestants produced photographs and cartoons made by Mr. Carvalho, of some of their standard check signatures and of the questioned signature. Mr. Carvalho swore that these photographs were exact representations of the originals, "to all intents and purposes *fac similies* of the originals" (288) and "full and fair photographs" (289). "The signatures," he said, in D. 71, "were enlarged on a natural scale; that is, one portion being enlarged in the same proportion as any other portion" (214). The contestants evidently intended to convey to the Court the impression that these photographs and cartoons fairly represented the originals and the proportion and size of the disputed and genuine signa-

tures relatively to each other. They showed the photographs to their other experts before the trial and displayed them in Court and used them for illustration instead of the originals.

It was proved by exact measurements made by proponent's experts Ewell, Cresson and Elliott, which measurements were repeated in Court, that the reproductions of the five check signatures on the photograph D. 63 were each six one-hundredths of an inch *shorter* than the originals (848 ; 1468), and that the reproduction of the disputed signature to Exhibit P. 1 on said photograph D. 63 was fourteen one-hundredths of an inch *longer* than the original (849 ; 1469). The proportions of the will signature to these check signatures were thus greatly distorted by the lengthening of the reproduction of the will signature and the shortening of the reproductions of the check signatures. These distortions in the proportions of the photographs so misrepresent the originals that Prof. Ewell testified that had the photograph D. 63 been sent him as a fair representation of the signatures for his opinion, he would have declined to testify for proponents (951).

It is obvious that the testimony of at least some of contestants' experts was based on this distorted photograph D. 63, and not on the original signatures. Carvalho says the disputed signature, from the initial stroke of the "G" to the finish occupies more space than any of the signatures which he has seen (250), and Cantwell (316) says, "The signature in Exhibit P. 1 is longer and extends much beyond the usual length of the genuine or standard signatures." Both these experts, however, swear that they had examined these five standard check signatures, which are Exhibits D. 56 to D 60. Carvalho testifies (222) that he has "certainly made a comparison with respect to D. 56 and D. 60, inclusive"; that he gave "special study to them" (301), although he is uncertain what other checks he has examined. Cantwell also testifies positively that he has examined the checks D. 56 to D. 60 (313). Now the fact was demonstrated by the measurements of

Messrs, Ewell, Cresson and Elliott that the disputed signature is shorter than two of these very five check signatures to which Carvalho gave "special study" and precisely the same length as a third, while the remaining two are shorter (848; 850; 1125; 1167; 1468; 1469). In the alleged photograph D. 63, however, the disputed signature is longer than any one of these five standard check signatures by at least nine per cent. of the average length of the five check signatures (848; 850; 1125; 1468-9).

It is scarcely credible that these two scientific gentlemen, Carvalho and Cantwell, testified from a mere guess, without measuring, when they incorrectly stated that the disputed signature was longer than any of the standards. The most charitable construction that can be put upon their testimony on this point is that they found the photograph D. 63 a very convenient substi tute for the originals in making their examination and measurements, and for this reason falsely testified that the will signature was longer than any of the others.

We do not know whether it was this photograph which contestants showed Orton (474) and Tolman (480) and other of their witnesses. The presumption is that it was. Crater evidently saw it (607), and there is no evidence of any other photographs being used. The form in which the photographs making up this Exhibit D. 63 are arranged, is extremely convenient, and it is highly reasonable to conclude that it was submitted to many, probably all, of the bank and lay experts of the contestants and formed the first basis of their opinions that the disputed signature was a forgery and served its purpose, of committing them, extremely well.

In such matters it is of the highest importance that an expert's judgment should not be biased in the first instance by getting any false or incorrect impression before coming to pass judgment on the question to be decided.

In Risley *v.* The D. B. &. W. R. R. Co., 7 Biss., 411, a learned judge of a Federal court says, in regard to

the testimony of certain witnesses who had testified that certain signatures were not genuine:

> "And in this connection, the question will doubtless occur to you whether the witnesses who testified on this point would have given the opinion that the signatures were bogus had they not looked at the bond with their minds unconsciously swayed by the impression created by the defense set up by the sureties."

Mr. Carvalho, after it had been shown by exact measurements in Court that the photographs on Exhibit D. 63, misrepresented and distorted the relative proportion of the disputed signatures to the five exhibits, D. 56 to D. 60, explained that the will signature was made on one negative and the five check signatures together on another negative (1498), and that the negative of the will signature was made under unfavorable circumstances—to which he unfortunately did not call attention in his first testimony (1499), but he believed that each one of the signatures was in proper proportion in itself (1499), and tried to amend his distorted *fac simile* of the will and these five check signatures by a labored attempt to *distort* his former testimony in regard to them (1499).

Whatever may be said about the good or bad faith of Mr. Carvalho in making these alleged *fac similes* and giving his testimony, it is certainly a remarkable coincidence that in this photograph in which the five check signatures are placed side by side with the disputed signature for comparison, all five of the photographs of the check signatures should be shorter than the originals, while the photograph of the will signature is not shorter but longer than the original, the discrepancies in both cases helping out the statements of both Carvalho and Cantwell, who testified that the will signature was longer than any of the standards, *and gave this as one of their chief reasons for believing the will signature a forgery.*

Messrs. Carvalho, Ames, Cantwell and Hagan "dis-

cussed the case and exchanged views," before testifying, which doubtless accounts for whatever similarity there may be in their opinions and testimony (338; 339; 400; 401).

XXI.

Proponents' Standards.

The testator showed a wonderful variety in his handwriting. Contestants' witness Carvalho says he "wrote a very fanciful hand," and "there is a great variety in the signature" (291).

The proponents, in view of the narrow range of contestants' standards, produced a large number of letters written and signed by the testator and showing the wonderful variety and diversity of his handwriting.

The experts of the proponents, in preparing to give their testimony, made a careful study of Mr. Gordon's handwriting, as shown not only in the narrow range of the check signatures of the contestants' standards, but in the wide range of all these letters, including the signatures, and obviously their opinions and conlusions rest upon a far broader and more reliable foundation than those of contestants' experts—even Mr. Ames says, "I think the wider range of signatures better of course" (436). The check signature was a special kind of signature, adopted for a particular purpose, and while the testator sometimes used it on papers, other than checks, it is evident that ordinarily when he wrote and signed letters and papers in the manner which was natural to him, as in these letters, he showed his natural characteristics as a penman. In one of the testator's check signatures (Contestants' Standard D. 17; Testimony 1214), the testator had evidently started to write the first "G" of his name in his ordinary way, as in his letters, but seeing his mistake corrected himself and made his conventional check "G."

The remarkable extent to which all these signatures

to testator's letters, and in fact the writing in the body of many of the letters themselves, differ among each other, clearly demonstrates the necessity of having before the Court the large number of standards produced by the proponents in order that a fair examination of the testator's handwriting might be made.

It is a very significant fact, indicating the wonderful diversity of Mr. Gordon's writing in these standard letters and signatures, that Mr. Carvalho, when shown only nineteen of the signatures to letters, was compelled to retract very many of the statements in regard to the testator's handwriting; and that Mr. Ames, another of contestants' experts, hesitated for some time, and studied the signatures for several minutes, before he was able to make up his mind whether they were genuine or not, (408; 409), and could not be very certain after fifteen minutes study, upon the stand, that the body of the Brooklyn will was not in Mr Gordon's handwriting (438).

Eminent bank tellers, of the experience and standing of Mr. George H. Watson, of the Bank of America, Mr. Alexander Semilis, of the Chatham National Bank, and Mr. Albert Z. Haring, of the Hudson County National Bank, testified that if they had only the check signatures of D. 56 to D. 60, as standards in their banks, they would refuse to pay a check presented to them bearing the signature of Exhibit P. 1; but they were all equally emphatic in stating that they would pay such a check without any hesitation if on their signature books they found signatures such as those to the letters introduced as standards by the proponents (1041; 1215; 1219).

In view of these facts, and of the retractions made by the contestants' expert, Mr. Carvalho, on examining a small number of proponents' exhibits, and the hesitancy of Mr. Ames to declare these same exhibits genuine, and his admission that the wider the range of standards, the better; it is by no means improbable, that if the contestants had been perfectly open and fair with their own experts, and submitted to them all the

material in their possession, instead of studiously keeping it from them, and intentionally confining their attention to the check signatures only, their experts would have refused to serve them in this matter.

The contestants did not undertake to answer proponents' case on these numerous additional standards of testator's handwriting, and thereby tacitly admitted that, judged by all the standards, the signature "Geo. P. Gordon," to the will is genuine.

XXII.

Contestants' Lay Experts.

Contestants called a number of men who had seen testator write, and several bank officials, besides their professional experts whose testimony will be examined hereafter.

Raphael Matteson, paying-teller of the Nassau Bank of New York, in which the testator kept an account down to the time of his death, and who had been familiar with testator's signature, thought the disputed signature was not genuine (177–184).

William H. Rogers, cashier of the same bank and who had also been familiar with Gordon's signature prior to his death, and has been called as an expert in other cases, thought that the Gordon signature to the will was not genuine and thought all the signatures to the will and the body of it had been written by the same hand (185 ; 187 ; 190). On his cross-examination this witness admitted that both he and Mr. Matteson had been called upon by some one representing the proponents, before they had seen contestants' attorney, and that this representative of proponents had shown them a photograph of the disputed signature and without offering them any compensation asked them if they thought it was genuine and that witness said that the signatures were of so long ago he could

not tell (194), and that subsequently to this interview contestants' attorney called upon him and "positively said I must come as my evidence was very material and that he would do anything for me and pay me anything I wanted" (199). The witness thereupon consented to come, and he testified as above indicated, having received meanwhile two checks for fifty dollars each, one for himself and one for his colleague, Mr. Matteson, for compensation. He further stated that he did not regard his own opinion as worth anything (199).

Edward F. C. Young, President of the First National Bank of Jersey City, had formerly been a paying teller and cashier in a bank for many years, and had compared the disputed signatures with the standard check signatures, Exhibit D. 16 to 54, inclusive. After such comparison Mr. Young thought the disputed signature of the testator was not genuine (456).

Charles W. Drummond, who was a bookkeeper in the Union National Bank of Rahway from 1870 to 1878, and often performed the duties of a teller, also testified that he was familiar with the testator's handwriting, "as he wrote it on checks" (462), testator having kept an account in the Union National Bank when witness was there. He thought on comparing the disputed signature "Geo. P. Gordon" with the testator's signatures on standard checks that the disputed signature was not genuine (464).

James T. Orton, of the Second National Bank of Newark, who had been in the banking business as receiving and paying teller for a great many years, and had several times testified in court in regard to signatures, stated that he had examined the standard checks Exhibits D. 16 to D. 54, inclusive, and also Exhibits D. 56 to D. 60, inclusive, and had seen a photograph of the will signature (doubtless the distorted photograph D. 63), and that just before going on the stand he had seen the disputed signature itself, and on comparing it with the standard check signatures thought it was not

in the same handwriting as the signatures to the checks (472–476).

David H. Merritt, who had been a paying teller of Newark National Bank for twenty years, had examined the standard check signatures and compared them with the disputed signature, and thought the latter was not in the same handwriting as the former, and said that in his opinion it bore "no resemblance whatever to the signatures of George P. Gordon on the checks." He thought the check signatures were made "in a free, careless manner," while the disputed signature was a studied and carefully made signature (526).

John Franklin Newcomb, a bookkeeper of the National Bank of Elizabeth, testified that he had examined a large number of checks every day for the last nine years and that he had examined the standard check signatures and the disputed signature and that he thought that these signatures "were not made by the same person," because the check signatures were in a "free" hand; the other evidently a "cramped, angular hand" (527–528). He further said on cross-examination, that he thought the standard check signatures were "quite a uniform lot of signatures," and that their characteristics were "quite uniform," and that the disputed signature bore very little resemblance to the check signatures (529).

William J. D. Chandler, who had been teller of the First National Bank of Elizabeth for about twenty years, had examined the standard check signatures and the disputed signature, and was of the opinion that they were not written by the same person because the check signatures were "in a free hand," while the signature to the will was "slower" and "a little more considered." He would not pay a check on the disputed signature if the standard check signatures were the ones they had in the bank (530–531). He was, of course, not shown the standard letter signatures. The witness stated that they sometimes rejected checks at his bank which did not turn out to be forgeries.

Mr. Rockwell, who had been cashier of the City

Bank of Newark for thirteen years, and was prior to that time secretary of the Republic Trust and Banking Co., in Newark for six or seven years, and had at that time experience in passing upon the genuineness of signatures (541–542), and subsequently was consulted occasionally, testified that he had looked at the Exhibits D. 16 to D. 54 and D. 56 to D. 60 with reference to the signature of George P. Gordon, and had examined the disputed signature to the will, Exhibit P. 1, and made a comparison, and had concluded that the disputed signature was not written by the same person who wrote the check signatures. The check signature, he thought, was "a very free and flowing, easy signature, and that the other seemed to be very much heavier, and in minute details it varies." He also thought the scroll on the will was labored. On his cross-examination, he admitted that the disputed signature "was very much in the style of the check signatures" (543).

Thomas W. Crooks, Cashier of the Essex County Bank, had been engaged in the banking business for twenty-three years, having held "every position from a boy to Cashier," testified that he had examined the standard check signatures, and also the disputed signature, and made a comparison, and as a result was of the opinion "that the party who signed the checks did not sign the will" (572). On cross-examination, the witness admitted that there "were some similarities in some respects between the signature of George P. Gordon on Exhibit P. 1 and the check signatures." and he said the small letters "ord" and "on" were "somewhat similar" to those on the check signatures, but the capital "G"s were "entirely different" (575). He further said he thought there was "a uniformity" in the standard check signatures, and quite a marked difference in Exhibit P. 1 from that uniformity "in the formation of the capital letters," and admitted that it was this which largely influenced him (576).

John W. Omberson, paying teller and cashier of the First National Bank of Jersey City, had been connected

with banks for twenty-six years, and had examined the standard check signatures and the signature to the will of George P. Gordon, and had made a comparison of these standards with the disputed signature, and thought the latter was not written by the same person who signed the checks. The checks, he thought, were signed "in a free easy hand," while the disputed signature was signed in "a crowded stiff and traced hand and the formation of the letters are not the same and they are different entirely" (581). He thought the scroll on P. 1 was "an imitation—it has been traced." On cross-examination the witness stated that he could not see any "similarity at all" between the signature on the will and the signatures on the checks (582).

James H. Lansley, a teacher of penmanship for over thirty years, had had experience in the study of penmanship, and had testified in a number of cases in Court, had examined the standard check signatures and the disputed signature, and was of the opinion that the disputed signature was not wriiten by the same person who wrote the check signatures. The first important reason which the witness mentioned for his opinion was the way in which the capital "G" was made. "In the genuine signatures," the witness says, "that I have seen so far (he had seen only check signatures), the part of the "G" usually made first has been made last; it was made with a down stroke instead of with an up stroke." In the disputed signature the line referred to is made with an up stroke (586). The end of the "G" and also the heavy last line in the "n" were additional reasons why the witness did not think the signature genuine, and he also referred to the shoulder on the top of the last "o" in the word "Gordon" as an evidence of lack of genuineness, and he thought the flourish below the signature had been traced (586, 587).

Phillip W. Crater, who had been in the banking business for thirty-six years as receiving and paying teller and cashier, and had testified in Court in a number of cases, had seen the standard check signatures

and compared them with the disputed signature, and said he thought "that the man that signed the checks never signed that will"; * * * "because the checks are of a free, easy, business-like hand and exceedingly uniform, more so than you usually find in a large number of checks. The signature to the will is a stiff, studied hand, apparently clumsy" (604). The witness further said on cross-examination that the day before he had seen a photograph of what purported to be some genuine signatures and the signature to P. 1 (evidently the distorted D. 63), and had not seen the originals until the day he testified (607). (Here again we have a false impression made by Mr. Carvalho's distorted photograph, which falsely represents the will signature to be longer than any of the check signatures).

The contestants also called Wm. E. Van Vleet and Henry Du Bois Van Wyck, who had seen testator write, and the detective expert Jayne.

Van Vleet, who had bought some of the Gordon real estate in Rahway from Cullen and Porter, and given them personally a mortgage for most of the purchase price (162), and had been taking orders from Cullen (165), had been a clerk in testator's employ for several years before the latter's death, and had often seen testator write, chiefly checks, it seems (159), did not recognize the signature to P. 1 as Mr. Gordon's handwriting (160).

Van Wyck also had seen testator write (617) and he too pronounced the disputed signature a forgery, he says, "the moment I looked at it, when Mr. Olds first showed it to me" (618).

Benaiah G. Jayne, alias "Gastin" (111), the detective employed to trip up Edward L. Adams under the guise of an investor in New Jersey lands, with Mr. Cullen's $300 in his "pocket" (561; 562), and having only seen check signatures—several of testator's (and at least one of Cullen's)—said unhesitatingly and emphatically "It don't possess one single characteristic of the other writing (in the checks). Nothing in the

form or shape, and it is a plain, palpable and unmistakable forgery" (552). The few reasons which he gave for his opinion were so completely exploded during the progress of the trial that it is needless to discuss them here.

It is obvious that the opinion of Jayne who was first employed at a high price as a detective to hunt up evidence against the will and later on turned expert, is just as valuable as that of VanVleet or VanWyck, and that it ought not to be considered at all. On this point see:

United States *v.* Mathias ,36 Fed., Rep. 892 894.

The contestants further tried to sustain their claim that the signatures of the witnesses as well as that of the testator to the will, were forgeries, by the testimony of two other witnesses, whose evidence is not worthy of serious consideration.

Henry B. Cushney, the lawyer of Fonda, N. Y., (666), by whom the contestants also attempted to impeach the character of Mr. Henry C. Adams, but whose own reputation for truth and veracity was shown to be bad (1076), claimed to be familiar with the handwriting of Henry Adams, one of the witnesses to the will; he had known him for a number of years, but only in a professional way, and had seen him write frequently (667). The witness expressed his belief that the signature of Henry Adams to the will P. 1, was not genuine (667).

Joseph W. Allen, a brother-in-law of Alonzo C. P. Adams, said he saw him write (467), but it appeared that the only occasion on which he claimed to have seen Alonzo C. P. Adams write was when they were calling on the girls whom they afterwards married (469). The absurdity of the witness' statement that at such time Alonzo C. P. Adams would write "most of other business he had to do—he done more or less writing," as he did not "spend all his time courting" (469), is too apparent to require any comment. In view of

these facts no weight can be attached to his opinion as to the genuineness of the signature of Alonzo C. P. Adams to the Will.

There is no evidence that any of the above mentioned witnesses saw any standards whatever, save some of the check signatures, and we may presume that the opinion of each one was sought and received upon the basis of the distorted photograph D 63.

XXIII.

Proponents' Lay Experts.

The proponents called fewer bank experts, but many more of testator's friends and family and business associates who were familiar with his habit of writing from frequently seeing him write.

Albert Z. Haring, who is paying teller in the Hudson County National Bank, and has been connected with the bank for twenty-one years, and whose duty it was to pass upon signatures to checks, had examined the disputed signature and the standard check signatures D. 56 to D. 60, inclusive, and the letter standards P. 46 to P. 57 and P. 119 to P. 125, inclusive (1039), and testified that in his opinion the person who wrote the signatures to the letters also " wrote the signature to that Will, Exhibit P. 1 " (1040).

On cross-examination the witness stated that if he had in his bank the testator's check signatures only, he would not pay a check with the signature to the will, but he would pay such check if he had the letter signatures, and he particularly selected the signature to P. 49 (which, by the way, was one of the exhibits selected by Mr. Barber (750) (as closely resembling the one on the will (1044)).

Alexander Semilis, who had been connected with the Chatham National Bank, New York City, since 1870, as paying teller, testified that a great many checks

passed through his hands and that he was accustomed to pass upon their genuineness, and particularly to decide upon questioned signatures. He had examined the standard check signatures in this case, D. 16 to D. 54, and D. 56 to D. 60, inclusive, and also examined the standard letters Exhibits P. 60 to P. 69, inclusive; P. 49 to P. 57, inclusive; P. 12 to P. 29, inclusive; P. 78 to P. 96; P. 205 and P. 206, and had compared the signatures to these Exhibits with he signature of George P. Gordon to Exhibit P. 1, and was of the opinion that the latter signature was genuine (1217–1218).

On cross-examination the witness stated (1218) that if he had in his bank the standard check signatures only, and a check with the signature on the will were presented, he would have hesitated about paying such a check (1219); he would have sent to the signer and have found out, but if besides the check signatures he had in his bank the letter signatures, he would then have paid the check (1219.)

George H. Watson, who had been paying teller of the Bank of America, of New York City, for ten years and before that had been receiving teller and who had been connected with his bank since 1853, and whose duty it was to pass upon a large number of checks ranging from two to three hundred a day, testified that he had examined the standard check signatures, D. 56 to D. 60, inclusive, and also P. 14, P. 60 to 69, P. 197 to P. 207, inclusive, and had compared these signatures of George P. Gordon with the signature to Exhibit P. 1, and after making such comparison was of the opinion that George P. Gordon wrote the signature to P. 1, "if it is admitted that he wrote these others" (1212–1213). The most important reason which led him to this conclusion, the witness stated, was the similarity of the letters "ordon" in the disputed signature to the same letters in the standards.

The witness also stated that if he had only the standard check signatures D. 56 to D. 60, to guide him, and a check were presented having the signature to P. 1,

on it, he would desire to see other signatures before paying the check, but having seen other signatures, such as those he had examined on the exhibits already referred to, he would be convinced that the signature in question was genuine and would not hesitate to pay the check (1215).

William Sherer, Assistant Manager of the New York Clearing House,and formerly for upwards of twenty-five years cashier of the New York Sub-Treasury under the United States Government, and who by reason of the exceedingly large number of checks which pass through the Sub-Treasury, has had an unusually large experience in passing upon disputed signatures to checks (1146), testified that he had examined the standard check signatures; also the signatures to Exhibits P. 35 to P. 39, P. 45, P. 48 to P. 57, P. 60, P. 96, P. 173 to P. 186, inclusive, and that he had compared the signature to Exhibit P. 1, with these standard signatures, and had come to the conclusion from such comparison, that the signatures of George P. Gordon on these standards, and the disputed signature on P. 1, were written by the same party. Mr. Sherer's eminence and unusually large experience entitle his opinion to very great weight.

Jonathan Woodruff, who was President of the Union National Bank of Rahway, from 1866 down to the time of testator's death in 1878 (1407), testified that Mr. Gordon, a director and depositor there, was in the habit of coming very often to the bank, making it a sort of headquarters, and that he, the witness, had seen him write, and was familiar with his handwriting (1408), and that in his judgment, the signature to the the will, P. 1, was Mr. Gordon's, and he added, "I should not hesitate to pay a check with that signature" (1409). The contestants strongly endeavored on cross examination, to weaken Mr. Woodruff's testimony, and to get him to admit that he had expressed doubt about the signature to Mr. Savage (contestants had tried at one time to get him to testify for them), but the witness stated very decidedly that he had not

expressed such doubt, but on the contrary had stated to Mr. Savage that he believed the signature to be genuine (1411, 1412). It was very evident that it had been Mr. Savage and not Mr. Woodruff who had expressed doubt as to the genuineness of the signature.

Albert C. Brewster (1241) who from March 4th, 1870, down to 1878, after Mr. Gordon's death, had been cashier and book-keeper of the said Union National Bank of Rahway, and who was very well acquainted with the testator, and had seen him write, testified, after having examined the signature to P. 1, that in his opinion the signature was that of George P. Gordon. The witness had examined a number of the standard signatures including a quantity of the letters (1249), and he testified not only from knowledge of testator's signature from having seen him write, but from comparison as well.

Alexander Vanderburgh, who had been acquainted with George P. Gordon from May, 1860, to the time of his death, and had traded with him in business and had frequently seen him write, testified that many years ago his attention had been attracted to a peculiarity in Gordon's handwriting, in that it was similar to that of witness' former employer and predecessor, Mr. Webb, and for this reason its characteristics had been particnlarly impressed upon his mind. The witness had examined the signature to the will and had seen the autotypes P. 99, 101–113, inclusive. He testified that in his opinion the disputed signature was "without doubt" that of Geo. P. Gordon, that he at once recognized the style of the signature to Exhibit P. 1, when he saw it as that of Geo. P. Gordon's handwriting and had no question about it (1251).

Mr. Amos P. Barber, who had known testator from 1856 to the time of his death (704), who had charge of his factory at Rahway (706) from 1872 and both prior and subsequent to that time had charge of the practical carrying out of the testator's designs and inventions (705), and who had received a great many letters

from testator in regard to these matters, and had also seen many of the numerous letters which testator had written to Messrs. Nichols & Langworthy, and had carried out the instructions contained in them, giving their contents careful study, testified on being shown Exhibit P 1 and asked in whose handwriting the signature, " Geo. P. Gordon," thereto was, that it was "in the handwriting of George P. Gordon without a doubt " (733). The witness, on cross examination, stated that his conclusion that the signature was genuine was based upon his familiarity with the testator's handwriting, both in the body writing and the signatures (737). The witness on being asked to select from the standard exhibits the signature most clearly resembling the disputed signature during the recess, selected P. 74 (739; 750), but stated that three others, P. 49, P. 54 and P. 87 also closely resembled the questioned signature, but thought not so closely as the signature to P. 74 ; and he also stated that he had not found any two signatures in the exhibits exactly alike. No other man could possibly have been so familiar with the testator's handwriting as Mr. Barber, who, from 1856 down to 1878, was constantly in the habit of working under testator's written instructions, which the witness must have had before him day after day through all these years, and must have often seen Gordon write under varying circumstances. Besides this, witness was a draughtsman and designer, accustomed to observe very closely lines and curves and shadings, and most of the other things which go to make up handwriting.

William V. A. Hicks had been a clerk in Gordon's employ from 1876 to the time of testator's death, and frequently saw testator write (1440). He testified that he had examiined the artotype P 99, and also the signature itself on P. 1, and that, in his opinion, the signature to the will was in the handwriting of George P. Gordon. The witness stated that he was very familiar with testator's handwriting from handling his papers; that he had seen him write letters and checks, and that

he had no question about the signature to the will being Mr. Gordon's (1440).

Frederick L. Degener testified that he was a machinist (791), and had known testator since 1849, and was familiar with his handwriting and had often seen him write (793); that he had examined Exhibit P. 99, and had also examined the disputed signature to Exhibit P. 1, and that in his opinion this signature to Exhibit P. 1 was in the handwriting of George P. Gordon (795).

Ernest J. P. Baumann had known the testator intimately from the time the latter went to reside at Rahway in 1866 to the time of his death (752), and had frequently been at his house and had seen him write and had corresponded with him when absent from Rahway (759), having received about one hundred letters from him (770). The witness said that in his opinion the signature at the end of the will was without doubt in Mr. Gordon's own handwriting (770).

Adeline J. Gordon (1190), the testator's sister, who was on very intimate terms with him down to the time of his death (1190. 1199), testified that she had seen testator write, and was familiar with his signature, and had received letters from him (1202), that in her opinion the disputed signature to Exhibit P. 1 was certainly the signature of George P. Gordon (1202).

Miss Eva Medora Doane, testator's niece, who was also on intimate terms with him and visited his house very often (1337) down to the time of his death, and who had received letters from him and seen him write (1340) testified that in her opinion the signature to the will was in the handwriting of George P. Gordon.

Agnes C. Doane, the widow of A. Sidney Doane, testator's nephew, had known the testator since 1855 (1036) and often visited him at his home in New Jersey (1037), and was evidently on the most friendly terms with him. She had seen him write his signature a great many times, and had seen his signature on letters received by her husband from him and was familiar with his writing. In her opinion the disputed

signature was without doubt in the handwriting of George P. Gordon.

William E. Winslow, nephew of testator's first wife, having no interest in the will however (1433), had been on very intimate terms with the testator during the last four or five years of his life, and had very frequently seen him write, had examined the signature to Exhibit P. 1 in Trenton, and also at the Chancellor's Chambers, and stated that in his opinion this signature was in the proper handwriting of George P. Gordon (1434).

William W. M. Cornish, a brother of the testator's first wife (1167), having no interest in the will, had known testator for about thirty years (1168), had visited him at his house, and was at one time employed in his office for about two years, had seen him write scores of times, and had received letters from him, and was familiar with his handwriting; on being asked his opinion in regard to the handwriting of the signature in question to Exhibit P. 1, said, "I think it is the handwriting of George P. Gordon—I have no doubt about it." (1172.)

Thomas H. Shafer, a practicing lawyer, who had lived at Rahway since 1844 (1103), and had known testator ever since the latter went to Rahway to reside, and was familiar with his handwriting, having transacted business for him, and who had witnessed the execution of papers for him, had seen testator write, testified that, in his opinion, the disputed signature was in the proper handwriting of George P. Gordon, and that there was "no question about it" in his mind (1104).

The testimony of these witnesses, all of whom were well acquainted with the testator and familiar with his writing, and had often seen him write, many of them under a great variety of circumstances, and knew his habit and manner of writing from observation, ought to have very great weight.

The proponents also examined, in regard to the signatures of the subscribing witnesses, Messrs. Thomas

H. Shafer, Edward L. Adams, Andrew Wagner and George C. Wood. Thomas H. Shafer knew Henry Adams, the first subscribing witness, well; had had business relations with him; had taken acknowledgments of legal papers executed before him, and had frequently seen him write (1103). The witness testified that, in his opinion, the name of Henry Adams to Exhibit P. 1 was in the proper handwriting of Henry Adams (1103–1104).

Edward L. Adams testified that he was "thoroughly familiar" with the handwriting of the subscribing witnesses, that he had examined their signatures to Exhibit P. 1, and that in his opinion the signatures were in the handwriting of Henry Adams, his father, and of Alonzo C. P. Adams and John Q. Adams, his brothers, respectively (804).

Alfred J. Wagner, who is sixty four years old, and had known Henry Adams and his family all his life very intimately (1064–5), and had frequently seen him write (1065; 1069), testified that the signature "Henry Adams" to the attestation clause of Exhibit P. 1 was genuine (1069).

George C. Wood, who is fifty-one years of age, and had for many years been in the same building with Henry Adams, at Fort Plain, N. Y., and had transacted business and collected rents for him, and had correspondence with him about it, and was familiar with his writing and had seen him write, testified that he thought the signature of Henry Adams, the subscribing witness to Exhibit P. 1, was in the proper handwriting of Henry Adams (1082–5).

XXIV.

The Professional Experts.

The contestants called as their professional experts Mr. Carvalho, who was originally a photographer, but has for some years been devoting his time to the pro-

fession of expert in handwriting (205); Mr. Ames, who is a "pen artist," and has for many years been engaged in expert work in handwriting (365); Mr. Cantwell, who has had an experience of a good many years as a bank officer, and in connection with his bank duties has been engaged as an expert in a considerable number of cases (211); Prof. Hagan, who was formerly a chemist, but who has for some years made a special study of handwriting, and who has frequently testified as an expert (323), and Mr. Tolman, who has for eight or ten years been devoting his time to expert work in handwriting, and who stated that he had had considerable experience in the use of the microscope, and had testified in a large number of cases (478). These witnesses, as has already been stated, had examined only check signatures (222; 313; 324; 367; 479) and did not have before them for examination or comparison any of the testator's letters or letter signatures.

The proponents called as their professional experts Prof. Marshall D. Ewell, the well known legal writer and professor and lecturer on law and jurisprudence, who has for a number of years given special study to handwriting, and had testified as expert in many cases (843; 844); Captain Rauch, who was for three years register of wills in Lancaster County, Pa., and had considerable experience as such officer in examining the signatures to wills, and who had devoted especial attention to the examination of handwriting for about thirty-five years, and who had had a special skill in imitating various handwritings, and had been a witness in many cases (818; 819); Dr. Charles M. Cresson, who had for a long time been a chemist and expert in physical sciences, and who, for about twenty years, had devoted his time to practicing as an expert in handwriting, and had often testified in Court (1107); Prof. W. W. McClelland, who had been for a great many years a teacher of penmanship and an expert in handwriting, and many years ago had experience as a bank official in passing upon signatures, and who for upward of fifteen years had made a specialty of the ex-

amination of disputed writings, and had frequently testified in Court (1346); and Arthur H. Elliott, Professor of Chemistry and Physics in the College of Pharmacy, New York City, who, since about the year 1868, had given a great deal of attention to the use of the microscope and also to photography, and had frequently examined and been consulted in regard to disputed writings, and had testified before as an expert in handwriting (1463–1466). These experts of proponents had examined and studied with care all the standards, both the check signatures offered by contestants and the letters and letter signatures offered by proponents and their testimony and opinions were based upon their examination of all the standards.

Some of the contestants' experts had considerable to say about various theories relating to "physical habit," "rotary thumb movement," "the riding of the pen on one nib or the other," &c. It is obvious that these theories are of no value unless supported by facts clearly and distinctly pointed out; they are only inferences deduced from facts, or they are simply the results of imagination, and they need not be considered separately from the facts pointed out to support them by those who advanced them.

The Testimony of the Professional Experts.

For the convenience of the Court the testimony of the professional experts has been collated with great care and impartiality, and arranged so as to bring into juxtaposition what the opposing experts have said about each one of the various signatures, letters, characteristics and everything else of importance which was discussed by these witnesses, the language of the witness himself being used whenever that was practicable. This collation and analysis of the testimony has been thought too long for

insertion in the body of this brief and for this reason is printed as an appendix and only a general discussion of the expert testimony is inserted here.

The Gordon signature compared with the standards—

Contestants' experts confining their testimony to their exceedingly narrow and unfair range of standards claimed that "the heavy, club-like lines," and apparently unusual shading or emphasis or pen pressure, which is to some extent seen in the questioned signature, George P. Gordon, were evidences of forgery, but admitted that very much of this singular appearance was due to the fact that the writing had been done on moist paper, with an extraordinary ink, and to the fact that the paper was merely "unsized stuff," and the ink had run through it, and that a steel pen used by a person accustomed to use a gold pen would make considerable difference in the appearance of the writing. Proponents' experts showed that the unusual appearance of the writing—spreading of the ink, the "heavy club-like lines," and peculiar shading, or pen pressure—was due to the fact that the paper was moist when the writing was done. It was proved that testator had carried the paper in his pocket for a week in hot July weather, and this accounted for its being moistened with perspiration as shown by experts Cresson and Elliott. The pen used was a steel pen, whereas the testator was accustomed to use a gold pen, and did not like a steel pen, and when compelled to write with one made "*poor work of it.*" These facts account fully for whatever is unusual or singular in the shading, pen pressure or emphasis, and taken in connection with other circumstances, including the marble top table, fully account for any possible differences in movement.

Contestants' experts thought there was a little waver-

ing in some of the lines of the disputed Gordon signature, but proponent's experts, after a careful examination with their microscopes, denied the existence of any such wavering, although they showed that there was a slight wavering in some of the Gordon standards. The experts of contestants claimed that the questioned signature was written by a different movement from that used in their standard check signatures. Proponents' experts testified that it was impossible to tell positively what kind of a movement was used, but pointed out the fact that the movement used by Gordon in his letters and correspondence was a slower movement than that used in his checks, and testified that any possible differences in the movement between the questioned and standard writings could readily be explained by the different circumstances of moist paper, thick ink, a steel pen, the marble-topped table, and the unusual, solemn character of the instrument.

Contestants' experts claimed that the questioned signature of the testator was longer than the standards, that the slant was different, that it was above the line, while they were all on the line, that they all had periods at the end, while it had not; that the initial line of Gordon's capital "G" was always a curve, unlike that of the disputed "G"s; that the break or angularity at the bottom of the loop of the "G" in P. 1 was not a characteristic of Gordon, that the heavy shading at the top of the staff of the first "G" and the peculiar spherical triangle forming the terminals of the "Gs" were unlike anything in Mr. Gordon's genuine writing; that the "e" in the questioned signature was comparatively shorter than in the standards, and did not have Gordon's characteristic loop; that the "o"s in the signature to P. 1 had loops or shoulders as Gordon's "o"s had not; that it was testator's habit to connect the "o" with the "P," as was not done in the signature to the will; that the "P" was taller than any of the "P"s in the genuine writing and had a different staff and loop; that the "r"

came down sharply in the questioned signature and not in the standards, and its upward stroke had a different curve from them, and that both the oval and the staff of the "d" and the second part of the "n" and the terminal flourish were all different from anything Gordon had ever made.

All these claims were shown in detail to be false.

Proponents' experts proved by exact measurement that in respect to length, height, proportion and slant the questioned signature corresponded more closely with many of the admittedly genuine writings than these did with each other; and showed that many of the standard signatures were written above the line and had no periods; that the circumstances of the case fully explained any possible alleged difference in movement. They showed further, that the straight initial stroke of the "G"s in the questioned signature was very common in the standards, that the "break" at the bottom of the loop of the "G's" was a marked characteristic of Gordon's writing (which was intensified in this case by a hole in the paper), as was also the peculiar spherical triangular terminal of the "G," and that Gordon frequently shaded the staff of his "G" heavily at the top; that the "e" had the proper height and proportion and loop of the standards; that the "o"s showed Gordon's own curves—alike on both sides, forming perfect ovals—and had shoulders and loops such as often occur in his letters and signatures; that Gordon omitted the connecting line between the "Geo." and the "P" just as frequently as he made it, that the staff of the "P" was just like Gordon's, and would be extremely difficult to simulate; that the loop of the "P" was almost identical with some of the standards, the irregular or angular top of the loop being caused by a hook at the top of the staff, which was highly characteristic of Gordon's writing, and in this case was so masked as to be visible only under the microscope, and in view of the circumstances a most powerful argument in favor of

genuineness; that both the upward and downward strokes of the "r" were altogether characteristic of the testator and likewise that the loop and the staff of the "d," both members of the "n" and the terminal flourish very closely resembled those in the admittedly genuine writings.

Contestant's experts did not undertake to answer proponents' positive evidence of the genuineness of the Gordon signature, shown by the large number and great variety of the new standards introduced by the proponents, and admitted to be genuine by the contestants, nor to deny or account for the many striking characteristics common alike to the questioned signature and the standard writings.

All the experts agreed that the scroll or rubric under the disputed signature "Geo. P. Gordon," had been very badly bungled by whoever made it; and though some of contestants' experts thought it was an evidence of forgery, others were not very certain about it, while proponents' experts thought no forger would have made "such a bungling character" as this scroll. It is obvious that the language used by Mr. Justice Van Dyke, in Boylan *v.* Meeker, 4 Dutch., 328, in reference to a botched page of the will in question in that case, applies with great force to this botched rubric, and to the "heavy club-like lines" of the questioned signatures. He says:

> "Its erased and slovenly appearance is to my "mind stronger evidence of genuineness than of "falsity. A person writing his own name or "signing a genuine and honest paper may be "willing to have it in a very imperfect condi-"tion, but a person forging the signature of "another to a false paper would be very un-"likely to do this when he could renew the in-"strument and repeat the experiment until it "was satisfactory. So here, if the whole thing "is a forgery and a fraud, * * * it would

> " seem to me much more likely that the whole
> " paper would have been rewritten and made
> " perfect rather than that it would have been
> " left to the legal scrutiny, to which it was
> " certainly exposed, with all this guilty evidence
> " on its face."

Vredenburgh, J., in the same case of Boylan *v.* Meeker (473) says :

> " Would these co-conspirators Hoyt and Boy-
> " lan have gone to all this trouble to get up and
> " carry through this complicated scheme of for-
> " gery and perjury and yet, when they discover
> " this mistake in their names, have not taken
> " the trouble to copy over again this half sheet
> " which would have avoided the whole diffi-
> " culty ? "

Could any language be more pertinent than this to the botched scroll and " the heavy club-like lines " of the signature to P. I. ? The writer of the body of the will used great care and neatness as is evident upon the face of the paper. Had he been forging these signatures, his own habit, as well as the considerations suggested by the learned Judges above quoted, would have led him to rewrite at least the last two short half pages of the document, if he had undertaken to forge these signatures.

Gordon's Signature compared with Body of Will.— Contestants' experts, to sustain their theory that the same hand wrote the body of the will and the questioned signature " Geo. P. Gordon," pointed out what they claimed were characteristic resemblances between the signature and the body writing.

Proponents' experts, however, showed that in almost every instance the alleged resemblances were imaginary, and that the few actual resemblances, which there were, existed in connection with very distinct and striking *differences* in characteristics. It is

surprising that the contestants' experts were able to point to so few resemblances between the signature and the body of the will, particularly in view of the fact that both are written on the same kind of paper, which is of a peculiar character, "merely unsized stuff," as expert Hagan says. It must be remembered that the will is a very long document, and that the contestants' experts had in these twenty closely written pages a vast field from which to select resemblances to the signature, and that the writing on those twenty pages is exceedingly irregular and contains a wonderful variety of strokes, curves and shadings. In view of the circumstances it would have been most remarkable if some similarities had not occurred, and such few slight resemblances as were shown to exist were certainly not more numerous nor pronounced than we should expect to find between this signature and twenty pages that we might select from the writings of the experts themselves or of any one else. There are many familiar common types of letters and characteristics of handwriting which men generally use. It would be a miracle if some of these were not found in the body of the will and in the signatures.

The Witnesses' Signatures.—Contestants' remarkable hypothesis is that the three signatures of the witnesses, Henry Adams, Alonzo C. P. Adams and John Q. Adams, as well as the testator's signature, were all written by the hand that wrote the body of the will. In order to maintain this charge they tried to prove that the signatures closely resembled each other, and the testator's signature and the body of the will in the characteristics of the handwriting, and that they were not like the handwriting of Henry Adams and his sons, Alonzo C. P. and John Q. Adams. respectively.

All four of the signatures—the testator's and the three witnesses,—were evidently written under the same circumstances as to steel pen, thick ink, moist paper, marble-top table, etc. There is no dispute on this point, the witnesses on both sides all agreeing, al-

though they differ slightly as to the effect of particular circumstances. The pen, ink and paper explain "the heavy club-like lines," and much of whatever may be peculiar in the shading or emphasis and pen pressure and movement of the signatures of the three witnesses as well as in that of the testator, and also much of whatever apparent resemblance there is between these signatures in regard to these matters. These circumstances in all probability have affected the writing of all four signatures in the same way.

Proponents' experts took up one by one the alleged resemblance pointed out by the contestants, and showed in each case that the so called resemblance either did not really exist at all, or, if it did exist, that it was very slight and in connection with very marked differences in characteristics.

Contestants' expert, Carvalho, admits that the signatures of the three subscribing witnesses "are apparently different, so far as the general picture effect is concerned," but thinks that under the microscope he saw the same habit in regard to pen pressure; subsequently on cross-examination, when compelled to retract what he had said on point after point in his effort to prove the Gordon signature a forgery, this witness was compelled to fall back on what would seem to be the same "picture effect" which he so easily disposes of under the seclusion of his own microscope (295). Mr. Carvalho also admitted that "Hemry" instead of "Henry" was an indication of genuineness; while Mr. Ames admitted that the three Adams signatures differed in "*vital essentials*" and "*many details.*"

The experts on both sides agreed that there are often striking resemblances between the handwritings of members of the same family or the same firm, or persons intimately associated in business; which is a matter of common observation.

Henry Adams, the first subscribing witness, was the father of the other two subscribing witnesses, and also of Henry C. Adams, who wrote the body of the will.

It appeared incidentally in the evidence in this case, that Henry C. Adams was for many years associated with his father, Henry Adams, in the practice of law in the same office (1094; 566; 567), and that Alonzo and John, although more than thirty years old, were still members of their father's household at the date of the will. The various checks and papers in the case as standards of the handwriting of the three subsribing witnesses show that Henry Adams and these three sons—particularly Henry C. and Alonzo C. P.—were intimately associated in business; the signatures of two or more of them frequently appear upon the same paper (798–803).

Is there any need then of imagining Mr. Henry C. Adams guilty of the crimes of forging the signatures of his dead father and brothers, and friend, and of fraud and perjury, in order to account for these few very slight resemblances between the signatures and the body of the will, when facts are shown to exist which experts on both sides testify would furnish the amplest explanation? These resemblances have been shown to be few and slight—the wonder is, in view of all the circumstances, that they are so few and so slight—and at the same time with them, there exist many great and characteristic differences between the writing in the body of the will and the signatures, and between the signatures themselves or, as contestants' expert, Ames, expresses it, they differ in "*vital essentials*" and "*in many details.*"

The contestants' experts had but one signature of Henry Adams and four of Alonzo C. P. Adams and none of John Q. Adams. They had not studied these standards beforehand, and they were not shown them until after they had pronounced the signatures forgeries on the stand, and then they made only a most casual examination of one or two of them.

It is interesting to note the way in which the contestants presented the case to their experts as it ap-

pears in the evidence. None of their experts were shown anything of Gordon's writing except check signatures, which admittedly differ greatly from Gordon's writing in his correspondence ; although it was in the power of the contestants to produce signatures to letters and other documents showing the great scope and variety of Mr. Gordon's writing, and from these check signatures alone—(and it will be remembered, too, that Mr. Carvalho only studied three or four of them, and that he prepared a photograph so as to bring together five of these check signatures considerably shortened, and the disputed signature of Gordon a good deal elongated, which photograph was shown to Cantwell, Crater, and we know not how many other experts and formed the basis of their opinions)—concluded the Gordon signature was a forgery. Some of those experts were shown a few of the signatures of Mr. Gordon to letters on their cross-examination, but, of course, when at bay, and in the presence of the enemy, having already testified that the signature was a forgery, they could not with fat retainers in their pockets, do otherwise than endeavor to maintain the position they had taken, although some of them were compelled to retract a great deal. Then, without being shown any of the genuine writing of the subscribing witnesses, they were asked to pronounce these signatures of the witnesses to have been all written by the same hand that wrote the body of the will, and having, on a few resemblances, committed themselves under oath to this position, they were allowed on the stand to see one signature of Henry Adams, a bank signature made for a special purpose, and two signatures of Alonzo C. P. Adams, and required to go through the farce of a comparison then and there—much to the embarassment of at least one of them—of these two signatures with these "standards." Of course, under such circumstances, they were compelled to find shocking dissimilarities. Contestants did not submit any standards of the writing of John Q. Adams ; still, their experts did not hesitate, although they

had not seen any standards—on snch slender bases do great men build their conclusions—to pronounce the disputed "John Q. Adams" a forgery, but Carvalho coyly admits that "I would rather have seen genuine writings."

The preposterous theory of contestants is that every similarity between the disputed signatures and the writing of the body of the will, or between each other, is an evidence that they were all written by the same hand and that every dissimilarity is also an evidence that they were all written by the same hand, the similarities being unconscious and the dissimilarities being feigned. It would seem, therefore, to have been not only useless but perilous for the proponents to offer any testimony based on a comparison between the handwritings of the signatures to the will and the will itself, for whether such evidence showed similarities, or the most striking dissimilarities, it could only benefit the contestants and tend to show forgery. The proponents therefore found themselves in the position of the theologian, who said with such touching plaintiveness, when doubtless in a like terrible dilemma :

"I can and I can't ;
"I shall and I shan't ;
"I will and I won't ;
"I'll be damned if I do,
"And be damned if I don't!"

Notwithstanding the perils of the situation, the proponents ventured to make such comparison and to show that the facts do not sustain contestants' remarkable theory; and that the body of the will and the four signatures were each written by a separate hand and that the signatures of the testator and witnesses are all genuine. (See Appendix.)

Proponents produced a large number of checks, letters and papers, which were admitted to be in the handwriting of Henry Adams and his two sons, Alonzo C. P. and John Q. Adams, respectively. The standards of Henry Adams showed a great variety and diversity

in his handwriting, and demonstrated the necessity of a large number of standards in order to fairly show the characteristics of his writing. The same things are true also of the standards of Alonzo C. P. and of John Q. Adams. In the case of each one of these three witnesses, proponents' experts, taking these numerous standards as bases, pointed out the identical characteristics of that witness' disputed signature, and showed conclusively that almost every important feature and characteristic of the disputed signature was in each case found in the standards. This positive evidence, these numerous facts and common characteristics, Mr. Carvalho, when recalled after having seen a few of the standards—taken "at random"—of each of these three witnesses and photographed them, blew away with a breath by saying that these standards—those he had seen only—had no resemblance whatever to the questioned signatures. He did not point out any facts or details to support this sweeping assertion, nor did he explain why he had failed to examine all the standards. Can it be that he feared that his elaborate theory of forgery would not bear the light of the facts shown by these standards?

In brief, then, the proponents' experts met fully and fairly every point raised by the experts of contestants and in addition brought out many important facts and characteristics, together furnishing a conclusive argument for the genuineness of all four of the questioned signatures and the good faith and validity of the will. This most important evidence contestants utterly failed to answer.

XXV.

Mr. Gordon declared that he had made this will.

When the issue is simply forgery *vel non*, the alleged testator's declarations that he has or has not made a will at the time and of the character of the document in question are pertinent to the inquiry and always admissable in evidence. The authorities on this point will be fully considered hereafter.

The contestants undertook to prove by VanWyck that Mr. Gordon had never made this will, by showing that the witness was on intimate terms with testator and that the latter never mentioned this will, although he talked frequently about his affairs and business and about the will of 1873, and about making another will. Van Wyck says Gordon talked in his presence about making "the Brooklyn will" before it was made, and afterwards, just before his death, told VanWyck that it had not been properly executed, and that he feared that Mary would make trouble about it, and that he desired to make another will but was too ill (620; 621; 622; 623). VanWyck also produced a letter dated Feb'y. 7, 1870, from Mr. Gordon, which contestants offered in evidence to show by inference that testator could not have made this will of 1868 (611). In this letter testator writes: "As regards our return—the time when—I intended to return on *Wednesday* mor'g—start then—but Mrs. G. is determined that I shall make 'a will' before I go. Now this 'will' *will* take *time*. If I am compelled to make 'a will' before I go, I cannot conjecture the time I shall be able to start. If I had *five* or *ten* thousand dollars to divide there would be no such confounded desire to have 'a will' made lest *I should die suddenly*. Money is very well if one can only know *his own affairs*, 'himself

alone'—but the U. States by publishing 'incomes' has 'spluthered' a man's own private matters broadcast and blown them into every eye and ear—so that our team has become so *unruly* that we cannot go along quietly as of old. Well, what is—is!" * * *

"I shall *at once* draw up frame of will and when satisfactory to me shall execute it. *I shan't be influenced*, but shall do *as shall seem best to me.* Should ever occasion come, you have above proof for Mrs. Gordon, should it be necessary, that no undue influence has been used as to the bequests and provisions contained in 'the will.'" * * * * *

"I am in haste to reach Nethermuir while the business will let me. I shall hurry the will. I can at any time *add codicils.* All I ask of my fellow-creatures everywhere is that they will not 'hurry' me eternally. I want rest this side of the grave –I shall find it the other side I have faith to believe. * * * More in a day or two as I progress with the will."

There is nothing in this letter in the least inconsistent with Mr. Gordon's having made this will of 1868. Mr. Henry C. Adams testifies that Gordon at the time the will was executed, said he wanted the matter "kept quiet" (9.) This would be a most natural desire, if he had any reason to suppose his wife or daughter would be dissatisfied with the provisions which it made for them, and from their constant habit of making trouble about money matters, there is no doubt that a knowledge of this will would have given them additional material for their bickerings, and have made testator's life with them even more uncomfortable than it was. This letter shows how extremely persistent Mrs. Gordon could be about money matters. But it is by no means certain that she was at the time ignorant of this will of 1868. She unquestionably knew of it in 1876 (1045). It may have been her knowledge of it which made her so persistent and the "team so unruly." And if her relations to Van Wyck were the reason for Gordon's making somewhat scant provisions for her in this will,

Gordon would not be likely to refer to it and bring up unpleasant matters in writing to this same Van Wyck, unless there were some necessity for so doing.

Testimony of a purely negative character such as this letter is of very little weight, and Courts have always so regarded it, as will appear from the authorities cited below.

Proponents proved by Mulvaney that not long before the date of the execution of this will of 1868, Mr. Gordon was greatly impressed by the death of a man in whom he was interested with the great importance of making a will (1277). He said: "Every sensible man ought to make a will." By his severe illness in the spring of 1868, he was impressed more deeply than ever with the uncertainty of life and the importance of arranging his affairs and evidently felt that he had found just the man he wanted to help him. Mrs. Burlingame (then Elizabeth May) testifies that shortly after this sickness he said to her "I am going to make my will and am going to remember you in it" (1453). He did remember her by a legacy of $5,000.

Mr. Ernest Baumann, who was on very intimate terms with Mr. Gordon in 1868, testifies that testator spoke to him in that summer of making his will (752); that he told witness that he wanted to arrange his affairs so that no gambler or any person of that sort might get hold of his money by marrying Mary (779), and later on, "*after the will was made*," of having arranged the matter (787). There were several conversations, the witness says, in each of which substantially the same thing was said. The witness does not distinctly remember Gordon saying that Mr. Adams drew this will but is convinced that Gordon must have told him so for he always had the impression that Mr. Adams drew the will (736). He saw Mr. Henry C. Adams visiting at the Gordon house very often in the summer of 1868. Gordon told the witness that he intended to buy the Adams' place

and give it to his brother. Witness remembers particularly going over to the Adams' farm with Gordon about that time, and disagreeing with him as to the best location for a new house, and that Gordon then told him he intended to buy the place and give it to his brother (754). Mr. Baumann's memory is indistinct in regard to the details of these conversations, but his absolute honesty and desire to tell the exact truth was very apparent. Whatever the details of these conversations may have been, he remembers very distinctly that Mr. Gordon said, in the summer of 1868, that he had made a will, and had tied up the property, or a portion of it, and that he intended to buy the Adams farm and give it to his brother, as this will provides.

Testator's sister, Adeline J. Gordon, testifies that in the fall or winter of 1870, "he told me he had made his will, and provided amply for his daughter—his wife and daughter—outside his business" (1195).

In December, 1872, testator told Amos P. Barber that he "had fixed things so that no damned *loafer* would snap his money off the end of a whip that married that girl" (727, 728), referring to his daughter, about whom the testator expressed great anxiety.

Mrs. Doane, the wife of testator's nephew, and confidential man, who was on intimate terms with the family, was visiting Mr. and Mrs. Gordon at their Woodbridge home in the summer of 1876 (1043). When she was about leaving Rahway, she and Mr. and Mrs. Gordon were in the carriage together, driving about the city prior to going to the station to take the train for New York. A lawyer by the name of Thorne crossed the street in front of the carriage, and Mr. Gordon asked if that was not Mr. Thorne, and on being told that it was, said that he, Thorne, had drawn a will for him some time before, but it was not satisfactory, and he proposed to either draw up a codicil or have the will cancelled and make a new will (1043; 1044). Mrs. Gordon said, "You know that Mr. Gordon has had a will drawn up by Mr. Adams, don't you?" and I said,

"No, I did not know that Mr. Adams was a lawyer." And Mr. Gordon said, "Yes, but I was not satisfied with that will either, and I wanted to make some alterations" (1045). Then Mr. Gordon spoke about the executors (1045). She says: "He said that in the will made by Mr. Adams that my husband" (A. Sidney Doane) "and Collingwood Gordon" (testator's brother), "were both executors" (1046), and he said my husband was executor in the will of 1873, and I said: "I know, but who else, but I do not think he mentioned who else" (1046). "He said no matter who was the executor, Sid" (the witness' husband) "would always be an executor, because he knew more of his business than anyone else did (1046)."

There was some conversation about whether Collingwood Gordon should be an executor, testator hesitating about making him an executor on account of his age, but fearing that if he omitted to make him an executor he would feel hurt. The entire conversation is very clearly given by Mrs. Doane on pages 1043 to 1048 of the testimony. All the circumstances and features of this conversation, as it is detailed by the witness, are such as to leave no possible doubt that the testator, in 1876, told Mrs. Doane that he had made this will. It was Mr. Adams who drew the will that he spoke of, and A. Sidney Doane and Collingwood Gordon were named as executors in it. It would be difficult to have any stronger corroborative evidence of the genuineness of this will than such testimony as this. It is incomparably stronger than that of any of the experts who have testified that in their opinions the signatures were not genuine.

XXVI.

Reasonableness of the Will.

The reasonableness of the provisions of this will, in view of all the circumstances that existed in the summer of 1868, is a strong argument in support of its genuineness.

Mr. Gordon had just recovered from a severe illness (33; 35; 753; 1451–2)—just escaped death, as he thought (33). Not long before this he had been deeply impressed with the importance of every man's making a will (1276–77), and for this reason this sickness made even a deeper impression on his mind. His wife and daughter often quarrelled with each other and with him about money matters (730; 1063; 1170; 1338–9). Both were, in his opinion, extravagant, and together they made his life very wretched (1058; 1277; 1310; 1311; 174–9; 1050; 1063; 1345). He disliked Van Wyck's attentions to his wife, and the course she pursued with reference to Van Wyck (1270–3; 1453; 1306; 1313–14). She put tartar emetic in his beer to make him very sick, Van Wyck tells us, and cure him of his liking for drink (642). He feared poison (79), Mr. Adams thinks, at her hands, and his life with her was anything but a happy one, although he probably loved her (1210). In these circumstances a farm and house, such as the will provides, and $1200 a year for life, is a reasonable provision. It would not have been strange in view of the facts had he made provisions for her less ample than these.

His daughter Mary had given him great cause for anxiety. She was then about twenty-one years of age (1194) and he was extremely anxious lest she should marry some adventurer who would get away with all his money (727; 728; 766). The prospect of her marriage to Charles Beebe pleased him so much that he named Beebe as one of his executors (1064), and made provision for Mary's husband on the supposition that

Beebe was the coming man. He ties up, however, most of the portion of the estate which is intended for her benefit, but makes ample provisions for her.

Miss May's care of him during his illness was fresh in his mind and she was his wife's half sister and a member of his household, and it was natural that he should leave her something in his will (1453).

The evidence and exhibits show that Mr. Gordon was greatly attached to the members of his own family. His great regard for his brother Collingwood and desire for his welfare is often apparent in the testimony (754; 1046). His sister Adeline was frequently the recipient of substantial evidence of his affection for her (1205) and it is evident also that he loved and cared for his other sisters and their families, (1047; 1048; 1056; 1337). He makes some provision for each of these and also for the children of those who had children. In the Brooklyn will he also provides for all these members of his family—for some of them in the same way as in this will, and for others in different ways.

Mr. Gordon had become wealthy and prosperous as a manufacturer of the printing presses which he had invented. His best thought and life had been given to this business, and he naturally looked upon it with pride and satisfaction. It would have been strange if he had not provided for its continuance and divided it among the members of his own family. This he does. And naturally in both wills directs that A. Sidney Doane, his favorite nephew and business manager (1037), who had his entire confidence (1053), shall have one-fourth of this business, and, as no one knew so much about the business or was so competent to successfully conduct it as Doane, he made him an executor. In 1868 Mr. Gordon had just got comfortably settled in his Woodbridge home and had the greatest enthusiasm for the place and a very high opinion of the value of land at Woodbridge (697; 703). He prevailed upon Mr. Henry Adams to build a substantial house that would be a credit to the place instead of a

cottage (1278). He added to his original purchases of land in Woodbridge township at prices which were then and are now regarded as very high (1305; 638; 1429; 1430; 1037–38; 697; 702). In this year (1868), he desired to buy the Laing farm which he mentions in the will, and he succeeded in making the purchase a year later (638, 1089, 1429–30). The Bramhall place, too, he purchased at we know not what price (1037-8), and was anxious to buy the Adams and Compton farms (754, 790).

With his enthusiasm for Woodbridge and his ideas in regard to the value of property there, it was entirely reasonable that he should make provisions for homes there for his wife and daughter and only brother and his favorite nephew. It was very much like Gordon as he appears in his letters of this period to make such minute and detailed provisions for his family as those contained in this will.

For many years Mr. Gordon had had his presses manufactured by Messrs. Nichols & Langworthy, at Hope Valley, R. I. He was compelled to make frequent journeys to Hope Valley in order to personally oversee the carrying out of his inventions and the construction of his presses, as appears from his letters and from the testimony of Mr. Barber. He had frequent cause to complain of his manufacturers for not doing the work as he wanted it (P. 66), and the frequent journeys to Hope Valley were undoubtedly growing wearisome with his advancing age. There is abundant evidence of this in his letters, and his desire to have a factory for making his presses at Rahway was altogether reasonable. In view of the homes he was providing for members of his family who were to be interested in and to continue his business after his death and his evident desire to perpetuate his business in his family, the provision by which his executors should establish a factory, in case he should not do so before his death, was extremely reasonable and natural.

Every provision and detail of this complicated docu-

ment shows Gordon's thought and plan; it is wholly reasonable and consistent throughout and the theory that any one else except George P. Gordon could have conceived it, is utterly incredible.

This argument derives added force from an examination of the provisions of the Brooklyn will which all admit Mr. Gordon signed.

XXVII.

Comparison of the So-called Brooklyn Will of 1873 with the Draft and Will of 1868, Exhibits P. 1 and P. 236.

Such a comparison leads inevitably to the conclusion that one draftsman had some of the language of the other before him. It is impossible that different persons could have hit upon identical phraseology in so many instances. Either Henry C. Adams concocted his documents after the propounding of the Brooklyn will in 1878 and while then attempting to frame a scheme of testamentary disposition as *for* Mr. Gordon and as *of* 1868, copied into his work these phrases from the Brooklyn will; or else Mr. Thorne, who drew the Brooklyn will in 1873, was furnished by George P. Gordon with a draft of the will of 1868. The first hypothesis is absurd. A forger would have avoided such "earmarks," and apart from that, Henry C. Adams, with his facility of expression and skill is the last man in the world to adopt another man's diction. On the other hand, a scrivener furnished with a draft of a will and directed to embody some of its provisions in a new instrument and to omit others would be very likely to follow the phraseology of the first document, changing it only where he thought he could condense or improve. That this is precisely what Mr. Thorne must have done is evident by the following comparison, made for convenience, in parallel columns. Note that Thorne's changes in phraseology are in the direction of brevity.

It will be remembered that Mr. Adams testified (1456) that when he gave Mr. Gordon draft No. 2 of the will of 1868 Mr. Gordon also took again and retained draft No. 1. Presumably the changes from that draft which entered into draft No. 2 were not numerous or very material, and such as they were, were probably noted on the document itself before redrafting, according to Mr. Adams' custom, as shown by his course with draft No. 2. Indeed he says (1456):

"No. 1 was the first attempt to make a will for "Mr. Gordon, from memoranda which he gave me; "and when he saw it put together and read it, he con- "cluded to change it, and gave me the memoranda for "changing it, *and we made the changes in it, I believe;* "and from that drew another, that is, No. 2."

It happens that none of the changes made in draft No. 2 enter into the phraseology we are about to compare. In these respects, therefore, there is no difference in the three papers drawn by Mr. Adams. We come now to the comparison. The italics in the right-hand column show words occurring in the Brooklyn Will, which we claim have been taken from the draft-will of 1868. Both the words and their order (except in three instances shown) are *exact* in both wills, but in the Brooklyn Will many intervening words are omitted.

WILL OF 1868—Exhs. P. 1 and P. 236.	"BROOKLYN WILL" of 1873.
I, George P. Gordon, of the Township of Woodbridge, County of Middlesex, and State of New Jersey, being of good health and of sound and disposing mind and memory (hereby revoking all former wills by me made) do make, execute, publish and declare this my last Will and Testament in manner and form following, to wit:	In the name of God, Amen, *I, George P. Gordon, of the Township of Woodbridge, County of Middlesex, and State of New Jersey, being of sound and disposing mind and memory (hereby revoking all former wills by me made) do make, publish and declare this my last Will and Testament in manner following,* that is to say:
(NOTE: The words "and form" are interlined in P. 236.)	

WIFE.

Article I.

§ 1. * * * * * * *
Now, in case I secure the title to that piece of land, and I shall be the owner of it at my decease, I give and devise the same to my wife, Lenora M. Gordon, her heirs and assigns forever, the same to be for her sole and separate use, free and clear from all debts, claims or demands of or against her husband, if she should ever again intermarry; and * * * *

§ 5. * * * *; which said devise, bequests, sum of money and legacy hereinbefore mentioned are in lieu of dower—all her dower right by the common or statute law;

(NOTE: The word "dower" where first occurring in this clause in P. 1 does not appear in P. 236.)

WIFE.

SECOND: *I give to my wife, Lenora M. Gordon, her heirs and assigns forever*, the sum of One Hundred thousand dollars to be paid to her as soon as possible after my decease, with interest from the time of my decease, which said *sum* is *in lieu of all* her *right* of *dower at common law* or under the laws of this State.

(NOTE: "right" and "dower" are transposed here.)

FIFTEENTH: * * * * * unto my said wife and my said daughter, equally, share and share alike, during each of their natural lives, *the same to be for* their and each of their *sole and separate use*, and upon their sole and separate receipt, *free and clear from all demands of* either of their *husbands, if* they, or either of them *should* intermarry * * * * *

DAUGHTER.

Article II.

§ 1. I give and devise to my daughter Mary Agnes Gordon my homestead and farm, &c.
* * * * * * *

§ 2. I also give and bequeath to my said daughter Mary Agnes, the sum of three thousand dollars yearly during her natural life, to be paid to her out of my estate in annual or semi-annual payments, as she may prefer, the same to be for her sole and separate use, and if she shall intermarry, I then give to such husband, &c. * * * * and if my said daughter and her said husband shall have lawful issue living at the death of either of them then the sum so given to either of them shall be paid in like manner to such living issue share and share alike and to the survivors or survivor of them and their heirs.

DAUGHTER.

THIRD: *I give* the sum of One Hundred Thousand Dollars, unto my said executors, in trust nevertheless, to invest the same immediately upon my death in some safe and responsible Trust Company or Companies and pay all the interests and profit whatsoever thereof, from the time of my decease unto my daughter Mary Agnes Gordon half yearly during her natural life, *the same to be for her sole use*, and upon her sole receipt *free and clear from all demands of her husband, if she should* hereafter *intermarry*, and upon further trust, at her death to pay the principal aforesaid to and among her lawful issue, as each shall respectively become twenty-one years of age, *share and share alike.*

FIFTEENTH: (*Repeated.*) * * * * unto my said wife and

my said daughter, equally, share and share alike, during each of their natural lives, *the same to be for* their and each of their *sole and separate use*, and upon their sole and separate receipt, *free and clear from all demands of* either of their *husbands, if* they, or either of them *should intermarry.*

* * * * * *

PATENTS.

Article II.

§ 3. If my said daughter Mary Agnes shall intermarry I then give to her and her husband jointly, and to the survivor of either of them, *their heirs and assigns forever*, one equal one-fourth part of each, all and every patent or patents, granted and issued to me by the Commissioner of Patents, under and by virtue of the Patent Laws of the United States, for improvements in printing presses or in any manner relating thereto, and all renewals of the same; and also the one equal one-fourth part of all the profits that may *be derived* from the sale of any part or of all the presses or parts of the same that may be manufactured under the authority of said patents or any or either of them.

(NOTE: The next articles III. and IV. it will be remembered are in inverse order in P. 236.)

Article III.

§ 1. I give to my brother Cuthbert C. Gordon, *his heirs and assigns forever*, one equal one-fourth part of each, all and every Patent or Patents granted and issued to me by the Commissioner of Patents under and by virtue of the Patent Laws of the United States, for improvements in printing presses or relating thereto, and all renewals of the same; and also one equal one-fourth part of all the profits that may *accrue* from the sales of any part or all the presses

PATENTS.

(NOTE: For convenience of comparison we print "Fifth" and "Sixteenth" in inverse order.)

SIXTEENTH: *I* hereby *give to my brother Cuthbert C. Gordon one equal one-fourth part of each, all and every Patent or Patents granted to me by the United States for improvements in Printing Presses or relating thereto and in all renewals of the same, also* an *equal one-fourth part, of all the profits that may be* derived *from the sale of all said presses that may be* built or made *under the same or any of them.*

that may be manufactured under the authority of said patents or any or either of them.

Article IV.

§ 1. I give to my nephew A. Sidney Doane, *his heirs and assigns forever*, one equal one-fourth part of each and all and every patent or patents granted and issued to me by the Commissioner of Patents under and by virtue of the Patent Laws of the United States, for improvements in printing presses or relating thereto and all renewals of the same; and also one equal one-fourth part of all the profits that may *accrue* from the sale of any part or all the presses that may be manufactured under the authority of the said patents or any or either of them.

(NOTE: The second "and" in this paragraph is not in P. 236).

Article VI.

§ 1. I give to my sister Wealthy Jane Bogert, *her heirs and assigns forever*, one equal one-eighth part of each, all and every patent or patents granted and issued to me by the Commissioner of Patents under and by virtue of the Patent Laws of the United States for improvements in printing presses or relating thereto and all renewals of the same; and also one equal one-eighth part of all the profits that may *accrue* from the sales of any part or all the presses that may be *made* under the authority of said patents or any or either of them.

Article VII.

§ 1. I give to my sister Mary Ann Doane, *her heirs and assigns forever*, one equal one-eighth part of, &c. (the same as in the bequest to Wealthy Jane Bogert except that the word "manufactured" is used instead of the word "made.")

FIFTH: *I give to my nephew, A. Sidney Doane, his heirs and assigns forever*, the sum of Ten Thousand Dollars also an *equal one-fourth part of each, all and every Patent or Patents granted to me by the United States for Improvements in Printing Presses or relating thereto, and all renewals of the same, also* an *equal one-fourth part of all the profits that may* be derived *from the sale of any and all the presses that may be* built *under said Patents or any of them.*

SISTERS.

Article VI.

§ 2. I give to my said sister Wealthy Jane Bogert and her children and to the survivors or survivor of them living at my decease the sum of six thousand dollars, to be divided equally.

§ 3. I give to my sister Adeline Julia Gordon, the sum of ten thousand dollars, to be paid to her out of my estate.

SISTERS.

FOURTH: *I give to* each of *my Sisters Wealthy Jane Bogert* and *Adeline Julia Gordon, the sum of Ten Thousand Dollars.*

RESIDUARY CLAUSE.

Article VIII.

I give, devise and bequeath all the remaining part and residue of my said estate both real and personal wheresoever and whatsoever to my said executors in trust for the following uses and purposes, viz: They shall * * * * * * invest the same * * * * * * and they shall divide and pay all the interest, rents, issues and profits whatsoever accruing therefrom in the following manner, viz.: * * * * *

RESIDUARY CLAUSE.

FIFTEENTH: *I give and bequeath all the* rest *and residue of my said Estate both real and personal whatsoever* or *wheresoever to my said Executors, in trust* nevertheless, *to invest the same* in some safe and responsible Trust Company or Companies, *and pay all the interest and profits whatsoever* thereof unto my said wife and my said daughter, equally, share and share alike, during each of their natural lives. * * * *

(NOTE: "Whatsoever" and "wheresoever" are transposed here.)

EXECUTORS.

Article X.

I nominate and appoint my brother, Cuthbert C. Gordon, my nephew, A. Sidney Doane, and my respected and esteemed friend, Charles Beebe, executors of this my last Will and Testament, and I empower and specially direct my said executors to exercise great caution and economy in the care and management of all business pertaining to the execution of the various provisions of this my last Will and Testament, and in the conduct and management of the business and the interests of my estate and

EXECUTORS.

EIGHTEENTH: *I* hereby *nominate and appoint* Henry Du Bois Van Wyck and *A. Sidney Doane, executors of this my last Will and Testament, and* hereby *direct and empower my said executors to* use and *exercise great care* in the investment of the several sums *herein provided to be invested* in trust *and to change* the *investment* of all or any portion *thereof from time to time, as* its *safety and the interests* of my said wife or daughter or both *may* require.

This should be in left hand col. here

the investments of all moneys provided herein to be invested and to make changes of such investments, or any *part* thereof, from time to time, as the safety of the same may, in their judgment, require and the interests of the devisees and legatees herein may *demand*.

(NOTE: "Direct" and "empower;" and "herein" and "provided" are transposed here.)

ATTESTATION CLAUSE.

Signed, sealed, published and declared by the said George P. Gordon to be his last Will and Testament in the presence of us who were both present at the same time, and subscribed our names as witnesses, at the request and in the presence of said testator and in the presence of each other.

(NOTE: This attestation clause is copied from P. 236. In P. 1 there are some additional words and a date.)

ATTESTATION CLAUSE.

Signed, published and declared by the said George P. Gordon to be his last Will and Testament in the presence of us who were present at the same time and subscribed our names as witnesses in the presence of said testator.

The natural style, in composition, of Mr. Adams and Mr. Thorne respectively is plainly discernible in the two wills when read at large. Mr. Adams (a lexicographer) is diffuse, redundant and prone to the pedantry of the profession—Mr. Thorne is terse, direct and concise; he was, as the Court knows, more of a business man than a lawyer. Provisions common to both wills, even when pruned in the Brooklyn will, are evidently in the style of Adams and not of Thorne. The phraseology is not natural to the latter. It breathes throughout of Mr. Adams. Who can doubt that "intermarry" is Adam's choice of word? The distinction between "dower right by *common* or *statute* law" is natural to the author of the "Glossary of Legal Terms." Thorne misses the fine distinction when he changes it to "dower at common law or under the laws of this State." Adams, with his nicety of exactness names the official who issues patents. Thorne thinks this unnecessary, and with less accuracy but greater terseness speaks of the patents as "granted by the United States."

Thorne reverses, to the more natural and common expression, Adams' "wheresoever and whatsoever" in Article VIII., and does the like with Adams' "empower and * * direct," and "provided herein" in Article X. Adams enjoins on the executors to "exercise great caution and economy in the care and management" of the estate. Thorne thinks the word "care" covers the whole case. These are but instances. The Court no doubt will see many others.

It is impossible to conceive of Adams building up Thorne's expressions; but the latter's condensation of the former's verbiage is the most natural thing in the world. A notable instance is in the attestation clause. Thorne leaves out every word not absolutely needed, yet uses every word, retained in the exact order used by Adams in P. 236.

Even more striking is Mr. Thorne's condensation of the restrictions on the "intermarrying" of testator's wife and daughter. Adams puts the restriction in each devise. Thorne blends both together in his Fifteenth clause. Again, Thorne shows his tendency to condense by omiting "parts of presses" in the patent-bequests. One can't imagine any reason for Adams' adding those words.

A curious proof that Thorne was "following copy" is afforded by the fact that he writes the bequest to Doane (Fifth clause) before that to Cuthbert Gordon (Sixteenth clause), which is different from the order in P. 1, but is *precisely the same* as in Ex. P. 236, and presumably in draft No. 1 which Gordon retained.

There are several matters trifling in themselves, yet cogent as showing which is the earlier document. We will point out some of these.

Mr. Adams as the draftsman of P. 1, in the first bequest of patents (Article II., § 3) bequeaths the one-fourth of the profits, that may "*be derived*" from sales, to testator's daughter. In the subsequent bequests of patents he charges the words "*be derived*" to the word "*accrue.*" Mr. Thorne prefers the phrase first used and therefore in-

serts it, in his bequests to A. Sidney Doane and Cuthbert C. Gordon, although in those bequests as drawn by Mr. Adams, which Thorne otherwise follows almost literally, the word "*accrue*" is used.

Mr. Adams, in drawing the bequests of patents uniformly uses the phrase "*one* equal *one*-fourth" (or eighth) part of the patents. Mr. Thorne prefers the phrase "*an* equal one-fourth part" and so writes it where he first treats of the subject in the Fifth clause of his Will, but when he comes to the bequest to Cuthbert C. Gordon, in the Sixteenth clause, the copying-habit asserts itself, and he follows Adams' phraseology.

The internal evidence, derived from the nature of the provisions of the two wills, that that of Adams is earlier than that of Thorne (aside from its being impossible for Mr. Adams in 1878 to put himself back in 1868, and fit this complicated document precisely to the then existing conditions, as discussed in the next paragraph) is simply convincing. In the narrower range of the present paragraph, it is equally convincing.

In this connection we ask the Court to note all the provisions of the "Brooklyn will," and not alone those cited at length in the present paragraph, and apply to those provisions the theory of Adams working backward from Thorne. It will be found to be preposterous.

Take this one example: In Article III. of the will of 1868, the testator gives to his brother, Cuthbert C. Gordon, *his heirs and assigns forever*, one-fourth part of the patents, &c. Mr. Thorne, in his provision for Cuthbert C. Gordon, omits the words just italicized. That he did not do so because of any idea of their inappropriateness to personal estate is evident from the fact that he retained like words in a similar bequest to A. Sidney Doane. The purpose of the omission is clear from a proviso, which reads as follows:

"Provided my said brother shall be living at the time of my decease, if he is not so living at the time of my death, then this bequest to him and every part thereof shall be regarded and treated as of no binding

force or effect, and no part thereof paid or made over to his heirs or assigns."

Either the testator, or Thorne, thought that the omitted words, if inserted, would pass the bequest to Cuthbert's heirs or assigns if he died before the testator. That was not desired, and to make sure, not only were the words omitted, but this proviso added.

This was a mental operation, perfectly natural and reasonable. How unnatural and unreasonable to reverse it and assume that Adams would start with the Thorne provisions, and attempt to reconstruct the presumable attitude of Mr. Gordon toward his brother ten years before!

In making the comparisons the Court should use for the will of 1868 the draft P. 236, ignoring the red-ink interlineations. This will come nearer to and is probably identical with "Draft No. 1," which Mr. Thorne must have had before him.

Again, no forger building up an earlier will from that of 1873 would cumber himself with such a variety of complicated provisions as appear in Mr. Adams' drafts. Why give testator's daughter and sisters interests in the patents when the Thorne will does not? The change *of omission* in this respect in the Thorne will is readily explained. Why give Mrs. Doane a direct bequest when the Thorne will makes *her children* the beneficiaries? She lived until 1887 (1191). Why omit Winslow, Hussey and the Cornishes?

On the theory of Mr. Adams' building the will he drew, upon the Brooklyn will, how can the contestants explain the changes in the draft P. 236? Why make or preserve a draft at all?

The changes in this draft (in red ink) are all very suggestive; where not mere verbal changes natural to Mr. Adams' mental habits, they evidently expressed *Gordon's* thoughts. How do contestants account in the bequest to Mrs. Doane for the fact that in the draft P. 236 the said bequest is (in two places) first written one *fourth* and then changed (in black) to one *eighth?* If P. 236 was copied from draft No. 1 or is

itself a copy of draft No. 2, the reason for these clerical errors is apparent. Mr. Adams had written prior clauses bequeathing to others one fourth and inadvertently writes one "fourth," sees his mistake and corrects it on the spot.

Suppose the two documents P. 236 and the "Brooklyn Will" were submitted—with their respective dates in blank—to any trained mind, and the question was asked which was the earlier drawn judging by the internal evidence of form and style alone. Is there any possible doubt but that P. 236 would be named? When we add to this internal evidence, the surrounding circumstances proved in the case that conclusion is simply irresistible.

Having demonstrated then that the will now in question was in existence prior to 1873, all argument deduced from the allegation that the red ink upon the Draft P. 236, was made from a substance discovered in 1874, is valueless. Such allegation, if proved, only confirms Mr. Adam's conjecture that P. 236 is a *fac simile* copy of the original "Draft No. 2" of the will of 1868.

Furthermore, upon what narrow ground must the contest of this will then stand? It must be conceded that the document we put forward as Mr. Gordon's will *was in fact his will* so far as purpose and intention go. All that can be claimed is that he never executed it and that Mr. Adams has forged the signatures at a later day.

How amazing that so carefully planned and elaborate a testamentary disposition, drafted and redrafted and entirely satisfactory to the testator should have been abruptly abandoned. If the Court is convinced that Mr. Gordon planned and ordered this will, it will require the strongest kind of evidence to overcome our direct, circumstantial and positive proof of its execution, supported as that is by a signature which the members of his family and his business associates at once recognized as genuine, and by proof of his declarations that he had made a will which Mr.

Adams had drawn and of which Cuthbert C. Gordon and A Sidney Doane were executors.

Opposed to all this there is *nothing* but "expert opinion" that Mr. Adams forged the will signatures; and has not that opinion been met and nullified by weightier opinion that the signatures are genuine? No adjudged case can be found where direct and positive testimony has been overcome by mere opinion of experts. There must be some accompanying proof of suspicious circumstances, contradictions and inconsistent facts. Of these, in the case before the Court, there are absolutely none.

XXVIII.

The Absurdity of the alleged Forgery.

This contest narrows itself down to the question of forgery. The contestants, not satisfied with general assertions that the signatures to the will are not genuine, make a specific and definite charge that the signatures were forged by Mr. Henry C. Adams. It was proved by proponents that the body of the will is in his handwriting, and contestants say that the subscription "Geo. P. Gordon" is "a dead piece of writing," and that the signatures of the subscribing witnesses are "clumsy forgeries," "awkward simulations," "crude compositions," and that all were done by Henry C. Adams. Thus they would make Mr. Adams not only a forger but a perjurer as well, and the originator and perpetrator of a most gigantic fraud.

But having elected to prove who the criminal author and perpetrator of the forgery is, the contestants assume a position where, if their theory fails, their whole case crumbles. We do not believe that as intelligent men the contestants are sincere in charging Mr. Adams with such grave crimes. On the contrary, it is entirely reasonable that somewhere back of their forty-four standard checks, somewhere in the boxes among the many papers and checks that the officious but "disinterested" Van Vleet hastily bundled up and sent out of the jurisdiction of this Court "by direction" of Mr. Cul-

len, or perhaps in the letter of A. Sidney Doane of July 25, 1868 (the very day the will was executed), obtained by contestants from Nichols & Langworthy, and which the proponents have called for again and again, but which has not been forthcoming, the contestants hold some absolute and indisputable evidence of the genuineness of this will.

If contestants insist upon their charge of forgery, charging it specifically against Mr. Henry C. Adams, to be consistent they should also show *when the will was forged and the motive therefor.* Charges of such a serious nature, brought against a man of seventy-three, whose name and character have been so honored wherever he has dwelt in all these years, who has endured so well the ordeal of the most searching cross examination, telling the facts and circumstances connected with the drafting and execution of this will with such simplicity and directness as to arouse the admiration of friends and adversaries alike; who has through all these trying months, when charged with these atrocious crimes, borne himself with such quiet dignity, and who has been corroborated, sustained, and vouched for by such a cloud of witnesses, should be specific in all respects, if such a theory is to be seriously considered.

Suggestions and insinuations on this subject are all the guides contestants have furnished, and these only orally and not shown on the record. At first it was claimed by contestants that the forgery was of a recent date—prepared since the will of Miss Mary Agnes Gordon was offered for probate in New York in 1890, but after the production of the postal card of Mr. Adams to Mr. C. C. Gordon (Proponents' Exhibit P. 4), the contestants have judged it wise to shift their position, and, as we understand, now admit it must have been perpetrated prior to the date of the postmark on this card.

Let us examine the facts and theories and see if *we* can fix a probable date when the will might have been forged, if it ever was. When, then, could this crime

of forgery have been committed, if at all? Surely not before March, 1875, because Henry Adams—whose integrity and high character are in evidence—was alive until that date to bear witness against his "forged" signature as a subscribing witness, as were also his two sons, the other subscribing witnesses; and with equal certainty we may assert that it could not have been forged until after Gordon's death in 1878. Could there be any possible reason for forging a will of a man who is living? Could such stupidity exist even on the part of the "clumsy forger" in question? There is no evidence that Mr. Henry C. Adams knew of Gordon's approaching death. He was not present when Mr. Gordon died, and the contestants have omitted from their catalogue of his alleged crimes the charge that Mr. Adams was personally responsible for Gordon's death.

Moreover it is obvious, as has been shown by the preceding paragraph (XXVII.), from a comparison of the will in question with the so-called Brooklyn will propounded in 1878, that the draftsman of one had the other or its prototype before him. We have argued that Thorne must have been furnished by Gordon with a draft of P. 1, (Mr. Adams testified that Gordon kept the first draft of P. 1., see p. 1456). The only other possible hypothesis is that Mr. Adams modeled his "forgery" upon the Brooklyn will. He could not have had access to this alleged will, however, until after it was offered for probate. This will, then, if forged at all, was forged after Gordon's death and after the Brooklyn will was propounded, in 1878. And it is equally certain that it must have been done before the letter was written to "Cuddie" Gordon, November 24th, 1879 (57). But what extraordinary difficulties the alleged forger encountered! What changes had taken place in Gordon's history, family and affairs between the year 1868 and the year 1878—changes so great and numerous that Gordon himself, had he been living when the crime must have been committed, if at all, could not have so surrounded himself again with all

the correlating facts and circumstances that are referred to in this paper, and that surrounded him in 1868, as to have been able to compose this will without somewhere deviating from the true relation of things as they existed in that year. For example, Mr. Charles Beebe was engaged to Mary Agnes in October, 1867 (1263; 1326), and this engagement was broken in 1870 (1331-2; 1264). Mr. Gordon was pleased with Mr. Beebe, and desired that he should marry his daughter, and hence the provisions in Sections 2 and 3 of Article II. of the propounded will, and also the appointment of "my respected and highly esteemed friend, Charles Beebe," as an executor. Does any one suppose that this "forger" would have dared to risk detection by venturing upon family affairs like this?

In 1878 Elizabeth May had long ceased to be a member of the Gordon household and had not lived in Rahway for years, and she had quarrelled with her half sister, Mrs. Gordon, shortly after the date of this will. What "forger" could turn back the tide of time ten years and provide for Elizabeth May and the father of herself and Mrs. Gordon, so that they might have a cottage near the house of Mrs. Gordon?

Again, in Article V. of the will, Mr. Gordon says: "In case I secure the title to that farm, I shall erect upon it a commodious, cheap and substantial factory building, etc." He had no factory at Rahway in '68, but had established one there in '72. Can any one presume to say that our "forger" with minute nicety of memory, recalled in 1878 all these varying conditions?

Then there is the purchase of the Laing farm, desired by Gordon in '68 and made in '69, ten years before this alleged "clumsy forger" did his bungling work. Mr. Eden Laing testified that at about this time he gave Mr. Gordon an option to purchase this farm (1430).

The Compton farm too, Gordon desired to purchase and this "clumsy forger" embraces that desire of the testator also, and records Mr. Gordon's plan to buy the

Adams farm for his brother Collingwood. All these facts and circumstances surrounding the testator are established beyond controversy by witnesses who are disinterested and uncontradicted, and they are all accurately recorded in this will. What other forger ever dared to include all a man's past in the document he was to palm off as genuine, as did this one? If there were but one such instance of correct recollection, our argument might not have great force; but when we keep in mind the fact that the will is long and full of these correct statements of fact as to Gordon's personal affairs and history, hopes and intentions, and that in all its pages not one flaw, one slip, one defect, has been pointed out, the conviction from the internal evidence of the will itself is irresistable, that it emanated from the mind of George P. Gordon.

Again, no motive has been shown for these alleged crimes. Do forgers and perjurers commit their crimes which, if discovered, send them to States Prison, without motives? Would a forger prepare a will twenty pages long when one page would be sufficient? The other side must admit that no forger would have so done. They may answer that Gordon had this paper drawn in the year 1868 with the intention of executing it, but did not do so; and later, Henry C. Adams forged all the signatures. How much is their charge of forgery worth when they are driven to this needle point (overlooking for the time all of Mr. Adams's testimony) in the light of Gordon's own subsequent declarations, that he had made this will; that Mr. Adams drew it, and that Sidney Doane and Collingwood Gordon were the executors?

If Henry C. Adams forged this will, why did he not sign his own name as a subscribing witness? The question of proving the will would naturally have been uppermost in the "forger's" mind, and it would certainly have been better to have signed his own name rather than that of his deceased father.

The same remarks apply to Mr. Edward L. Adams. If this will is a forgery, he is a co-conspirator, and

would it not have been more natural that he and Henry C. Adams should actually sign as witnesses rather than to simulate the signatures of others, thus furnishing two genuine "live signatures," as well as witnesses, rather than "dead" imitations?

The very fact that Henry C. Adams is not a subscribing witness, is a most potent argument against the theory of forgery, because, if this paper had been forged by him, how could he have reasoned himself out of the logical necessity of being a subscribing witness to it? He was Gordon's friend; John Q. and Alonzo had no intimacy with Gordon. Henry was a lawyer; his brothers were laymen. The body of the will was in Henry's handwriting; his brothers had nothing to do with its drafting. All these facts, had this paper been a forgery, would have driven Henry C. Adams irresistibly to putting his name to the paper as a subscribing witness.

And why should the "forger" put the names of three witnesses to the paper, when two were sufficient? Was ever such depravity and love of crime charged against a man—a lawyer—who has lived more than seventy years an honorable life, winning and keeping the respect and friendship of the best men in the communites in which he has dwelt?

What forger would write his feigned signatures with thick ink on damp paper, producing "heavy and club-like lines," unlike the genuine signatures, or make such a "botch of a scroll" as that under the Gordon signature, or introduce so many of the unusual, instead of the ordinary characteristics of his father's and brother's handwriting? As an intelligent man Mr. Adams must have anticipated a fierce contest, if, following on the heels of the Brooklyn contest, he was forging a will like the one in question, less favorable to Mrs. Gordon and Mary than the Brooklyn will. These peculiarities which attract attention to the signatures, at first sight, could all have been obviated by re-writing two short pages in a document twenty pages long.

And if this paper had been a forgery, does any one suppose that a draft or copy of it would ever have been found? Is that too a forgery? The very presence of this draft or copy is an evidence of truth.

But the most overwhelming and conclusive argument that this cry of forgery—the only thing the contestants could cry at all—is absurd, is the testimony and conduct of Henry C. Adams himself. An old man with one supreme thought in his life—his book—a man of great learning, but simple-minded as a child, looking back across the years to 1868, recalling clearly the drafting and execution of the will and incidents and circumstances surrounding it, unable clearly to recall all the links in the collateral chain of circumstances, frankly telling his doubts and perplexities about the draft—doubts and perplexities which would not have occurred to him had he not been scrupulously conscientious, going down to the Secretary of State and depositing his "eosine forgery," attending at Court day after day, without anxiety, without fear, without bitterness, without anger, with the quiet dignity of a gentleman and scholar, having an unwavering confidence that the truth and right will prevail—his conduct and bearing are the best possible argument in his defense and for the genuineness of the will.

XXIX.

Attempts to Discredit Henry C. Adams.

The testimony of Mr. Henry C. Adams in regard to the execution of the will was direct and positive, and shows beyond question that the will was drawn under Mr. George P. Gordon's instructions and properly executed by the testator. The testimony of this witness and of Edward L. Adams as to the custody and finding and production of the will is also direct and circumstantial, and greatly strengthens the presumption of

good faith which courts always indulge. Scores of facts and circumstances established by many other independent and disinterested witnesses and not denied by the contestants, bear the strongest possible witness to the truth of the testimony of both the Adamses.

It was evident that some thing more than the unreliable opinions of contestants' paid experts in handwriting which were sure to be rebutted by testimony of other experts, and which, as a matter of fact, were completely exploded by proponents' experts, would be necessary to overthrow this direct and positive testimony establishing the will. Courts have always, and rightly too, regarded direct and positive testimony as far more convincing than negative testimony or mere opinions.

It was absolutely necessary then for contestants in order to defeat this will to break down the testimony of Henry C. Adams. They tried to accomplish this by endeavoring to prove (1) that the red ink interlineations in the draft or copy (P. 236) which Mr. Adams had produced, were made with ink containing eosine, which was not discovered until 1874; and thus discredit his testimony; (2) that he would be greatly benefitted pecuniarily by this will, and (3) that his character for truth and veracity was bad.

(1.) The War of the Red Inks.

Proponents' experts, using as standards genuine documents and signatures which fairly represented the scope and diversity and characteristics of the handwriting of the testator and subscribing witnesses had shown that the peculiarities and characteristics to which contestants' experts had pointed in the questioned signatures to support their elaborate theory of forgery were found with scarcely an exception in the standards, and were in reality, evidences, not of forgery, but of genuineness, and that besides there were so many other strik-

New Jersey State Library

ing characteristics common to the disputed signature and admittedly genuine writings as to leave no doubt about the genuineness of the signatures. Contestants' experts had used only the comparatively uniform check signatures of testator as standards. Proponents' experts used not only these standards, but also a great many letters and letter-signatures of testator, and the facts and characteristics which they pointed out to the Court were in some cases found in both kinds of standards and sometimes only found in testator's ordinary handwriting in his letters and signatures. In regard to the subscribing witnesses' signatures, the contestants' experts made no study of any standards previously to giving their testimony, and in the case of two of the signatures, the most casual comparison in Court with one or two standards and in the case of the other signature made no comparison whatever with any standards. Proponents' experts on the contrary had studied numerous standards of all three of the witnesses' handwriting, and in these pointed out to the Court the facts and characteristics which sustained their conclusions that the signatures are genuine, and the contestants' case was thus overthrown.

Instead of answering or endeavoring to answer this testimony based so largely upon the additional standards, contestants recalled Carvalho who had seen only a few of the standards of the subscribing witnesses' signatures, and who without giving any details or pointing to any facts to support his opinion, made the general assertion that the standards—the few which he had seen—had no resemblance whatever to the disputed signatures, and then contestants proceeded to make an attack upon the draft or copy which proponents had offered in evidence.

It is evident that this attack being collateral to the main issue—had no other purpose that to discredit Mr. Adams' testimony.

The Draft P. 236: Mr. Adams had testified that he first made a draft "or attempt to make a will for Mr. Gordon" from memoranda which testator gave him

and "when he (Gordon) saw it put together and read "it he concluded to change it and did, and gave me "the memoranda for changing it and we made the "changes in it I believe; and from that drew another, "that is No. 2" (36; 1456). Mr. Gordon carried No. 2, as he had carried No. 1, in his pocket for a few days and read it and studied it and made changes that were written on slips of paper that seemed like slips "from a memorandum pad" (1456). These changes were written in No. 2, Mr. Adams says, with red ink, and No. 3, which is the will P.1, was drawn from this amended draft No. 2 (1457). Mr. Adams kept No. 2 with these changes made with red ink (1457) as he wanted to preserve some memento of the transaction. "I intended," he says, "to keep this as a keepsake as long as I lived" (1459). He wrote in the signatures some time after the will was executed from memory which accounts for the fact that the order of the second and third witnesses is different from that in the will itself (1461; 1653).

When Mr. King called on Mr. Adams at Orange in November, 1890, the latter produced a document which he thought was this draft No. 2, which he had made in 1868, and he spoke of it to Mr. King as the original draft (36; 1629) and a little later when he and proponents' attorneys became anxious about the safety of the paper, thinking they might have to probate it as a lost will (1457) Mr. Adams took it to Trenton to the office of the Secretary of State and deposited it with him endorsing upon the envelope "Original draft of will of G. P. G.," &c., (1458; 1645). It remained in the custody of the Secretary of State until in June, 1891, when it was opened in the presence of the Master and the attorneys (1458).

After the will was opened by the Ordinary and Mr. Adams saw that it was written on blue paper; and after the draft was opened in June, 1891, and Mr. Adams noticed that it was on white paper (1645; 1624) he recalled the fact that in 1868 he used blue paper only, and could not recall having used any white paper at all at that period (1624; 1654). He was per-

plexed and exercised in mind about the matter (1624; 1654) and wondered whether it was possible that this paper, Exhibit, P. 236, was after all not the original draft, but a reproduction which he had made at some later period or subsequent to 1868 (1624; 1655). His mind was so filled with perplexity that he went to Mr. Beckett and Mr. Collins and told them about his perplexity (1624; 1655; 1657). He had considered this as the original draft and could not remember having made a copy, and yet the white paper staggered him (1645-6). "I was puzzled by it," Mr. Adams says, "because it was on white paper and my recollection or impression was that I used nothing but blue paper in 1868, and I told Mr. Beckett that there was a link or two in the chain of circumstances gone and I could not reconcile it and it troubled me considerably" (1624). Mr. Beckett suggested that he might have obtained the white paper from Gordon or from his father's stationery, and this reasonable suggestion quieted his perplexity and he concluded that this must be the original draft in which he remembered making the red ink interlineations in 1868 (1625; 1645; 1657), and dismissing the subject from his mind he went on the stand and so testified in September, 1891, (1646; 1657). Subsequently, however, his doubt returned (1646), and his attention was directed somewhat more to the matter by the claim set up by the contestants that the red ink interlineations in P. 236 could not have been made prior to 1874 (1647), as they alleged the ink contained eosine, a substance that was not discovered until that year.

In his perplexity he thought over these matters after September "in the vigils of the night" (1646), and concluded that there must be some mistake about it (1646), that at any rate he had been a "little too sanguine" in his testimony (1646), and he suggested to Mr. Collins that his testimony ought to be corrected (1653). Accordingly he was recalled, at his own request, at the next opportunity and testified that he was in doubt whether P. 236 was the

original draft or a copy. He recollected a conversation he had had with Gordon somewhere between 1875 and 1877 when Gordon told him he wanted to make another will, and asked him where the will which he, Adams, had drawn was (1625). He remembered telling Gordon that he thought the original will was probably among his father's old papers at Woodbridge, over which he had no control, but that he had the original draft " which would enable him to make a new will as well as the will itself " (1625 ; 1632 ; 1648). The two had several conversations in which this will and the making of a new will were discussed (1647). Mr. Adams could not, however, remember distinctly whether Gordon asked him for this draft or not (1649) but was sure that Gordon spoke about it several times, and his best recollection is that Gordon " did call for it " (1637). If Mr. Gordon did ask him for the draft, he is very certain he would have given it to him and had made a copy, a fac simile, to keep as a remembrance of the drawing of the will, which was a peculiar and difficult work (1626), the will being of much more importance than any one he had ever drawn (1627 ; 1628). If he made a copy of so important a paper it would be like his habit, which originally came from making copies of papers which might come into controversy, to make as nearly as possible a fac simile of the original (1627 ; 1628) and he would, in making such copy, in accordance with his habit, have written the black ink portion first, just as it originally stood, and then have made the erasures, and afterward the interlineation (1627). Mr. Adams also thought there was a possibility, but " an improbable possibility " that he might have made a copy at the time that he saw A. Sidney Doane or Cuthbert Gordon in 1879 (1628). Since 1879 he has been very much occupied with his literary work and has very rarely thought about the matter and cannot remember having had his attention directed to it especially between 1879 and the time he saw the copy of the *Telegram* in November, 1890 (1630). He could not

swear positively whether P. 236 was the original draft, as he had been accustomed to regard it, or a copy. He had made an original draft, with red ink interlineations similar in all respects to this P. 236, in 1868, and had drawn the will from it (1630), and if P. 236 is not that original draft, which Mr. Adams thinks must have been on blue paper, then P. 236 is a copy of the original (1630).

Had Mr. Adams, when testifying on September 10, 1891 (1455 *et seq.*) suggested, as he did when recalled on October 23d, 1891 (1624), the possibility of P. 236 being a *fac simile* instead of the original draft No. 2 of the will, and had he given precisely the same testimony which he did when recalled, it is obvious that the desperate attack on him in the matter of the red ink would have had no force whatever. How is the case changed by the too confident reasoning with himself, which satisfied him in September that the paper was the *original* draft? He was clearly conscientious about it, and his conscientiousness is only brought forth the more clearly by his insisting, in October, when his doubts had revived, upon making them known to the Court in advance of the testimony of expert witnesses, present in the court room—which counsel were ready to produce, and did immediately afterward produce, to show that it was entirely possible, and even probable, that the red ink used on the document was of a kind in existence in 1868. The truth is—not strange with a man of his years—that Mr. Adams' memory is not tenacious on all points. There are several notable examples of this. For instance, he continually confused Mr. Beckett with Mr. Booraem (70, 71). His recollection of the date and purpose of his interview with Judge Savage was clouded (45 to 49, 61 to 72); yet it is evident from the silence of Judge Savage when called as a witness by the contestants (495) that there was nothing at all suspicious in the time or circumstances of the interview. Again, he thought that it was "Cuddie" Gordon who had replied to his letter to that young man, printed at page 57, and gave the contents of the

reply as he remembered it (24); but the internal evidence of the postal card from Mr. Adams found among the elder Gordon's papers is, that it was the father and not the son who wrote (57).

All this cannot affect his positive, direct and affirmative testimony as to the execution of the will. There is no possibility of failure of memory there. The document itself is before us, with the signatures. Contestants say he *forged* the signatures. Perjury, not failure of memory, is the only alternative to the truth of his testimony on this subject.

But let us see if it is clear, as contestants think, that the red ink writing upon P. 236 must have been put there after 1874. Of course, it must if the ink was made from eosine. But was it?

Contestants' Red Ink Experts: The contestants called as "red ink experts," Harry B. Hodges, who has studied chemistry at several German universities, had been instructor of Chemistry at Harvard College, from 1875 to 1880, and after that was employed to do experimental work for Carter, Dinsmore & Co., ink manufacturers, of Boston (1506); William A. H. Stafford, a manufacturer of inks, who has been connected with the business since 1871 only (1543); James H. Stebbins, Jr., who has studied chemistry at several European universities (1549), and had given some attention to the subject of aniline colors (1549; 1550); David F. Davids, of the firm of Thaddeus Davids & Co., ink manufacturers (1553); Henry Morton, the President of Stevens' Institute of Technology, of Hoboken, N. J., formerly Professor of Chemistry at the University of Pennsylvania (1557), who had given special study to fluorescent bodies in the early seventies (1558); Albert R. Leeds, Professor of Chemistry at the same institution (1566); Charles A. Doremus, who had studied chemistry in Germany, and is a teacher of chemistry at various institutions (1575; 1574), and Carl Pickhardt, who has been an importer of dye stuffs for over twenty years (1580; 1581). All of these claimed to have more

or less familiarity with the characteristics of red inks and the substances used for their manufacture.

Mr. Hodges, who had made many experiments with red ink, testified that he thought the red ink interlineations were made with ink containing eosine, that the strongest proof to his mind that the ink in question was eosine was "its peculiar color and bronze effect" (1537–8), and the "best test" outside of this in his opinion was "that made with a strong ammoniacal acid or sulphate acid of about half strength or a strong hydrochloric acid." The effect of either of these acids would be to turn writings made with eosine ink yellow (1511). This witness produced samples of writing which he said were made with fuchsine, carmine, safranine and eosine solutions respectively (Ex. D. 134, p. 1511), and experiments were made on these samples with hydrochloric acid. The result was that in one case the eosine was not appreciably affected by the acid, owing, the witness said, to the thickness of the ink, but in another place the ink was changed by the acid to an orange color, and in still another case to a dull orange yellow (1575). The witness then applied hydrochloric acid to certain words in P. 236, and thought the result was that the color of the writing was changed to "an orange shade" or "an orange yellow," and this confirmed his judgment that the ink contained eosine (1542, 1543). The witness testified that no red inks were known in 1868, except carmine, Brazilwood and fuchsine, and that there had been no other red ink produced from aniline colors at that time (1507; 1519). The witness professed to be thoroughly familiar with the literature of the subject, and testified that eosine was not discovered until the year 1874 (1507; 1516). The other witnesses gave testimony to the same effect. All agreed in the opinion that the red ink of P. 236 was made of eosine because of its peculiar red color and gold bronze irridescence and its turning yellow when treated with hydrochloric acid, and that no substance was known in 1868 from which a red ink could

have been manufactured showing these characteristics. With this testimony contestants closed their case, but at the next hearing moved to re-open their case because they claimed to have some newly discovered evidence. Mr. Stebbins, one of the red ink experts, was recalled, and said that since the last hearing he had been making experiments with red ink, and had discovered two or three new tests (1580). The first of these was the "diazo" test, which consisted in the application of nitrous acid, phenol and hydrochloric acid successively (1591; 1592). The effect of this experiment, the witness stated, was to distinguish eosine from all other inks. He proceeded to apply the test to what he stated were samples of writing made with solutions of eosine, coralline, and a large number of other colors; practically the same result was produced on the coralline as on the eosine, as the witness admitted (1597). Whatever slight differences there were could be readily accounted for (1617) by the fact that the solution of coralline was evidently thin as compared with the eosine, and had faded by reason of the use of caustic soda in its preparation (1622).

The results of this new diazo test were evidently not very satisfactory to the witness himself; the effects anticipated were not produced in a number of instances, and the test entirely failed to distinguish eosine from coralline. The witness endeavored to break the force of the latter fact by stating that writing with coralline ink would within from twenty-four to forty-eight hours bleach out and change color and become almost white (1623). (This, proponents' expert, Endemann, testified would only result when a caustic alkali was used with the coralline in preparation of the ink (1675–1677) as was the case with the coralline ink Mr. Stebbins testified about (1622). The witness then described another new test which he claimed to have discovered, called the fluorescent test, and which consisted in dissolving in water a small quantity of eosine' when the witness said "a very deep green fluorescence will be obtained" (1604). The witness applied this ex-

periment to some of the eosine which he had produced and to a small quantity of red ink which he took from P. 236, and a somewhat similar fluorescence was observed in both cases, except that the fluorescence was lighter in the case of the ink taken from P. 236 than in the other (Exhibits D. 151 and D. 162).

The test was then applied to other solutions which the witness had produced, but no fluorescence was obtained (1605). On cross-examination the witness named some other substances, as chrysaniline and magdala red, which had green fluorescence (1617), but was entirely ignorant of whether or not such cheap and common substances as turmeric and fustic had any fluorescence; he never had heard that they had, and he did not know whether there were any other fluorescent substances or not, but did not think there were (1619). As an illustration of the ignorance of the witness on the subject of fluorescence, it appeared that he did not know anything about the article of proponents' witness, Prof. Morton, a well-known authority on the subject of fluorescence, in Johnson's Encyclopedia, in which the writer enumerates turmeric, fustic and several other common substances that are fluorescent (1619).

Proponents' Red Ink Experts: The proponents called four experts: Dr. Endemann, who had studied chemistry for several years, beginning in 1861, in the German polytechnic schools and universities, and had been practicing his profession as chemist since 1864, for several years being a professor of chemistry at Columbia College. He had given special attention to dye stuffs and was particularly familiar with eosine (1663; 1664). He testified that other substances were known in 1868, capable of producing red inks, which have a gold bronze iridescence and turn yellow under hydrochloric acid (1664). The witness had experimented with aurine and produced samples of inks which he had made from aurine in solution with other substances. Examples of writing made with these inks were marked Exhibits P. 241 to P. 252. Dr. Endemann testified that the

samples of eosine writing, produced by the contestants' witnesses, Hodges and Stebbins, were entirely different in color from the red ink writing in P. 236 (1672; 1673), while the witness' ink, No. "1888" (P. 244), "is nearly exactly like it in color" (1673), what slight difference there is being fully explained by the difficulty in reproducing at the present time the same shades which were characteristic of the imperfect dye stuffs used in 1868 (1673). He further showed that the golden irridescence of the aurine specimens which he produced corresponded much more nearly with the golden irridescence of P. 236, than did the irridescence of the eosine writings of Prof's. Hodges and Stebbins, which had a decided greenish cast (1673). The witness testified that the inks prepared with *caustic alkali* would bleach out quickly (1676; 1677), and that it was highly improper to use caustic alkali for that purpose (the very thing that the learned Prof. Stebbins had done in his coralline solution prepared for the purpose of his diazo test); this was a well known fact in 1865, and is also shown by the specifications of the Ellis patent (Ex. P. 239), (1676). Prof. Endemann's inks, however, being prepared with other alkalines (1670; 1672), would in his opinion undoubtedly have lasted from 1868 to the present time, if dry on paper (1676), unless exposed to light (1678), in which case all dye stuffs will fade (1678), notably eosine (1681); but, of course, an ink which has been fixed on the paper for 23 years would not fade as readily as ink freshly applied (1682). Regarding the writing on P. 236, the witness testified that he did not believe the ink used was an eosine ink (1664; 1680); he could not tell what it was (1680; 1681), but as a result of his examination and experiments, believed that it was "substantially an aurine ink with additions" (1680).

Dr. Endemann himself remembers experimenting with aurine, and when in 1860 or 1861 it was rediscovered by Gilbert and Smith at the University of Marburg, and they wrote to England to ascertain its practical usefulness as a dye-stuff, he says, that the reply

was that it could not be used for anything but the *manufacture of inks* (1667). The witness further mentioned the fact that in 1868 he bought some red ink at a stationer's in New York, which, in the light of his present experiments, he believes must have been an aurine ink, as it showed the same effects under the action of carbonic acid gas (1676 ; 1677).

Prof. Henry B. Cornwall, who occupies the chair of analytical chemistry at Princeton College (1682), and has been the head of his department since 1873, and who had studied chemistry at Columbia College and in Germany, had given special attention to the subject of aniline colors. He testified that he was not able to say what the ink on P. 236 is, as none of the tests applied by the contestants was conclusive (1684). The fluorescent test of Prof. Stebbins is of no weight, as there are many substances like turmeric and purpurine, which would produce the same effect, and which are besides inexpensive and very likely to find their way into inks (1685). The witness produced two specimens of writing made with aurine inks prepared by himself (1689 ; Ex. P. 253 and 254) ; and stated that in his opinion they corresponded just as closely in color with the ink on P. 236 as did the eosine samples of Professors Hodges and Stebbins (1686 ; 1687) which in turn varied in color as compared with each other (1686). The irridescence of these eosine writings is of a more greenish metallic color than that of the writing on P. 236 (1687). The difficulty in reproducing the exact shade of an ink made twenty-three years ago, he stated, lies in the fact that the ingredients are not made in the same way as they used to be (1687). Prof. Cornwall believed that the writing with the inks he had produced would last as long as the paper, if it is not exposed to light (1688) ; while eosine will fade by exposure to light (1689) ; he agreed with Dr. Endemann that ink which had been on the paper 23 years would be less likely to fade than ink freshly applied (1688.)

Professor Lewis M. Norton, professor of organic

chemistry in the Institute of Technology in Boston, who had received a chemical education both in Germany and in Boston, and who had given special study to aniline coloring matters, and had frequently given testimony in Court, testified that he had experimented with aurine (1691) and produced a sample of aurine ink which he had prepared and also samples of writing with the same (P. 255; P. 256; P. 257), showing a great variety of shades of color (1692; 1693). The witness "would not hazard an opinion from an inspection" as to whether the red ink on P. 236 was eosine or what it was, and did not think any one could do so (1695). He thought that the eosine writings of Profs. Hodges and Stebbins on D. 150, correspond with the ink on the draft in the irridescence, but as far as the shade is concerned there is a great difference, while his specimen of writing with aurine ink resembles it more nearly in color and has the same irridescence (1693). It would be impossible to produce the same shade of red as is found on P. 236 at the present time (1694), and Prof. Norton exhibited specimens of writing with mixtures of the same aurine with different ingredients which all varied greatly in color (1694). In the samples of writing with the eosine samples of Profs. Hodges and Stebbins "there is a decided difference in the shade" (1697), which he did not think was due merely to a greater dilution in one than in the other (1699). Regarding the "fluorescence test," he stated that there were many substances which produce a green fluorescence (1695) and it would not be difficult to find a mixture which would produce a fluorescence which had both the green tinge and the roseate hue shown by the contestants' experiments (1698). The reasons why aurine has gone out of use, the witness stated, were that it did not give as favorable results as the better colors that superseded it, and it was specially objected to because it caused skin poisoning (1695).

Professor Arthur H. Elliott, of the New York College of Pharmacy, who had already testified as an expert on

the question of handwriting, was then recalled by the proponents. He stated that his chemical studies began in London in 1866, when the aniline colors were a new fad with chemists, and the most brilliant and sensational discoveries were being made in that field; the witness became interested in the dyeing and calico printing industry, and in that connection he acquired a very intimate knowledge of the properties of aniline colors and dyestuffs generally, which was further extended by experiments made in 1878 with Prof. Chandler (1700). The witness remembered particularly the efforts which were made in 1866 or 1867 in London to "kill" or obliterate the *golden irridescence*, which was an objectionable feature of the red ink made then of aniline colors; he remembers that the coloring matters then used were fuchsine, chrysaniline, rosolic acid (aurine) and others (1701). Prof. Elliott could not form any opinion as to the substance of which the red ink on P. 236 was made. "My experience," he said, "with regard to colors of this character, is "that tests applied to such minute quantities are very "delusive and inconclusive in my mind, *and I would "not like to state, from any test that I have seen applied "to such small quantities, whether it is eosine or not*" (1702). The witness knew personally of experiments made to manufacture ink of aurine in 1868 or 1867 (1703). He also stated that there were many other substances which would produce a greenish fluorescence (1703; 1705).

It was further shown by proponents that aurine not only could have been employed for the manufacture of red ink before 1868, but that it was actually used for that purpose, and that this was a matter of common knowledge in the scientific world.

One of the strongest proofs of this is the British patent granted to Henry Ellis in 1865, a duly authenticated copy of which was admitted in evidence, Exhibit P. 239, and the numerous references to the sub-

ject in the chemical literature of that time. Dr. Henry Ellis, in the specifications of his patent (P. 239) says: "The liquid aniline dyes I treat as follows: "*For "red ink I take aureine one measure*, and add to it "an equal measure of commercial silicate of soda in "solution of specific gravity, 1.5 * * * By vary- "ing the quantity of either the silicate or the dye, "*various shades* of red may be produced." (1661). At another place he states that the color *may be modified* by the addition of gamboge (1661). Writing fluids produced in this way have "*great permanency*" and will not corrode "steel or other metallic pens" (1661).

By an article in the "*Chemical News*," a recognized London scientific publication of August 4th, 1866, containing a reference to this patent, the whole scientific world was made familiar with it (1665). In the same publication of July 10th, 1868, p. 18, it is again mentioned in an article by Dr. Adriani, who says, (1666):

"As regards the solution of aurine, in weak fixed "alkalies and their carbonates, from experiments I "instituted *I think I may recommend aurine cake as "an article for the manufacture of red writing fluid— "red ink—of great beauty*," and he calls particular attention to the advantages of such an ink that it will not corrode, but rather protects steel pens, and will not decompose the ultramarine used for coloring paper. Then he further says: "Tampering with what is "written with alkaline aurine solutions, *with acids for "instance*, will at once become evident by the writing "*becoming yellow*, while the primitive color cannot be "destroyed" (1666). This last remark is particularly noteworthy in connection with the "best test" of the scientific experts of the contestants, their "conclusive" hydrochloric acid test. Again, in the same article, at p. 33, Dr. Adriani says:

"Nothwithstanding it is asserted that the color from "rosolic acid [the crude aurine (1667)], is very fugitive, "I find that things written now, five or even eight

"weeks ago, exhibit no change or fading. *Aurine in "alkaline solution far surpasses the best red ink in "brilliancy. * * * The color is extremely brilliant "and the raw material not expensive, considering its "immense tinctorial power even in small quantities.*"

How widespread the knowledge of the use of aurine for making red inks was at that time is shown by the fact that Wagner's Annual Report, a prominent German scientific authority, published in 1869, which reviews the progress in chemistry and technology and the literature on the subjects of the year 1868, reproduces the article of Dr. Adriani in the Chemical News, and states that it has also been published in six other German monthly and weekly publications during the year 1868 (1674). In the "register" of Wagner's Annual Report published in 1876, referring to the works of ten years previous to 1874, the first substance mentioned for the manufacture of red ink is "aurine" (1674). In view of the facts stated by Dr. Adriani in his article in the *Chemical News* and the universal interest which it excited, as evidenced by its frequent reproduction in other journals, there is every reason to suppose that just at the time in question, shortly before 1868, aurine ink was manufactured quite extensively; of course, like nearly all other substances used for making red inks, aurine was later on driven out of the market by the brilliant and—what is more important to the ink manufacturer—cheaper eosine.

It is a most remarkable fact that every one of the learned experts for the contestants failed to mention or remember aurine, this substance which responds to every one of their "conclusive" and "infallible" eosine tests, as a coloring matter used for red inks before 1868; it is a mystery for which the proponents are unable to find any explanation.

But this side issue is a wholly useless digression from the real controversy. Exhibit P. 1 bears internal evidence, in certain interlineations, repetitions and omissions, of having been copied from a pre-existing draft, and from exactly such a draft as P. 236. (Compare

P. 1 with P. 236 in the following cases: Page 2, lines 1, 4 and 19; page 3, lines 7 and 11; page 4, line 4; page 6, lines 2 and 4, and 3rd from the end of page; page 7, line 21; page 9, lines 8 and 15; page 16, line 1; page 18, line 12; page 19, lines 9 and 14; and the striking case on page 14, after line 7, where the words "fully complied with," which in P. 236 were in the margin, and therefore overlooked in copying, were afterward interlined in P. 1). We have demonstrated under Point XXVII., that such a paper must have been in existence when the Brooklyn will was written in 1873. Assume that the red ink in P. 236 is eosine—all that is proved by that fact is, that P. 236 (so far as the red ink interlineations are concerned) is *not* the original draft from which P. 1 was copied. It does not prove that the original draft and P. 1 were written after 1874.

(2.) No motive for Forgery and Perjury.

Contestants made great efforts to prove that under the provisions of this will Mr. Henry C. Adams had a pecuniary interest which supplied a motive for the crimes which they charged. The will provides that if testator is unable to purchase during his lifetime the farm which Henry Adams, the father of Henry C. and Edward L. Adams and of the other two subscribing witnesses then owned for $32,000, which he has "offered and is willing to pay for it," then the executors shall keep the offer open, and, if Mr. Adams will accept it, they shall purchase the farm for testator's brother, Collingwood Gordon. The "experts" called by contestants thought the price was high, but admitted that Gordon had paid *higher* prices for land in 1868 and thereabouts and that some of the owners of land in Woodbridge at that time valued their land at as much as $1,000 an acre—twice the price named in the will for the Adams farm (697; 702). These witnesses testified that the prices of real estate were much lower at the present time than in 1868, and that they had been still lower in 1873, and that it was almost impossible to

tell what the market value of the Adams farm was in 1873 or is now, but in the opinion of the witnesses it was considerably less than the price named in the will (696 ; 697 ; 700 ; 702). Mr. Henry Adams had built a substantial house and carriage house on this farm, the former costing $10,000 (1315 ; 1321; 1322). Edward L. Adams, one of the Trustees of Henry Adams' Estate, testified that his father was offered $35,000 for the farm in 1868 or 1869, and that he refused to sell (810), and that the Trustees of the estate in making up an inventory or estimate of the value of the estate had valued the farm at $25,000 shortly after Henry Adams' death (812), and that Henry C. Adams was unwilling to have the place sold at the price mentioned in the will (128).

Mr. Henry Adams before his death conveyed his property to trustees, who were to pay certain amounts to his children for life ; the amounts to be paid to Henry C. Adams and Edward L. Adams were $700 a year each, for life, with possibly a small amount in addition from any surplus income of the estate (The Deed of Trust, Ex. P. 208). Henry C. Adams is not one of the trustees, although Edward L. Adams is a trustee. An action appears to have been brought in the Courts of New York on behalf of the son of Alonzo C. P. Adams to set aside this trust deed about the year 1881, and is still pending (130). None of the family except the son of Alonzo C. P. Adams desire to overturn this trust deed and divide the estate (130; 813). Henry C. Adams has always strongly opposed the setting aside of this trust, and has never acquiesced in any pretended decree of a New York Court setting it aside (813). A trust company in New York has at Mr. Henry C. Adams' disposal moneys arising from the estate of Henry Adams, which Henry C. Adams would receive as an heir at law, if he would acquiesce in the decree setting aside this deed of trust (69813; 814). The value of the Adams estate is about $140,000, and Henry C. Adams would receive one-fifth of it, which would amount to about $28,000, if the estate were divided

among the heirs at law (811; 812). These facts are not disputed by the contestants. It is very evident that Mr. Henry C. Adams is not influenced by mercenary motives; otherwise he would take the fifth of the estate and live in luxury for the few years of life that remain to him, instead of continuing to live in the extremely frugal manner which has been characterizing his life for many years.

It would seem from the testimony that perhaps the market value of the Adams farm may not be quite so much as the price named in the will; the difference however would not be great and would be very insignificant when divided by five, so that if it were possible to enforce such a provision of a will twenty three years after its execution (which no one, much less a lawyer like Henry C. Adams, would claim for a moment) when nearly all the circumstances have completely changed and the beneficiary for whom the provision was made is dead, the interest which Mr. Henry C. Adams could have in having that provision carried out would be very slight indeed, and it is utterly incredible that a man of his intelligence and character should commit such atrocious crimes as fraud, forgery and perjury for a sum so insignificant, when he has refused on principle to acquiesce in the setting aside of his father's deed of trust, although, by such acquiescence, he would at once obtain a large sum of money. It is infinitely more reasonable that Mr. Henry C. Adams himself accurately expressed his own views and motives when he said: "Now, Mr. King, you can have this and all the information I have and all the facilities I have, and you can have the use of that draft, and you can have it all without money and without price" (37.)

But neither Mr. Henry C. Adams nor any member of the Adams family claiming through or under Henry Adams has or can have any possible interest under this will. The laws of this State (Revision, 1244) provide: "4. That if any person has attested the execution of "any will or codicil after the 1st day of March, in the

" year of our Lord one thousand seven hundred and " fifty-three, or shall attest the execution of any will " or codicil hereafter to be made, to whom any bene- " ficial devise, legacy, estate, interest, gift or appoint- " ment of or affecting any real or personal estate, hath " been or shall be thereby given or made * * * * " such devise, legacy, estate, interest, gift or appoint- " ment shall, so far only, as concerns such person at- " testing the execution of such will or codicil, *or any* " *person claiming under him or her, be utterly null and* " *void.*"

No member of the Adams' family could claim any benefit or interest under this will, for as to them such interest, even if provided by the will, would be "*utterly null and void.*"

Another suggestion of a motive which contestants made in their cross-examination of Mr. Henry C. Adams was that he might have been influenced to commit these crimes because he disliked Mrs. Gordon, and desired to have revenge on her by forging a will which should diminish the sum which she should obtain from her deceased husband's estate. This charge is not worthy of serious consideration. Mr. Adams has frankly indicated that he distrusted Mrs. Gordon and did not like her treatment of the testator, and that he thought that the will gave her more than she ought to have. Other persons shared his views in regard to Mrs. Gordon, including at times probably the testator himself. There is no evidence, however, that Mr. Adams ever cherished or showed any desire to injure Mrs. Gordon, or ever committed any act, or uttered a word, showing hostility to her, and the mere feeling that she was not a proper wife, and the remembrance of a single unpleasantness, would not furnish a motive which any reasonable man could accept to induce the commission of such crimes as the alleged fraud, forgery and perjury.

(3.) Contestants' Attack on the Reputation of Henry C. Adams.

After the contestants had developed their theories relative to the forgery of the will upon the narrow basis of their check standards, they were forced to make some direct attack upon the character of Henry C. Adams in order to have some basis on which to rest such charges of forgery. The development of this attack and the answer to it made by the proponents, is the subject of this paragraph.

Contestants' Witnesses.—The contestants found in Henry B. Cushney a willing tool for their purpose. He is an attorney and counsellor at-law, residing at Fonda, New York, fifteen miles from Fort Plain (666); he knew Henry Adams and Henry C. Adams, and had business relations with them, and testified that Henry C. Adams' reputation for truth and veracity among his neighbors in the locality of Fort Plain was bad (671). He also stated that Mr. Adams left Fort Plain fifteen or twenty years ago (670). Mr. Cushney also testified, against the objection of the proponents, that he would not believe Henry C. Adams under oath (672). On cross-examination this lawyer admitted that he came from Fonda, New York, into the State of New Jersey voluntarily, to testify in this case; and it also appeared on his examination, that his zeal to record his sincere animus had gone further and to the extent of obtaining certain papers from the County Clerk's office at Fonda, and bringing them down to aid him in testifying as to the handwriting of Henry Adams, being specially deputized by the County Clerk of Montgomery County to so bring them (668). He produced these Court records from Montgomery County, N. Y., while upon the stand "of his own free will, to make a comparison, if necessary" (672). At one place he testified that there was no enmity between him and Henry C. Adams and that they had never been anything but "*friends*" (674); but notwithstanding this assertion he admitted that he had manifested animosity against

Mr. Adams while on the stand (679). It further appeared that in certain litigations in Montgomery County Mr. Adams was the attorney upon one side, and the witness the attorney upon the other, *and that Mr. Adams had been singularly successful as against Mr. Cushney* (674, 675). It also appeared that all the persons who had ever said anything against Mr. Adams, said it to Mr. Cushney and then straightway died. At all events, he was not very successful in naming any person who was now alive whom he had ever heard speak adversely of Henry C. Adams. He did mention the name of Mr. William T. Rudd as being one of these persons, and that Mr. Rudd was expected in Court to testify against Mr. Adams, and that he (Cushney) had received a communication from Mr. Rudd relative to this matter (678, 679); but as the same Mr. Rudd afterward went on the stand in behalf of the proponents (1236 ; 1237) and emphatically denied these statements, not much can be made out of them in behalf of the reputation of Cushney for truth and veracity. So Henry B. Cushney was the only witness the contestants called who swore directly that the reputation of Henry C. Adams was bad, and that he (Adams) was not to be believed under oath (672). We shall comment below upon the reputation of Mr. Cushney himself, as appears from the testimony of several witnesses afterwards called by the proponents.

The only other witness called by the contestants who testified as to the character of Henry C. Adams, was Frothingham Fish, who resides at Fultonville, Montgomery Co., New York, also about fifteen miles distant from Fort Plain, who was at one time a Judge of the Supreme Court of the State of New York. And, notwithstanding this fact, he also voluntarily came two hundred miles and into the State of New Jersey, expressly to give testimony against Mr. Adams. It is true that, apparently, he was not actuated with motives of intense personal malice like Cushney, but that fact, perhaps, does not render his conduct any less open to censure, and it is true that he presided at a certain

trial where Mr. Adams was one of the attorneys (1226). And his decision therein—after Mr. Adams had severely criticised it as well as Judge Fish's conduct therein at the General Term—was reversed. The most that he could say against Mr. Adams was that he had understood that the latter had been unscrupulous in making affidavits (685). All he recollected about it was that he had heard Peter G. Webster, now dead, talk about Henry C. Adams. He had heard Webster say that Mr. Adams was reckless and unscrupulous in the business of making affidavits, but the witness did not know whether the affidavits were those of Henry C. Adams himself or of his client's (686). All of the other persons whom Judge Fiish had heard speak of Henry C. Adams, are now dead (686 ; 687). This witness was very decided in his testimony as to the good character of Henry Adams, Sr. He admitted that he had come nearly 200 miles on purpose to testify at this trial (690, 691).

Both of the above witnesses, it will be remarked, testified only to the reputation of Henry C. Adams, while he resided in Fort Plain, New York, and it will be borne in mind that he left Fort Plain in February, 1868, and has not since been back there to reside, so that the period covered by their testimony would be for fifteen or twenty years prior to 1868.

Proponents' Fort Plain Witnesses: Alfred J. Wagner testified that he resided in Fort Plain, New York, and had always lived there ; he was about 64 years of age, and had been Town Clerk, Supervisor and Sheriff of that county, and knew the family of Henry C. Adams and Henry C. Adams himself very well,from boyhood even. He was very intimate with the Adams family, and he knew the reputation of Henry C. Adams in Fort Plain for truth and veracity, *and that it was good and always had been good* (1066). This witness also knew the Cushney referred to above and had known him for forty-five years, and he knew his reputation in

Montgomery County for truth and veracity, *and that it was bad* (1066). He further testified that there never had been in Fort Plain a man by the name of James Carey or James L. Carey, the latter having been one of the persons whom Cushney had named (676), as having once testified against Henry C. Adams' character as follows: "The next was James Carey, I think his name was James L. Carey. He was an insurance agent for the village of Fort Plain—a prominent man there, and I heard him swear to it on the trial there."

This witness also testified that he had never heard of a man by the name of Lawrence Morris in Montgomery Co. (1067). Cushney had also (676), testified "that Lawrence Morris, a Justice of the Peace around there for a great many years—I heard him swear to it (Adams' reputation), on the trial of the case." He also testified that he had often heard Albert Hoffman speak well of Henry C. Adams' reputation for truth and veracity (1067), and further that Peter G. Webster was an uncle of the witness, and that his, Peter G. Webster's relations to Henry C. Adams were very intimate and friendly always; that he had never heard Peter G. Webster speak ill of Henry C. Adams; never heard him say anything against his character and reputation for truth and veracity, but on the contrary (1068). This was the Peter G. Webster that Judge Fish testified (684) told him (Fish), about Henry C. Adams' recklessness in drawing affidavits. As to one Cook, a lawyer, whom Judge Fish testified (688), spoke very hard things about Henry C. Adams, Mr. Wagner testified that this Cook left Fort Plain, *in the year 1851*, and went to California, and never returned to Fort Plain (1064, 1072). The witness Hackney testified to the same fact (1092).

Albert Dunkel testified that he came to New York City in 1871, and before that time he had always lived at or near Fort Plain; that now he was in the commission business in New York City; he knew the Adams family well in Fort Plain, and he knew the

reputation of Henry C. Adams for truth and veracity in Fort Plain when Adams resided there, and that it was good (1073). He further said that he knew Mr. Cushney, contestants' witness, and *that Mr. Adams' reputation was better than Cushney's* (1075), and that he had heard "Cushney spoken of in a way—I don't know just how to word it—not in a favorable way, but had frequently heard Mr. Henry C. Adams spoken of in a favorable way" (1076).

Abraham Nellis testified that he was seventy years of age, and that he resides in a place called Nelliston (named after the witness), very near to Fort Plain, in fact in the village. He knew Henry C. Adams well, and his reputation for truth and veracity where he lived, at the time he lived in Fort Plain, and had always heard him spoken of favorably (1077, 1078). This witness had been approached by the other side. "They came to see me—what I had to say about his character (Henry C. Adams'), and I said 'You must not speak to me about it'" (1078).

George C. Wood testified that he had lived in Fort Plain since 1861; that he was the manager of the Western Union Telegraph Co. there, and knew Henry C. Adams from 1861 to 1868; met him every day, and that Mr. Adams's reputation for truth and veracity at Fort Plain was good at that time and is now (1083).

David G. Hackney testified that he resided at Fort Plain, and had been Postmaster there, and was at present President of that village, and had known the Adams family ever since he had known anybody, and knew nothing against the character of Henry C. Adams (1091; 1092; 1094).

Charles Scott testified that he now resided at Newark, N. J., but formerly, and until three years ago, at Fort Plain, and that he never heard Mr. Adams' reputation for truth and veracity questioned (1102).

Daniel S. Morrell testified that he resided at Canajoharie, three miles from Fort Plain, New York; was a practicing lawyer there (1221) since 1856, and had been District Attorney of that county; he knew Henry C.

Adams, having formed his acquaintance about five years before Mr. Adams left Fort Plain. They were fellow practitioners at that bar, and the witness knew Mr. Adams intimately, and that his reputation for truth and veracity was good (1222). On cross-examination, this witness testified that he had never heard Henry C. Adams' character brought into question by any one in Court or out, but on the contrary, the witness had heard Judges Gridley and Belden speak favorably of Mr. Adams (1226; 1227).

Harvey Dunkel also testified that he was a lawyer in active practice residing at Canajoharie, and had been District Attorney of Montgomery County; he knew Henry C. Adams from 1859 until the latter left Fort Plain, and met him in the general legal business of the county, and that his reputation at that time, in that community, was good (1230).

Charles W. Wheeler testified that he lived in Canajoharie and was admitted to the bar in 1887, but had been a magistrate there since 1865; he knew Henry C. Adams and thought the latter had practiced before him, and as to his reputation for truth and veracity in that community when he dwelt there, the witness never heard it questioned; "never heard it questioned then or since" (1234).

John Finehout, merchant at Canajoharie, testified that he resided at Fort Plain from 1847 to 1860, and since the latter date at Canajoharie, and knew Henry C. Adams during the time "as well as anybody," and that his reputation was good (1235).

William T. Rudd, after directly contradicting the testimony of Cushney (1236), who had "*expected him here to-day*" testified that he lived at Fort Plain from 1838 to 1844, and that he never heard anything against Henry C. Adams (1237).

Edward A. Dillenbeck, a wholesale grain and hay commission merchant of New York City, testified that he lived at Palatine, two miles from Fort Plain, from 1845 till 1869, and then at Fort Plain until 1875, and that he knew Henry C. Adams well, and that his repu-

tation for truth and veracity was very good in that community (1323).

William J. Tingue, of Tingue, House & Co., of New York City, woolen and plush goods manufacturers, testified that he lived at Fort Plain until 1866; that he was about twenty-seven years old at that time, and had known Henry C. Adams from childhood up. Witness' place of business at Fort Plain was next door to Adams' law office. The latter's reputation for truth and veracity in that neighborhood was good (1419).

Solomon A. Morton lived at Fort Plain all his life until this year and knew Henry C. Adams there from 1864 to 1868 and never heard his reputation questioned (1424).

Proponents' Rahway witnesses:

Ernest J. P. Baumann swore that he knew Henry C. Adams in the year 1868 in Rahway, and he never heard anything against his reputation (777).

Thomas H. Shafer testified that he was a practicing lawyer and had resided in Rahway since 1844, and that he knew Henry C. Adams from the time he came to Rahway until Henry Adams, Sr. died; that he became acquainted with him in business, and that his (Adams') reputation for truth and veracity in that period and community was good. "I never heard it called into question at all" (1107).

Mortimor Jacques, who was one of the carpenters who built Mr. Adams, Senior's, house at Woodbridge (1315), testified that he knew Henry C. Adams from 1867 up to the present time, and that his reputation for truth and veracity when he (Adams) lived at Rahway "was good, sir, none better" (1318).

Dr. William B. Bloodgood, a retired manufacturer, living at Elizabeth, N. J., knew Henry C. Adams at Rahway in 1868 and 1869, and never heard his reputation questioned" (1428).

Proponents' Orange Witnesses:

Edgar Williams, who resides in Orange, N. J., and is the editor of the *Journal*, testified that he knew

Henry C. Adams for the last twelve years, and that his reputation for truth and veracity is good in the community in which he lives (1019).

Frank W. Baldwin, who has also resided in Orange for the last five years, and is the publisher of the *Orange Chronicle*, knew Henry C. Adams for the last ten or twelve years, and knows that his reputation for truth and veracity in the community in which he dwells is good (1022).

John N. Lindley, who has lived in Orange, New Jersey, for forty years, and has a store there, knew Henry C. Adams for the last ten years, met him very frequently, and knows that his reputation is good in that community (1023). He did business with him and he visited at witness' house.

John Gill, who has resided in Orange for thirty years, and who is a partner in a hat manufactory there, has known Henry C. Adams for fifteen years, having met him at witness' office, and at his house, and at his neighbors' houses, and never heard anything against his character (1026).

David George, who has resided in Orange for eighteen years, has known Henry C. Adams for the last twelve years, and has never heard his reputation for truth and veracity questioned or debated (1027).

Charles A. Lindsley, who resides in Orange and is in the coal business there. Henry C. Adams is a tenant of this witness, and has been such for about twelve years, and the witness never heard any one criticise or question Mr. Adams' reputation for truth and veracity in Orange. The witness has had business dealings with him and his (Adams') reputation is very good (1028).

Joseph Davis testified that he lived in Orange and kept a restaurant there since 1880, and has known Henry C. Adams since that time, and that his reputation for truth and veracity has always been good (1029).

George P. Kingsley testified that he was a member of the bar of this State, residing in Orange for the

last twenty-five years, and had known Henry C. Adams for the last twelve years quite well, and that his reputation for truth and veracity in Orange was good (1030).

Wilberforce Freeman testified that he was a member of this bar, but not in active practice, and had resided in Orange nearly all his life and had known Henry C. Adams for about ten years quite well, having seen a good deal of him, and had never heard anything said against him at all, and whatever he had heard people remark about him was good (1031.)

James W. Field testified that he was a member of the bar, residing in Orange, and had known Henry C. Adams since 1874 or 1875, having met him very often, "sometimes every day, sometimes once a week, or two or three times a week," and having seen him in his own (witness') law office, and the witness knew his reputation for truth and veracity in the community at Orange as good (1033).

Edward A. Everitt, testified that he is in the grocery business and had resided in Orange all his life; he was about thirty-five years of age; he had known Henry C. Adams for about twelve years and had traded with him, and knew the reputation of Mr. Adams for truth and veracity in that community as good (1034).

Giles P. Mandeville testified that he had always resided at Orange; that he was retired from business but was a Justice of the Peace, and had known Henry C. Adams for the last ten years, had met him at offices, at his residence and in the street, probably two or three times a week, and that his reputation for truth and veracity in that community was good (1090).

Ezra C. Williams, testified that he resided at West Orange and was a partner in a plumbing establishment; he had known Henry C. Adams for the last six or eight years (1417) and had had business relations with him (1418), and that his reputation for truth and veracity in that community was "first class" (1418), and this witness, when interrogated by the Ordinary as to what he meant by "reputation," answered "the general opinion

of a man, the public opinion, the sizing up of a man." Q. "How do you estimate that?" A. "Why, by common talk, the standing he has in the community" (1418).

Charles G. Williams, pharmacist at Orange, has known Henry C. Adams for about ten years and his reputation for truth and veracity there is good (1422).

Frank Jones, who is in the piano business at Orange, has known Henry C. Adams ten years, and his reputation for truth and veracity in the neighborhood of Orange is good (1421).

Charles E. Dodd, a mason and builder at Orange, never heard Mr. Adams' reputation for truth and veracity questioned or criticized there (1423).

Daniel A. Heald testified that he had lived in Orange about thirty years, and that he was the President of the Home Insurance Company, of New York City, and had known Henry C. Adams about thirteen years quite well and had business transactions with him, and had met him socially and knew his reputation for truth and veracity where he now dwells, and testified that it was good (1151).

It is unnecessary for us to comment upon this testimony. These witnesses speak for Mr. Adams in a manner more powerful than any arguments. They have covered the life of Henry C. Adams from his early manhood in Fort Plain, down to the present time.

In reply to the evidently mischievous malice of Cushney, and the disposition of Fish as to which we are at a loss to find the proper word to characterize it; three lawyers now in active practice in Montgomery County, testified to Henry C. Adams' reputation and professional standing when he was a practicing lawyer at that bar. One lawyer from Rahway, and three from Orange, testified as to his reputation, and besides these witnesses many substantial and prominent citizens in the various places where he had resided, like Alfred J. Wagner, a former Sheriff of Montgomery County; David G. Hackney, a former Postmaster at Fort Plain,

and at the present time president of the corporation; George C. Wood, the manager of the Western Union Telegraph Co. there; Edward A. Dillenbeck, at present of New York City, a wholesale grain and hay commission merchant; Mr. William G. Tingue, of the well-known firm of Tingue, House & Co., woolen and plush goods manufacturers; Edgar Williams, an editor of an Orange newspaper; Mr. Frank W. Baldwin, a publisher of another Orange newspaper; Mr. Wilberforce Freeman, a well-known resident of Orange, and Mr. Daniel A. Heald, the president of the Home Insurance Company, all voluntarily testified that the reputation of Henry C. Adams was good in the communities in which he had thus dwelt. Besides these, there were many other witnesses who also gave similar tributes to Mr. Adams' standing and reputation in the community. The contestants indeed counted without their host when they opened the door for the question of character and reputation. It must have been apparent to the Court that the proponents were able to call any number of reliable witnesses from Montgomery County, from Rahway, from Orange, who would gladly have testified in favor of Mr. Adams' character and reputation, and it is also very apparent that the contestants searched Montgomery County over to find other witnesses who were willing to put themselves in the same position as Mr. Cushney and ex-Judge Fish (678, 679—1078); but as such witnesses were not to be found among the living, Messrs. Cushney and Fish did not hesitate to go into the land of shades, hoping in the twilight of that uncertain country to find some corroboration of their testimony; and doubtless the contestants would gladly have relegated these two witnesses, and the entire question to the same shades long before the proponents ceased calling witnesses in support of Mr. Adams' character and reputation.

LAW POINTS.

Point I.

The rejection of the will of 1873 by the Surrogate's Court of Kings County, New York, and the granting of Letters of Administration to Henry J. Cullen, Jr., was no adjudication that George P. Gordon died intestate, when another will is offered for probate.

It is clear from the New York statutes that there was no adjudication of intestacy in the Brooklyn proceeding which would be of any weight after a will was discovered. No Court ever yet made any such adjudication as that which the contestants pretend to claim. In such cases the Court simply determines that no will has yet been proved, but does not commit the absurdity of trying to decree that no will thereafter to be discovered shall be probated.

Gaines *v.* Hennon, 24 How., 553.
Gaines *v.* New Orleans, 6 Wall., 642.

Point II.

Domicile.

It is often requisite to determine the domicile of a decedent in order to know by what law the distribution of his property is to be governed. Where testator leaves a will provisions valid in one State are often void in another. These questions do not necessarily arise on the probate of the will; they come up on the distribution. A will may be proved in this State, though the domicile is in another State, and though the will has

never been proved there. The jurisdiction of the Court depends on assets, real or personal in the State.

Re. Booth, 3 Dem., 416.
Bowdoin *v.* Holland, 10 Cush., 21.
Wood *v.* Matthews, 73 N. Y., 477, 483.

Such probate was granted in Harral *v.* Wallis, 10 Stew., 458, 459, where testator was domiciled in France. That this is so in New York appears on the face of the statute underwhich Cullen was appointed. See *supra*, division XIV. of this Brief.

While, however, the probate of the will does not turn on proof of a New Jersey domicile, we have fully met the issue and all parties are before the Court, and we see no reason why, if the Court should admit the will to probate, there should not be in addition a decision upon the domicile now, since it must be settled at some time, and it is for the interest of all parties to settle it without further litigation on that point.

Testator's domicile was in New Jersey at the time of his death.

On a question of succession the issue is one of domicile, not residence or citizenship. Domicile may exist without citizenship, as in Harral *v.* Wallis, 10 Stew., 458.

As to residence, it may be had in more than one place. A party may have two or more residences but he can have only one domicile. Stout *v.* Leonard, 8 Vr., 492, 495. Mr. Gordon had a residence in Woodbridge and one in Norfolk and, it is claimed, one in Brooklyn. No one contends that Norfolk was his domicile.

That Woodbridge became his domicile in 1866 and so continued for some years is unquestioned. It is clear also that he never abandoned his residence in Woodbridge. Did he abandon his domicile there?

The contestants allege that he changed it to Brooklyn. The burden of proof is upon them, and in view of his continued residence in Woodbridge the burden upon them is heavy.

In Bell *v.* Kennedy, L. R., 1 H. L., Sc. 307, Bell sold out his property in Jamaica and left it for good and went with his family to Scotland, and after living with relatives, hired a house for a year and negotiated for a permanent residence, when his wife died and a question of succession to her estate arose. The Court held that she had not acquired a domicile in Scotland because of letters written by her husband at the time, stating that he was in doubt after all whether to settle in Scotland or seek a warmer country.

In Depuy *v.* Wurtz, 53 N. Y., 556, the Court said:

"To effect a change of domicile for the purpose of succession there must be not only a change of residence, but an intention to abandon the former domicile and acquire another as the sole domicile."

See also Mitchell *v.* United States., 21 Wall., 250.

It should be further observed that the purpose of the inquiry into domicile is material. Domicile for probate or succession, and domicile for suffrage, are determined on different grounds. A man might have one domicile for one purpose and another for a different purpose. "A man can have but one domicile *for one and the same purpose* at any time." Stout *v.* Leonard, 8 Vr., 492, 495. Contestants must prove such a change of domicile from Woodbridge to Brooklyn as will answer the test on a question of succession.

In Smith *v.* Croom, 7 Fla., 81, 158, this point is clearly stated, and the Court says that much confusion has arisen out of the failure to distinguish between domicile for succession and other kinds of domicile such as political, commercial and forensical.

Bearing in mind what the purpose of the inquiry is and where the burden lies, let us examine the grounds

on which contestants allege that Gordon's domicile was in Brooklyn.

First.—It is alleged that he voted there in the fall of 1876. Assuming for the sake of argument that this is proved, what is its importance? On a question of citizenship the exercise of the right of suffrage would be weighty evidence, and perhaps almost conclusive to estop the voter from denying that he was a citizen where he voted. In Shelton *v.* Tiffin, 6 How., 163, 185, there is a dictum that voting is conclusive on the question of citizenship under the Act of Congress giving jurisdiction between citizens of different States, but on a question of domicile in a probate case no element of estoppel enters, and the place where testator voted is of minor importance. A man might vote under a mistake of his rights, or he might have a domicile to vote upon and not a domicile to determine succession.

In Smith *v.* Croom, 7 Fla., 81, a man left his family in North Carolina and carried on business in Florida and voted there, but the Court held that for the purpose of succession his domicile continued to be where his wife lived. In Livermore *v.* Faring, 74 Me., 174, the question was one of settlement. The Court said: "The fact of voting in a town, while of importance on a question of settlement, is by no means conclusive. The vote may be without right and fraudulent. It may be through a mistake of the voter as to his legal rights. * * It is simply a fact with the other facts in the case to be weighed by the jury."

See also Jacobs' Law of Domicile, § 435, note 5.

Easterly *v.* Goodwin, 35 Conn., 279, 285.
Kellogg *v.* Oshkosh, 14 Wis., 623.
Moore *v.* Darrell, 4 Hagg., 53.
Mann v. Clark, 33 Vt., 55, 61.
Clarke *v.* The Territory, 1 Wash. Ter., 68.
Hayes *v.* Hayes, 74 Ill., 312.
Guier *v.* O'Daniel, 1 Binn., 349, 354.
Mandeville *v.* Huston, 15 La. An., 281.
Hitt *v.* Crosby, 26 How. Pr., 413.

Folger *v.* Slaughton, 19 La. An., 323.
Lincoln *v.* Hapgood, 11 Mass., 350.
Fish *v.* Chester, 8 Gray, 506.
Chaine *v.* Wilson, 1 Bosw., 673.
Gardner *v.* Board of Education, 5 Dak., 259.
Woodworth *v.* St. Paul, etc., 18 Fed. Rep., 282.

While we can afford to admit that Mr. Gordon voted in Brooklyn in the fall of 1876, we by no means do admit it. It is not proved; it is not even attempted to be proved. What is attempted is to show that the name and the address of the Brooklyn house appears on the registry and poll lists for that year. For how many subsequent years does not appear; in Jersey City they would be voting on it still. What facts can these documents prove. At most, that the clerk entered on the list the name and address given him by some person who was a stranger to him. The poll clerk, Bussing, testifies that he did not know Gordon. It was not his duty or that of the Board to personally know voters before they entered the names.

Furthermore, the records produced are not competent evidence. Records of another State properly proved in this State, have the same effect as evidence in New Jersey as in the State whence they come. But in order to make these records evidence to show that George P. Gordon voted in Brooklyn some statute of New York must be produced making them evidence to that effect there. No such statute can be produced. Suppose Gordon had been indicted for voting without authority in Brooklyn, could his voting be proved by the mere production of the registry and poll list? Clearly not unless some New York statute makes these records evidence for that purpose and such statute must be proved. Condit *v.* Blackwell, 4 C. E. G., 193, 197; Reversed, but not on this ground, 7 C. E. G., 481, 485.

In the absence of a statute making it evidence of the fact of voting by the person named, how can it be evidence? It is not a case of official entries by a party

since deceased who had knowledge of the facts entered by him. "An entry of an official made at the time according to the established practice of, the office, by one having competent knowledge of, and no interest to misstate, the matter recorded" may be used as evidence, *provided* it is made by one in the usual course of duty and is aided by collateral proof, and provided the person who made it is dead. Browning *v.* Flanagan, 2 Zab., 567, 572. But this does not aid the present case, for not only does it lack support by collateral proofs, but it cannot be pretended that the election officers have "competent knowledge of the matter recorded." They may at most be presumed to know that a man appeared before them and gave the name and address recorded by them and cast a vote, but they cannot be presumed to know that the man who voted was George P. Gordon. No presumption from these records can be raised that he voted, unless there is a New York statute making these records evidence for that purpose, and evidence not merely to the canvassers for the purposes of the election, but for collateral purposes. Buffalo L.H. Co. & S.D. Co. vs Knights Templar &c. 126 N.Y.

Condit *v.* Blackwell, 4 C. E. G., 193, 197.
Sewell *v.* Sewell, 122 Mass., 156, 162.
Fish *v.* Chester, 8 Gray, 506.

It should not be overlooked that the facts stated in the record are confessedly untrue in part. Mr. Gordon is recorded as having resided in Brooklyn for three years before October, 1876. He did not buy the house until 1874.

Second.—The contestants present city directories to show that Mr. Gordon lived in Brooklyn. We know of no ground on which these can be admissible for the purpose. The question is not one of general reputation; but even if it were, reputation cannot be proved in that way. This evidence is the merest hearsay, and we do not even know whose hearsay it is. We can conjecture that somebody at Mr. Gordon's office or at Mary Agnes Gordon's house gave the name of Mr.

Gordon as owning the place, and as sometimes there, but to show that Mr. Gordon had a permanent home there, with intent to remain, such as is needful to constitute a domicile, an entry in the directories is not only legally worthless, but is worthless on the grounds of common experience.

The *third* ground is the production of evidence to show that Mr. Gordon paid personal taxes in Brooklyn. The fact that he also paid personal taxes and poll taxes in Woodbridge in the year 1877 sufficiently meets this fact, which is of trifling value at best. It is also held that these tax records are not competent evidence in an issue of this character. See Commonwealth *v.* Heffron, 102 Mass., 148; Sewall *v.* Sewall, 122 Mass., 156, 162.

The *fourth* ground set up is, that the proceedings in Brooklyn adjudged that there was a domicile in Brooklyn. There were two proceedings. One was the probate of the will, and as the will was rejected for probate, it seems to us quite clear that the issue of domicile could not be passed upon. It was not necessary for the Court to pass upon it, and there is no adjudication upon it. The judgment of the Court does not involve any decision upon it.

The other proceeding was for the appointment of an administrator in Brooklyn, and this appointment was made on the petition of Mary Agnes Gordon, in which she set up that her father was a resident at Woodbridge. If anybody knew whether Mr. Gordon lived in his Brooklyn house, it was Mary Agnes Gordon, whose home was there. So far as the Brooklyn Surrogate's proceedings are evidence at all, they are in favor of the New Jersey domicile. We think the above are all the grounds upon which the Brooklyn domicile is contended for. On the other hand, look at the overwhelming proof of a New Jersey domicile. The rule is laid down in Story on the Conflict of Laws, Section 47, citing Dr. Lieber: That a presumption from mere circumstances will not prevail against positive facts, which facts would determine the domicile.

Not only did the contestants fail to rebut the presumption that testator's domicile continued in New Jersey down to the time of his death; its continuance was established by positive proof by proponents.

(1.) Mr. Gordon bought the Brooklyn house in February, 1874, for a home for his daughter Mary, and never expressed any intention of making it his own home or residence, and never did make it his home or residence or domicile.

The testimony of Barber, Miss Gordon, and a number of other witnesses is very direct and positive on this point and establishes it beyond question. (See XIV. above.)

Even Van Wyck admits that Gordon had the Brooklyn house as a place to stay over night, "when he did not want to go home" (to Rahway).

In one of his letters testator writes in a jesting way about meaning to reside in Brooklyn, but it is evident, even from the letter itself, that he did not entertain any intention of doing so, and the letter is evidence that at the time it was written, March, 1876, he had not become a resident of New York State, and had no right to vote there in that year. In a similar jesting way he writes of Mrs. Gordon's living at Rahway and his living in Brooklyn in 1875, and it is evident from his subsequent letters and declarations, and the facts shown in regard to his manner of life, that he referred only to a brief separation from his wife.

(2.) Mary Agnes Gordon resided in the Brooklyn house, and had entire control of it. She controlled everything in regard to the house, making the purchases, hiring the servants, and even having the repairs done. There is no dispute on this point; the witnesses are uncontradicted.

(3.) Testator continued to keep his house at Woodbridge, with the furniture, horses and carriages, and servants and everything else about it in precisely the

same way after the purchase of the Brooklyn house as before. There was no change in the factum of residence.

A number of the witnesses who were thoroughly familiar with the Gordons and the Gordon household gave the most positive and direct testimony on this point (see XIV. above).

It was incumbent on the contestants to prove that testator intended to abandon and did abandon his New Jersey domicile.

Depuy *v.* Wurtz, 53 N. Y., 556, and the many cases there cited.
Mitchell *v.* United States, 21 Wall., 350.
Smith *v.* Croom, 7 Fla., 81.
Bonnell *v.* Dunn, 4 Dutch., 153.
Kugler *v.* Shreve, 4 Dutch., 129, 132.
Harral *v.* Wallis, 10 Stew., 458, 469.
Harral *v.* Harral, 12 Stew., 279.

In Maxwell *v.* McClure, 6th Jur. (N. S.), 407, some of the Judges regarded the fact that where a man went from England to Scotland and acquired a house in Scotland and spent most of his time there, he nevertheless retained his home in England, as a circumstance of importance in determining his domicile.

(4.) Testator's habits and manner of life at Woodbridge continued the same after 1874 as before.

The testimony of Woodruff, Brewster, Hankins and others as to the testator's continuing to reside at Woodbridge and drive down to Rahway in the morning and go to New York, where he had his office, and return in the evening is so full and positive that there can be no doubt about this continuing to be his habit until the time of his death. After 1869, when he purchased property in the South, he occasionally went South in the winter for a short time, but when North his habit never changed. All the witnesses agree that he went "very seldom" to Brooklyn. His daughter complained that he so rarely came to see her, Frequent visitors to

Mary at the Brooklyn house saw him but once or twice at that house in all the years that Mary lived there.

There is not a particle of evidence anywhere in the case that he went to Brooklyn except to visit his daughter; there is a total absence of evidence that he went for the purpose of residence. The failure to show intent is absolutely fatal to the contestants' claim that the testator was domiciled in Brooklyn. "The change (if any there be) must be made *facto et animo*, both are alike necessary" Mitchell *v* U. S. (*supra*).

(5) The presumption is that a man resides where his wife resides. Mrs. Gordon and Mary could not "abide under the same roof," and the Brooklyn house was therefore purchased for Mary, who lived in it, and, of course, Mrs. Gordon did not live there. The evidence of numerous witnesses that Mrs. Gordon continued to actually reside at Woodbridge is very direct and positive and uncontradicted. The presumption that a man resides with his wife is very strong. In Jamison *v.* Hapgood, 10 Pick., 77, 98, the Supreme Court of Massachusetts hold that the presumption that a married man's domicile is with his family "is so strong, that it requires the most cogent proof to remove it."

Smith *v.* Croom, 7 Fla., 81.
Douglass *v.* Douglass, L. R., 12 Eq., 617.
Forbes *v.* Forbes, 12 Kay, 341, 366.

The last case was an important one, turning upon the question of domicile. The Court held that the wife's residence is strong evidence of the husband's intentions as to his domicile, although such evidence might be rebutted. In Brewer *v.* Linneus, 36 Me., 428, the Court held that the residence of the wife is *prima facie* evidence of the domicile of the husband and in the absence of any proof to the contrary is conclusive.

In the case at bar there is no evidence to the contrary, and the presumption, even if there were no other

positive evidence, would be conclusive under the decisions.

In Sherwood *v.* Judd, 3 Bradf., 267, 274, the Court says :

" It is manifest that the residence of the family is " an important element in determining the abode of " the family. The wife is usually placed at home. If " not accompanying her husband, her residence is or- " dinarily the point to which he expects to return, " and which he claims as his place of permanent " domicile."

The same doctrines have been approved in this State.

Braudred *v.* Del Hoyo, 20 N. J. Law, 328.
Harral *v.* Wallis, 10 Stew., 458, 469.
Cadwallader *v.* Moore, 3 Harr., 138.
Harral *v.* Harral, 12 Stew., 279.

(6.) Mr. Gordon's declarations in solemn instruments and in his letters show that he continued to reside at Woodbridge to the time of his death. (See exhibits referred to above.)

Such evidence always has weight and in the absence of contradiction is conclusive.

Jacobs on the Law of Domicile, sec. 462, and many authorities there cited.

" The intention may be gathered both from acts and " declarations."

Depuy *v.* Wurtz, *supra.*

In Lord *v.* Colvin, 4 Drew, 366, 409, Kindersley V. C. says :

" It is always considered that the manner in which " a man describes himself in solemn acts and legal " documents is an important point in reference to the " question of his domicile."

In Ward *v.* Oxford, 8 Pick., 476, Parker, C. J., says :

" The designation of his residence in a solemn instru-

" ment, such as a deed or a will, is in the nature of a " fact rather than a declaration, being made when " there was no controversy and when no possible in- " terest could exist to give a false designation."

(7.) Testator's oral statements all tend to show that he was domiciled in New Jersey, and these are of value to show intent.

He was in the habit of speaking of the Woodbridge house as his home. When he said he was going home, he went to the Woodbridge house. Shortly before his death when he spoke of being glad to get home, it was when he was at Rahway and living at Rahway. He spoke of the Brooklyn house regularly as Mary's home. As to the importance of such declaration as evidence of intention see

Story on the Conflict of Laws, Sec. 47.
Isham *v.* Gibbon, 1 Bradf., 69, 86

(8.) Testator paid both personal and poll tax in New Jersey only a few weeks before his death.

This fact has much more weight than the payment of taxes in Brooklyn, because of the payment of poll tax in New Jersey and because the New Jersey records are shown to be more accurate than the alleged Brooklyn records, and the facts in regard to payment in New Jersey were proved by the collector himself. No authority is necessary on the point that poll tax is assessed only upon residents of the State.

See Revision of N. J.

(9.) Testator's daughter made sworn statements that he was domiciled in New Jersey at the time of his death.

See objection to probate of Brooklyn Will and petition for Letters of Administration to Henry J. Cullen, Jr. (Exhibit P. 210).

(10.) Testator's family and neighbors and servants all agree that he resided at Woodbridge down to the time of his death.

A large number of witnesses testified to this fact and detailed so many corroborating facts and circumstances as to make it certain that their testimony was accurate. (See XIV. above.)

Contestants were unable to produce a single friend or neighbor or employee of the testator to testify that he resided in Brooklyn, although they tried (1259).

The facts and circumstances prove conclusively the proposition that the testator at the time of his death was domiciled in the State of New Jersey.

> Abington *v.* North Bridgewater, 23 Pick., 170.

So cogent is the proof as to his home in the year 1877–8, that even if it were an admitted fact that he was domiciled in Brooklyn in 1876, a change to Woodbridge would be the only fair conclusion. Assume the fact of voting in Brooklyn, yet the evidence is not sufficient to show a change of domicile to Brooklyn; on the other hand assume the domicile in Brooklyn in 1876, and the evidence is sufficient to show a change to Woodbridge and a domicile there in 1877 and 1878.

POINT III.

The burden of proof is upon the contestants to establish the forgery and perjury charged, beyond a reasonable doubt.

In Turner *v.* Hand, 3 Wallace, Jr., 88, 111, (the Meeker Will case), where the issue was forgery, the will having been first formally proved as in the case at bar,

Mr. Justice Grier in charging the jury said: "You must remember that the burden of proof is on the party who alleges fraud. That fraud, though proved by circumstances, can never be presumed, for fraud is a crime. It is not enough to show suspicious circumstances; suspicion is not proof. It does not require a great deal of ingenuity to cast suspicion of fraud upon any transaction. There is a very great and sometimes grievous error into which, not only the public mind, but that of jurors and judges, too, are apt to fall; and which leads to false judgments, and sometimes to great oppression. I would therefore, especially call the attention of the jury to it; and caution them to be aware of it. It is this: The law abhors fraud. Every honest mind hates it, and even those who practice it themselves, will join in the denunciation of it. It makes them feel virtuous for the time, and they are the most ready, from the arguments of conscience, and judging from others by themselves, to believe it true, and inveigh most loudly against it.

When the clamor of fraud is raised in the community, or when it is confidently charged by counsel in court, we are prone to see all facts through a false medium, which *magnifies* the importance of every fact from which suspicion of fraud may be raised, and ignores the plainest inference against it. In the midst of our virtuous indignation against fraud, we first assume it has been committed and then seek for arguments to confirm, not our judgments, but our prejudices. 'Trifles light as air' then become 'strong as proofs of Holy Writ.' Circumstances which to an unprejudiced mind are just as compatible with innocence as guilt, which at best could only raise a suspicion, are set down as conclusive evidence of crime. Those who sit in judgment over men's rights, whether as courts or jurors, should beware of this natural weakness to which we are almost all of us subject. We all fancy ourselves wiser than perhaps others are willing to give us credit for. This feeling is gratified by what we believe to be superior sagacity. Rogues may be cunning but they

can't deceive *us*. Under this satisfactory belief, we become over-astute, and often see that which is not to be seen. We suffer our imaginations to take the rein from our judgments, and rush headlong in this case after the fox called fraud. Circumstances which should avail for the proof of fraud are such only as are inconsistent with a contrary view of a transaction, and lead irresistibly to that conclusion. * * * *

"The evidence to establish such a belief must be proofs clearly and indisputably proven, which when arrayed together form a chain of circumstances imcompatible with any other solution than the falsehood of this testimony. * * * Those who charge fraud are bound to prove it by circumstances or evidence which will lead our minds to certain and definite conclusions. All the facts must point to one focus, making it bright as day. If the supposed facts are capable of being reconciled with innocence or if they cross the path of each other, pointing to different hypotheses, they can not be relied on as proving anything."

The Lord Chancellor in Boyse *v.* Rossborough, 6 H. of L., 2, 51, said, "In order to set aside the will of a person of sound mind it is not sufficient to show that the circumstances attending its execution are consistent with the hypothesis of its having been obtained by undue influence. *It must be shown that they are inconsistant with a contrary hypothesis.*"

This is the law in this state. In Kane *v.* Hibernia Mutual Fire Insurance Co., 9 Vr., 441, the Court held, "that, as to the defense of burning by design, *testimony to establish it must satisfy the jury of the fact beyond a reasonable doubt, and be such as would be sufficient to convict the plaintiff in case he had been indicted for that offense.*" The Court cited many authorities showing the doctrine of the law to be well settled.

The contestants charge, in opposition to this will,

that Henry C. Adams has committed fraud and forgery and perjury. They must establish these charges *beyond a reasonable doubt and by such evidence as would be sufficient to convict him, were he indicted for these crimes.* If they have not done so, as they surely have not, this will must be admitted to probate.

POINT IV.

Where the issue is simply forgery vel non, testator's declarations are admissible.

This question appears never to have been directly decided by the Courts of this State. In the cases of Rusling *v.* Rusling, 9 Stew., 609 ; Kitchell *v.* Beach, 8 Stew., 446; Pemberton Case, 13 Stew., 520 ; Lynch *v.* Clements, 9 C. E. Gr., 437, such declarations were held inadmissible *to prove undue influence.*

In Stevens *v.* Vancleve, 4 Wash. C. C. Rep., 226, Washington, J., held such declarations generally inadmissible, "*unless where offered to repel a charge of fraud, circumvention or forgery.*"

This Court, in Barker *v.* Barker, 9 Stew., 259, held, apparently contrary to current of decisions, however, that the declarations of a testatrix, denying that she had made a will, were admissible to show that the will was spurious.

In Den *v.* Van Cleve, South., 589, it was held that testator's declarations were competent evidence on question of lack of testamentary capacity and fraud.

The Court of Errors and Appeals in Boylan *v.* Meeker, 4 Dutch., 274, says that the authority of this case "has been shaken" by the opinion of Washington, J., in Den *v.* Van Cleve. Washington, J., however, specially excepts from his condemnation of declarations as evidence cases where they are "offered to repel a charge of fraud, circumvention or forgery," and it is therefore clear that the Court of Errors did not intend to overrule Den *v.*

Van Cleve so far as it holds that when a will formally proved has been attacked upon the ground of forgery, testator's declarations are competent to rebut circumstantial evidence of the forgery. Both Den *v.* Van Cleve and Stevens *v.* Van Cleve, while not deciding the precise point, are so far as they go authorities in favor of the competency of testator's declarations to rebut circumstantial evidence of forgery.

In Boylan *v.* Meeker, 2 McCarter, 310, it was claimed that the paper had never been executed as a will, but that its execution had been obtained fraudulently or surreptitiously, and declarations were offered to show that the provisions of the will were different from testator's frequently expressed intentions. The Court (Potts, J.,) held the declarations admissible.

In Boylan *v.* Meeker, 4 Dutch., 274, the same will was in question, and the Court held that testator's declarations in which he spoke of other wills, but did not mention the one propounded, and of testamentary intentions different from those contained in the will in question, were not admissible to overthrow a will, the execution of which had been proved by eye witnesses. The Court, (Whelpley, J.,) says : "The argument, shortly stated, is this. Four witnesses positively swear they saw the will executed. The plaintiffs affirm this testimony is overcome or proved false, because they have proved that the testator never spoke of it, never by his words or actions manifested any knowledge of such a will. The defendants answer—you have not proved your proposition ; you undertook to prove that he never spoke of the will of January, 1852 ; the whole burden of this is upon you ; you have undertaken to prove a strict negative, your evidence does not do it ; it comes far short of it ; it makes no case, and is therefore incompetent. The burden cannot be again shifted by incompetent proof on this point.

"It is to be remembered that we start in this case with full proof of knowledge of the will ; the testimo-

ny of the subscribing witnesses settles that; the presumption is that continues. Can that presumption be overcome by any amount of negative evidence? *If it be satisfactorily proven by the testimony of one unimpeached witness that Meeker knew of this will, spoke of it anywhere at any time*, can the testimony of ten thousand witnesses testifying to every subsequent moment of his life, that he never again spoke of it or of its contents, overthrow it? Clearly not, and in this case we start with proof that he spoke of it to four witnesses and knew all about it. There is no necessary inconsistency between the testimony of four and that of the ten thousand; at most they but prove an alibi at all other times except the time in question.

"Unless proof of a negative is complete it is no proof. But it is said that the declarations of Meeker go further than mere negative evidence; that they were equivalent to declarations by him that he never signed the paper of January 12th, 1852. Be it so. Suppose the testator did declare that he never executed any will after September 1851, and that if any such will should be produced it would be a forgery, is such evidence competent when a will duly executed and proved by the subscribing witnesses has been offered in evidence?

"To admit the evidence even in the strong form which I have stated, to wit: that the testator had made no will since a certain time and that any will of a subsequent date is a forgery, is a clear contravention of the statute of wills, its whole policy, scope and object. That statute provides that a will of lands must be in writing subscribed by the testator in the presence of two subscribing witnesses. The testator is not permitted to express his will verbally. He must do it in writing and declare it to be his will in the presence of two credible witnesses." * * * *

"If the will has but one attesting witness it can have no operation, although the devisees may be able to prove by forty credible witnesses that the testator said on

his dying bed *in articulo mortis* repeatedly, 'That is my will,' the statute is inexorable ; no amount of evidence will supply the want of that one credible witness attesting ; and yet the rule contended for by the plaintiff's counsel would permit the testimony of two credible witnesses to be overthrown by the mere verbal declarations of the testator made in the presence of one witness and proved by him. We have this absurdity, that a will must be executed in the presence of two credible witnesses so as to furnish clear and safe proof as a security against fraud, but that its execution may be disproved by the testimony of one witness who does not testify that it is a fraud or forgery, but that he heard the testator say so."

This case leaves undecided the question whether declarations are competent to rebut circumstantial evidence of forgery of a will, whose execution has been duly proved by direct evidence.

Such declarations have been held competent by the courts of a number of States and of the United States and by the English Courts. These Courts clearly distinguish the cases where declarations are offered to rebut evidence of the forgery of a will formally proved from those where they are offered for a different purpose.

In the sharply contested and important Taylor Will case, 10 Abb. Prac. N. S., 306, the distinction is clearly drawn by the Court. In that case the proponents made *prima facie* proof and the contestants claimed that the will was a forgery and produced expert testimony to show that the signature of the decedent was forged. Theproponents offered declarations of the decedent made subsequent to the date of the alleged will in reference to his having made a will. The contestants' counsel objected to the declarations of decedent as being incompetent on an issue of forgery or simulated handwriting.

Hutchings, Surrogate, decided that the evidence was admissible and that the decision of the Court of Appeals

in Waterman *v.* Whitney, 11 N. Y., 157, and the other decisions of the New York Courts, excluding declarations do not apply to the case where forgery is charged. The Court says: "The opinion of the Court of Appeals in Waterman *v.* Whitney, 11 N. Y., 157, discusses the admissibility of declarations of a testator in cases where the validity of a will is disputed on the ground of *fraud* or *duress* in procuring its execution, or *mistake* or some *similar* cause aside from the mental weakness of the testator, and holds that no declarations of the testator himself can be received in evidence except such as were made at the time of the execution of the Will, and are strictly a part of the *res gestae*, but the applicability of the rule to the case of the disputed genuineness of a signature seems not to have been considered, or, I believe, even referred to in that decision; and I hardly think such a question could have been in the mind of the Court, as within the classes of cases mentioned in the opinion. They appear to be cases of disputed validity arising under instruments *recognized as genuine.*

"Here, and at this stage of the matter before me, the inquiry involved is: *Is this a genuine signature of the decedent?*

"The contestant claims it is not genuine, and has offered letters of the decedent to show declarations, and, indeed, they were offered as *declarations*, made subsequent to the date of the instrument, of such affection towards the contestant, as to be inconsistent, as counsel claims, with the provisions of the paper in question; and that evidence was, I think, properly received, as well in respect of the question of genuineness as that of alleged *undue influence.* It was, doubtless, offered as to both grounds, and, if I remember the other testimony of contestant correctly, I am strongly of the conviction that a fair and proper trial of this cause requires me, on established rules of evidence, to receive such declarations as are offered to be proved in legitimate rebuttal of the evidence for the contestant; that is, such declarations as were made by the

decedent during the short period of his life, after the date of the paper, that he had made a will, with any statement by him of its provisions as correspond with, or identify the paper as the one referred to.

"To exclude such declarations would be, as it appears to me, to reject matter, to say the least, clearly *not immaterial* to the principal question I am to determine upon this paper. The evidence should, however, be taken, not as direct proof, but only as corroborative of the testimony of the *factum.*"

The precise question was also fully considered in Hoppe *v.* Byers, 60 Md., 331. There an additional legacy evidently written after the paper was first written, was charged to be a forgery, and experts gave testimony to that effect. In rebuttal, testator's declarations that he had provided for the legatee were proved; also, on the part of contestant, declarations that he had made no will at all were offered and received. The Court, after a careful review of the authorities said that such declarations were not admissible on a question of undue influence, but that the question of *forgery vel non* was a different issue, and on that issue they were admissible to corroborate evidence of handwriting. The Court thought this doctrine was established by the few cases where the issue has been directly presented and cited. Turner *v.* Hand and Taylor's will case (supra); also Johnson *v.* Brown, 51 Tex., 65; and Beadles *v.* Alexander, 9 Bax., (Tenn.) 601; also the two English cases referred to hereafter.

Johnson *v.* Brown, 51 Tex., 65, was a will contest in which it was claimed that the alleged will was a forgery. Declarations of the deceased, made before and after the date of the will, were offered to show testator's hostility to the principal beneficiaries, and admitted. On appeal this was held no error. The Supreme Court reviews Boylan *v.* Meeker, Waterman *v.* Whitney, and the other cases, and distinguishes them, declaring that none of these cases raises the precise point at issue in the case at bar, and concludes:

"After full consideration of the questions in this case we are of the opinion that the declarations of J. W. Warren before and after the date of the proposed will, expressive of feelings of ill will toward the beneficiaries, as were his feelings of kindness toward them, were properly admitted in evidence—not of themselves as proof sufficient to overcome the testimony of the subscribing witnesses, but as a circumstance in a case of this character, proper for the consideration of the jury in connection with all the other facts and circumstances in evidence; that they are not so much declarations disparaging a duly executed will, as evidence of an independent collateral fact—the state of feeling between the parties, and which would, in some degree tend to prove the issue before the Court"

Beadles *v.* Alexander, 9 Baxter (Tenn.) 604, was a will contest. One witness (Massey) was dead and his signature was proved to be genuine. The other witness (Jacobs) testified to his own signature but stated that his best recollection was that the testator was not present when he signed it as a witness, but that one James Simms brought the will to the school house where the witness was teaching school, and that at the request of Simms, he, Jacobs, and Massey signed it. Several witnesses, including devisees and legatees, proved statements of the testator to the effect that Simms had written the will and that he himself had taken it to the school house and there executed it in the presence of Massey and Jacobs, who witnessed it at his request. These statements were objected to and their admissibility considered on appeal. The Court held the statements admissible (though not part of the *res gestae*). "They do not stand as mere hearsay declarations of other parties. They are the declarations of the testator as to his own acts, and about which he must certainly know and in general he has no motive to speak falsely and both parties claim under him, one as devisee or legatee and the other a distributee and heir. His declarations are not introduced to establish the particular fact by force of the admission or statements above, but for the pur-

pose of corroborating and supporting the presumption arising from the fact that the will bears the genuine signatures of two competent witnesses and to contradict the testimony of the witness, who, although he admits his signature, yet denies the testator's presence."

In Merce *v.* Mackin, 14 Bush, Ky., 434, 447 the Court held that evidence of testator's declaration that a will had been lost, or as to the contents of the will "are only admissible in corroboration of other evidence and when there is no other evidence, his declaration should be rejected." There must first be evidence to prove or disprove the execution. Declarations are only admissible in corroboration.

In Tucker *v.* Whitehead, 59 Miss., 594, it was held that where there is doubt whether the testator or a spoliator mutilated a will, the declarations of the testator, though no part of the *res gestae*, are admissible. The Court say: "In such a case it is the part of wisdom to open the doors as wide as possible for the admission of every species of evidence at all calculated to advance the discovery of truth, since not to do so must in a great number of cases result in defeating the will of the deceased by accident or fraud. The evils which may spring from the introduction of parol proof in such a case are less than those which must be brought by its exclusion."

The decision of Lanyer *v.* Smith, 8 Mich., 414, is to the same effect.

So, when the question is whether or not the testator destroyed or meant to destroy a will which had been duly executed, declarations have been held admissible in many of the states.

Collagan *v.* Brown, 57 Me., 449.
Weeks *v.* McBette, 14 Ala., 474.
Paterson *v.* Hickey, 32 Ga., 156.
Chisholm *v.* Ben, 7 N. Mon., (Ky)., 414.
Matter of March, 45 Hun, 107.

The precise question was also considered in Turner *v.* Hand 3 Wall. Jr., 88, 92, 110, and testator's declarations held competent on the issue of forgery *vel non* to be considered along with other circumstances.

The United States Supreme Court in Adams *v.* Norris, 23 How., 353, held testator's declarations admissible, stating its decision in the following language : "As suppletory proof that testator had made the codicil and was acquainted with the contents of the instrument, the admission or declaration offered as evidence was competent testimony."

In Sugden *v.* Lord St. Leonards, 1 L. R. Prob. Div., 154, after secondary evidence had been offered of the contents of a lost will, the Court admitted in corroboration of the disputed proof of the existence of a will the testator's declarations. This case is cited with approval in Rusling *v.* Rusling, and was followed in Gould *v.* Lake, 6 L. R. Prob. Div. 1, where testator's declarations were admitted to prove a certain separate writing was part of the will. The Court said: "The present question is whether these two papers were joined together, or were before the testatrix at the time she signed. But the question of law would not be different if the suggestion were that the first sheet was a forgery or an interpolation by somebody after the event. In such a case could it be said that in order to establish that this sheet was a genuine part of the will, evidence could not be given of a statement of the testatrix before she made the will, that she was going to dispose of her property in the manner in which it appears to be left in the paper alleged to have been interpolated? And in my opinion it is also the law that statements to the same effect subsequent to the making of the will would also be admissible to show what was the state of the testator's mind and intentions, just as it would be an ingredient in the consideration whether or not a supposed interpolated sheet were a part of the will at the time of the execution. I think that the case is gov-

erned by the decision of the Court of Appeals in the case of Sugden *v.* Lord St. Leonards, and that any statements of the testatrix whether made before or after the execution of the will—for I see no distinction between them—are admissible in evidence with a view of showing what were the constituent parts of the will."

In fact it is the generally accepted doctrine of the law that declarations of a testator are admissible on the probate of a will where the issue is fraud, circumvention or forgery.

The great text-book writers all use substantially the same language.

Jarman on Wills, 5 Am. Ed. (R. & T.), vol. 1, p. 723: "Parol evidence is also admissible for the purpose of counteracting fraud. * * * And as a charge of fraud may be supported, so it may be rebutted by evidence of this nature."

Redfield on Wills, I, p. 611, n. 4: "In all cases where fraud or forgery is alleged the declarations of the testator, eitherbefore or after the execution of the will have been received."

Phillipps on Evidence, 4th Ed. II., p. 686: "In such a case where a will is disputed on the ground of fraud, the declarations of the testator are admissible in evidence, which * * * they would not be in ordinary cases."

Stephens Digest Law of Ev., Pt. 1, Ch. 4, Art. 29: "The declarations of a deceased testator as to his testamentary intentions and as to the contents of his will are deemed to be relevant * * * when the question is whether an existing will is genuine or was improperly obtained. * * * It is immaterial whether the declarations were made before or after the making of the will.

Roscoe Nisi Prius Evidence, 15th Ed., p. 53. "The declarations of a testator are admissible to support his will, if disputed on the ground of circumvention or forgery. So they are admissible to impeach the will by imputing such fraud."

Taylor on the Law of Evidence, Section 1136: "The declarations, too, of a testator are admissible to show his intentions, if the will be impeached on the ground of fraud, circumvention or forgery, and similar evidence, will be received with the view of rebutting the presumption that the alteration or interlineation apparent on the face of the will was made after its execution."

Among the authorities cited by all these writers is Doe *d.* Ellis v. Hardy, 1 M. & Rob., 525, which was an action of ejectment. The lessor of the plaintiff claimed title under a codicil to a will, and the defence was that the alleged codicil was a forgery. The plaintiffs, after giving other evidence, which was admitted without objection, offered declarations of the testator of his intention that the lessor of the plaintiff should have the property. They were objected to by the defendant; but Littledale, J., before whom the case was tried, overruled the objection, and admitted them, saying, "I think the declarations of the testator are admissible, to show his intentions, where the defense is either fraud, circumvention or forgery."

Mr Gordon's declarations relating to this will were made at various times and in varied circumstances, to a number of different people, and they are competent and important evidence to rebut the charge of forgery. They show that at numerous times, extending through several years, Mr. Gordon spoke of this will, and recognized it as his act and will, and they must be conclusive. And after these declarations, what are the hundreds of pages of contestants' expert testimony worth, contradicted at

every point as they were, and shown to be utterly unreliable?

The Ordinary reserved his decision as to the admissibility of these declarations, but it will be borne in mind that no objection whatever was made by contestants as to the most important portion of proponents' testimony on this point, namely, the testimony of Mrs. Agnes C. Doane. The declarations that testator made to Mrs. Doane are therefore in the case in any event, as are those made to Miss Adeline J. Gordon.

POINT V.

The evidence that testator never spoke or wrote of this will to Van Wyck is incompetent to prove forgery.

This precise point was decided in Boylan *v.* Meeker, 4 Dutch., 487, quoted at length above.

POINT VI.

Proponents' witness, Henry C. Adams, stands unimpeached and uncontradicted.

The testimony of Cushney and Fish fell far short of being an impeachment, even had the witnesses been credible. (1) The time to which the testimony of Cushney and Fish referred was when Mr. Adams lived at Fort Plain 23 years ago and anterior to that. This is much too remote. State *v.* Parker 96 Mo. 382; Rucker *v.* Beaty, 3 Ind., 70; State *v.* Howard, 9 N. H , 485; Weber *v.* Hanke, 4 Mich., 198; Stevens *v.* Rodger, 25 Hun, 55. (2) The testimony given by these witnesses is not credible. Cushney's reputation for

truth and veracity was impeached. He is unworthy of belief. He was forced to admit that he had an animus, and had shown it in giving his testimony. Fish claimed that he and Henry C. Adams were as friendly "as any two lawyers in Montgomery County" but admitted that he had come 200 miles to another State purposely and voluntarily but at the expense of the contestants to impeach the character of his "friend," and explained that he and Mr. Cushney consulted Judge Ferguson about the matter because "*it was a delicate matter for a man to volunteer to come over the border of his own State to give testimony; it would look ordinarily as if a man wanted to furnish tesimony*" (691).

When forced to name some of those whom they had heard say that they would not believe Mr. Adams, they mentioned the names of several persons, almost all of whom had, curiously enough, departed this life some years before, so that their presence could not be obtained to contradict these statements. It was shown that one of these persons named, had not lived or visited in Fort Plain for more than forty years, and in regard to another one that no such man ever was known in Fort Plain. Nearly all the others were shown to be intimate friends of Mr. Adams, who had always spoken well of him, or bitter enemies, while the last one, Mr. Rudd, who the witness Cushney said was willing to come and testify against Mr. Adams' character, appeared in person and indignantly and emphatically denied that he had even been approached by the contestants with that object in view and gave testimony to the excellence of Henry C. Adams' reputation for truth and veracity.

Proponents called thirty-five witnesses who flatly contradicted both these witnesses. Besides witness Cushney was thoroughly impeached. If any credence whatever can be given to Fish's testimony, that testimony clearly does not amount to impeachment; the gist of it was that the witness had heard persons, mostly lawyers, say that Mr. Adams'

reputation was bad, because as a lawyer he drew affidavits more strongly than the facts warranted. It is a matter of common knowledge among those who are familiar with Courts that lawyers who are vigorous practitioners are apt to be charged by their adversaries in the heat of debate with making affidavits stronger than the facts warrant.

Under the decisions of this State, if all the statements made by Fish were true and uncontradicted, they would not amount to an impeachment.

In Atwood *v.* Impson, 5 C. E. Green, 150, 159, the witness had heard the unfavorable remarks about the person whose reputation was in question "evidently from persons who referred to particular transactions." The Chancellor held that :

"This is not the evidence which the law permits or should permit to affect the credibility of a witness. * * * The object of the law is to show the character of the witness as to telling the truth. General reputation in the community where he is known is the best and the only test which the law allows as to character."

In King *v.* Ruckmann, 5 C. E. Green, 317, 356, the Court passes upon the kind of testimony required to impeach a witness, and says that the greatest portion of such testimony given in that case "is such as can not be regarded. It is evidently founded upon the fact that Ruckmann has been guilty of very improper conduct with regard to the cattle of his neighbors and is a troublesome and litigious man and has made himself unpopular and odious in the neighborhood. Some of the fairest and most respectable witnesses are influenced by the fact that he was fined and judged in contempt by the Circuit Court for offering to treat the jury in a case of his own with oysters ; *and most of the witnesses against his character are persons who have engaged in litigation with him.* Such witnesses are necessarily produced when they alone know or witnessed facts required to be proved ; but when selected

to give character to a witness are not of much value. The only testimony in such case is as to the general reputation of the witness impeached in the neighborhood for truth and veracity and that such reputation is generally bad ; saying that the witness from what he knew of his reputation would not believe him under oath is not sufficient. I do not think the testimony on the part of King shows that Ruckmann had acquired reputation in his neighborhood as a man of untruth or an habitual liar. The evidence is abundant to show that he is a litigious, cross-grained, troublesome and unjust man. The number of witnesses to sustain his character would be sufficient to neutralize the testimony against him even if more directly on the point of his character for veracity. If they speak the truth such character could not have been general."

(3.) The testimony of the witnesses called to sustain the reputation of Henry C. Adams, shows that he has all through his life maintained a high character and standing, and that he is a thoroughly trustworthy witness.

The witnesses come from different parts of the country ; they represent various pursuits and professions ; they are evidently men of high standing and character in their own communities, and their testimony combines to show that Mr. Adams is a man who is thoroughly credible, and that he is above any suspicion of committing fraud or forgery or perjury. If but one witness came to sustain his character, that witness' presence might be explained by friendship or some other motive, but when scores of witnesses of the character of those gentlemen come here and bear witness to the reputation and integrity of Mr. Adams, no Court and no reasonable man can doubt the truth of his testimony.

POINT VII.

The credibility of Henry C. Adams having been maintained, the factum of the will has been established.

POINT VIII.

The preponderance of expert testimony is decidedly in favor of the proponents.

The testimony of paid experts in handwriting, is of far less weight than the direct and positive statements of an unimpeached and uncontradicted witness. (See XVII. above, page 66 of this brief).

Even distinguished experts like Mr. Carvalho are found to be unreliable, not only in regard to the truthfulness of their photographic representations, but in other ways as well. The General Term of the New York Supreme Court, no longer ago than last February, in passing upon the testimony which he had given in the United States National Bank *v.* National Park Bank, 59 Hun, 492, *500*, said: "The testimony of the witness, Carvalho, that this signature was forged in its entirety, is discredited by the testimony of every witness who was familiar with the handwriting of the cashier. It is incredible, had this signature been manufactured in the way claimed by this witness, that all these persons should pronounce it a genuine signature." And the Surrogate of New York County, in the Wait Will Case (The Daily Register, May 5th, 1888), in which this witness had "demonstrated by experiments" in court the age of certain writing, says: "It will be seen that the results of the test show that the opinion of the witness is not to be relied upon, and sometimes not even for approximate accuracy."

In the case at bar we have one of the best possible illustrations of the unreliableness of such testimony. Seven red ink experts swore that no substance was known in 1868 from which a red ink could be made having the color and gold bronze irridescence of the red ink interlineations on P. 236, and that would turn yellow when touched with hydrochloric acid. The proponents' experts showed that these seven witnesses were entirely mistaken, and demonstrated the fact by producing the substance and making the ink, and reading the patent granted in 1865 for its manufacture, and extracts from the best chemical papers of the time, proving that aurine was well and widely known as a good material for making red inks in 1868 and before that time, and two of them testifying that they were personally familiar with its being so used.

The testimony of Henry C. Adams to the drafting and execution of the will is very direct and positive, and is strongly corroborated by all the surrounding facts and circumstances which are fully established by other witnesses. The only evidence produced to contradict this direct and positive testimony was the evidence of the experts in handwriting. These, under the well known principles of law cited above, even if themselves uncontradicted, would be far less weighty than the direct and positive testimony of proponents' witnesses. This principle is well established.

"Opinions with regard to handwriting are the weakest and least reliable of all evidence as against direct proof of the execution of an instrument." Grier, J., in Turner *v.* Hand, 3 Wall. Jr., 115.

"You must bear in mind that the best possible evidence of the execution of any instrument of writing is that of the subscribing witnesses and other persons present who swear they saw it signed. They swear to facts and not to opinions, and if they are credible witnesses whose character for truth and veracity stands unimpeached, it is the only safe and reliable evidence of the execution of such instrument" (ibid 173).

In Boylan *v.* Meeker, 4 Dutch., 327, in a concurring opinion Van Dyke, J., after passing upon the other question says: "It is also contended that the signatures to the will are not genuine, and fourteen witnesses have expressed their belief that they are not, while ten have expressed the opinion that they are. If this were the only evidence in the case it might be contended with propriety perhaps that the preponderance of evidence is against the will; but while we are often forced to depend on this kind of evidence, we all know how unreliable it is, and how little real dependence can be placed in the mere opinions of witnesses either skilled or unskilled in such matters where they seem to be nearly equal in adverse views and where no one can either know or speak with certainty. Nor can I find much light thrown on this part of the case by a very careful inspection of the signatures and comparing them, as we are invited to do by the counsel on both sides, with the signature admitted to be genuine. My belief is that human skill cannot solve the question this way. Most, if not all, that can be said with certainty is that the signatures on the will greatly resemble some of those admitted to be genuine, but they may be forged nevertheless. The right legal conclusion from the matter is, however, that the testimony of one unimpeachable and uncontradicted witness swearing positively, directly and unequivocally that he saw the party sign the paper and added his own name at the time as a witness is entitled to more weight than the doubting uncertain guesses of a hundred witnesses who are equally divided or nearly so, in my opinion, among themselves."

It was claimed that the will itself looked suspicious, &c. Van Dyke, J., says: "Its erased and slovenly appearance is to my mind stronger evidence of genuineness than of falsity. A person writing his own name or signing a genuine and honest paper may be willing to leave it in a very imperfect condition, but a person forging the signature of another to a false paper would be very unlikely to do this, when copying from

a genuine one, especially when he could renew the instrument and repeat the experiment until it was satisfactory. So here, if the whole thing is a forgery and a fraud, * * * it would seem to me much more likely that the whole paper would have been rewritten and made perfect rather than it would have been left to the legal scrutiny to which it was certainly exposed, with all this guilty evidence on its face" (328).

See, also, Brown *v.* Mutual Benefit Life Ins. Co., 5 Stew., 809.
Rogers on Experts and Expert Testimony.
Taylor Will Case (*supra*).

But in the case at bar these expert opinions of contestants' witnesses were contradicted and in detail shown to be false. Moreover, the experts of the proponents pointed out to the Court a great many facts and characteristics common to both the questioned and the genuine signatures of the testator and the three witnesses to this will, which furnished very strong positive testimony in support of the genuineness of all the signatures. Much of this testimony was based upon new and different standards from those used by contestants' witnesses, and this new positive testimony, resting upon new material, the contestants did not undertake to contradict, and therefore admitted it to be true.

On the testimony of these experts alone, if Mr. Adams' testimony could be left out of account, the proponents have established their case, and when the testimony of Mr. Adams is added, and the declarations of the testator himself and the inherent improbabilities of forgery are taken into account and the scores of strongly corroborative facts and circumstances are held in mind, the genuineness of the will must be held to be established beyond a doubt.

The will, Exhibit P. 1 should be admitted to probate in solemn form.

All of which is respectfully submitted.

Dated Jersey City, N. J.,
December 16th, 1891.

COLLINS & CORBIN,
Proctors and of Counsel
for Proponents.

BLACK & KING,
BOORAEM, HAMILTON & BECKETT,
} Counsel for Beneficiaries under the Will.

CONTENTS OF APPENDIX.

A.—The Gordon Signature.

a.—Compared with Standards.

I.—*General Characteristics.*

1. Writing on Line 3
2. Period 3
3. Slope 4
4. Length of Signature 5
5. Movement 6
6. Pen Pressure 9
7. Patching, &c 17
8. Tremulousness 20

II.—*Detailed Comparison.*

1. The "G" in Geo 22
   Up stroke .....
   Curve at bottom of oval .....
   Shading of staff .....
   Spherical triangular termination .....
2. The Greek "e" 28
3. The "o"s 29
4. The "P" 33
   Connection between "Geo." and "P"
   Hook at top of staff .....
   Staff .....
   Loop .....
5. The "G" in "Gordon" 37
6. The "r" 38
7. The "d" 39
8. The "n" 41
9. The terminal flourish 42
10. The Paraph 43

b.—The Gordon Signature compared with the body of the Will..... 45

1. Testimony of Contestants' Experts...
2. " Proponents' " ...

B.—Circumstances affecting all four Signatures..... 53

C.—The Adams Signatures..... 54

a.—Signatures compared with body of Will and each other..... 55

1. Testimony of Contestants' Experts... 55
2. " Proponents' " ... 55

b.—The Adams Signatures compared with Standards..... 77

I.—*The "Henry Adams" Signature*..... 77

1. Testimony of Contestants' Experts... 77
2. " Proponents' " ... 79

II.—*The "Alonzo C. P. Adams" Signature.*

1. Testimony of Contestants' Experts... 84
2. " Proponents' " ... 88

III.—*The "John Q. Adams" Signature*... 94

In the Prerogative Court of New Jersey.

In the Matter of The Probate in Solemn Form of the Last Will and Testament

OF

GEORGE P. GORDON,
Deceased.

Appendix to Proponent's Brief.

ANALYSIS AND COLLATION OF EXPERT TESTIMONY.

General Statement.

A general review and discussion of the testimony given by the experts on both sides has been inserted in the body of the brief, and it has been shown in general that each one of the points which contestants' experts endeavored to make has been fully met, and that, besides, there were a great many new facts and characteristics pointed out by the proponents' experts, and not met or answered by the contestants, furnishing an unanswerable argument for the validity of the signatures and will.

Attention has also been called in the body of the brief to the extremely unfair and misleading character of contestants' standards, including as they did only samples of testator's check signature, which signature was of a special kind and adopted for a special purpose, whereas Mr. Gordon's other writing and signatures showed a remarkable variety and diversity. Contest-

ants had offered but one signature of the witness, Henry Adams, as a standard, and but four of Alonzo C. P. Adams, two of which were practically worthless, and none of John Q. Adams.

The proponents, on the other hand, offered as standards a large number of letters and signatures by Mr. Gordon, showing the wonderful diversity in his ordinary handwriting, and produced also numerous standards of the handwriting of each of the subscribing witnesses, which showed that each of these witnesses greatly varied his handwriting and that no one or two standards could possibly form any fair test for comparison. Proponents' experts had studied all these standards and their opinions and reasonings, and the facts they showed to the Court were the result of this careful study and examination, while the contestants' experts had studied only a few of Gordon's check signatures—some of them apparently only Carvalho's distorted photograph—and had not studied any of the standards of the witnesses' signatures, but gave their opinions from the most casual glance at one or two of them on the witness stand.

The foregoing facts must be kept in mind in considering the following abstract of the expert testimony, which takes up seriatim all the material points discussed by the experts on both sides.

The contestants called as their professional experts, Messrs. Carvalho, Cantwell, Ames, Hagan and Tolman, and proponents called Messrs. Rauch, Ewell, Cresson, McClelland and Elliott.

A.—THE GORDON SIGNATURE.

a.—Compared with Standards.

I.—General Characteristics.

1.— Writing on the Line.

Contestants' expert, Carvalho, testifies that in the five check signatures, D. 56 to D. 60, it is Gordon's habit to write on the line ; the disputed signature is written just a little way above the base line, he says, and this is one of his reasons for considering the disputed signature a forgery (229). A careful inspection of the five check signatures mentioned in comparison with the disputed signature shows that there is doubt about the accuracy of Mr. Carvalho's statement, even in regard to these five signatures.

Proponents' expert, Ewell, points out (888) that the testator is very erratic in his method of following the line; he more often departs from the line than follows it in writing his signature, and directs attention to Exhibits P. 35, P. 36, P. 37, P. 38, in which his signature is considerably above the line, whereas in P. 39 "he has come considerably below the line," so that his habits in that respect vary, and no argument against the genuineness of the signature to P. 1 can be derived from the fact that it is written just a little above the line, if such is the fact.

2.—The Period.

Mr. Carvalho calls particular attention, as one of the indicia of lack of genuineness, to the fact that it was Mr Gordon's habit to put a period, as was shown by the Exhibits in Court—the checks only, of course, he refers to—after his name, whereas in the disputed signature there was no period after the name (235). Mr. Ames also says that usually at the end of genuine signatures there is a period (378). On cross-examination Mr. Carvalho, on being shown a number of letter signatures, retracted his former statement and admitted

that the absence of a period was of little consequence in determining the genuineness of the disputed signanature (290 ; 291 ; 296).

An inspection of the various exhibits shows how much the testator's habits vary in respect to the period and that its presence or absence would be of no consequence whatever in determining whether or not any particular signature was genuine.

3.—The Slant.

Mr. Carvalho says the actual slope of the writing in the disputed signature varies six degrees from the slope of the standard check signatures, the one being thirty-four and the other about forty degrees (229). Mr. Hagan says the disputed signature slants more than the standard checks (333). Mr. Ames does not think that any particular point can be made in regard to the slant (394), because of the variance in the slant of the particular letters and parts of letters. Mr. Orton first said that the disputed signature was more regular than the signatures to the checks, but, later on, appears to have changed his mind and concluded that the disputed signature slanted more than the check signatures, but thought that the difference in slant was a most important matter (475).

Proponents' expert, Dr. Cresson, measured accurately the slope of the disputed signature and the slopes of a number of standard signatures, and his results are stated at length upon pages 1128 and 1129 of the testimony. Among other things, he found that the inclination of the letter "P" in Exhibit P. 1, was forty-six degrees, in D. 60, forty-six degrees, and D. 58 thirty degrees ; that the inclination of the oval of the second "o" of Gordon in Exhibit P. 1, was thirty-eight degrees, and of the second "G" in D. 56, thirty-eight degrees. The inclination of the axis of the "o" in the word Gordon in the disputed signature was thirty-two degrees ; of the "o" in Exhibit D. 58, thirty-five degrees, and of the last "o" in D. 58 thirty-six degrees. The inclination of the "r" in the name of Gordon was

forty-seven degrees; in Exhibit P. 1, and in Exhibit D. 59 it was forty-three degrees, and in D. 56 thirty-seven degrees. The inclination of the curve following the "n" in Exhibit P. 1, was fifty-two degrees; in Exhibit D. 60, fifty-eight degrees; in Exhibit D. 58, forty-five degrees. It appears from these exact measurements that the slope of the standards varies greatly, and that some of them slope more and some less than the disputed signature, and that the slope of the various letters in some of the standards varies greatly (1127; 1128; 1129).

Captain Rauch testified that the slant of the writing in the body of the will is irregular (830; 831), while the slant of the disputed signature is uniform throughout. Prof. McClelland gave testimony of the same character. It is very evident that the contestant's witness, Ames, is correct in his conclusion that "*no particular point*" can be made of the slant.

4.—*Length of Signature.*

Mr. Carvalho says that the "signature taken as a whole from what appears to be the initial stroke of the "G" to the finish occupies more space than that of the signatures, any that I have seen" (250).

Mr. Cantwell also says (316) that the signature in Exhibit P. 1 "extends much beyond the usual length of the genuine or standard signatures". In view of the exact measurements made by Prof. Ewell (896), Dr. Cresson and Prof. Elliott (1468) in open Court, and verified by the Ordinary himself, the learned experts and counsel for the contestants will doubless not insist upon this point or mention it again. The most casual inspection of the standard signatures shows that Prof. Ewell's statement, that there is great variety in the length of Mr. Gordon's signatures (900), and that the disputed signature does not vary materially in length from the standards, is true.

5.—*Movement.*

Mr. Carvalho testifies that the testator's habits as shown in *the three check signatures* D. 58, D. 59 and D. 60 in the cartoon D. 71, was to use a forearm movement while the disputed signature was written with a finger movement (228 ; 229; 218).

Mr. Ames says the movement in writing the Gordon signature in Exhibit P. 1 was some wrist and some finger, but mostly finger, while the movement used in the standard check signature was a wrist and forearm movement with very little finger movement in it (434).

Mr. Hagan said that he could not tell "by observation whether the signatures were made with the forearm movement of the rotary action, or with the finger movement" (345), and that it would be possible for a man to write his signature with the finger movement although accustomed to write with the forearm movement, and then the resulting signature would be "quite dissimilar" from his ordinary signature.

Mr. Tolman thought the check signatures (460) were written by a trained hand, "one which used what is called the arm movement with great uniformity." This tended to give elongated lines unequal in size with great variety as to flourishes and immaterial portions. The signature to the will, the witness said, was the signature of "one who wrote a limited wrist movement, finger and wrist movement" (480 ; 481).

Proponents' witness, Capt. Rauch, says (974): "I never knew a good penman—I do not recall one in all my life—that wrote as many different ways as Mr. Gordon." (975). He commonly used a combination of the arm movement with that of the wrist or fingers, although the arm movement seems to predominate in the writings. The witness thought it was a difficult matter to draw the line between finger and wrist writing (976). "There are," he says, "almost innumerable ways of writing in the holding of the pen, and I consider it a doubtful thing at best, to express a reliable opinion upon how a particular pen was held, the position of the

hand and other things which might cause it to differ in that respect, so that it is hard to tell what writing is written with a wrist or finger movement" (976).

The witness further stated that a person who wrote with a wrist movement wrote a more cramped hand than a person who wrote with the shoulder movement. The same witness further along said that the testator used a combination of what he called a shoulder and wrist or finger movement, and in some cases seemed to use more of one than of the other, and that he was of the opinion that the signature "Geo. P. Gordon" to Exhibit P. 1 had been written with the slower movement without so much of the shoulder movement, and that this would make a perceptible difference between it and the ordinary check signatures, independent of any consideration of differences as to paper and pen. An unusual pen and the peculiarity of the ink would intensify the differences (1012 ; 1013).

Prof. Ewell thought the check signatures D. 58–59 and D. 60 were in an easy, flowing handwriting, and probably made with an easy arm motion (914). The disputed signature he also called "an easy flowing signature, but not so easy and flowing as the others." There was, however, "nothing cramped about it," in his judgment (914). The witness said it was impossible to determine certainly whether the writing was made with an arm movement or with a wrist movement; that sometimes writers used a part of each kind of movement, part of the writing being done from the wrist and part from the "forearm or elbow movement, and still others wrote with a finger and wrist movement" (854; 907). He thought, however, the testator used "a pretty free movement in writing," and very rarely wrote with a finger movement, although he thought it impossible to tell accurately (882).

Dr. Cresson, after having measured the height of a number of capital "P"s in the standard signatures,

and compared them with the letter "P" in the disputed signature, stated that a number of the "P"s of the testator were all made from the "wrist hand," not from the shoulder, and that those made from the shoulder were taller than those made from the wrist (1130).

Prof. McClelland testified that the check signatures, particularly the "G"s, were written with the whole arm movement, that is, by slightly raising the arm from the desk or table, and the testator's correspondence was written with the fore-arm movement, "which consists in the action of the forearm upon the muscular rest near the elbow, the hand riding on the nails of the third and fourth fingers" (1349). "In all cases," the witness said, "where the initial line begins at or near the base line, the initial "G" is not so bold as in the check standard signatures. From this the inference undoubtedly is that the 'G"s found in Gordon's correspondence of the type of those in the disputed signature were written by more of a forearm or wrist movement than were the "G"s in his checks (1349; 1350). In his redirect examination, the witness testified that he found in the standards of the testator examples of all the movements which he had enumerated. There was the finger movement, the fore-arm movement and whole-arm movements and combinations of these various movements (1404).

It is clear from these various statements made by the experts on both sides of the contest, that it is impossible to determine with certainty just what kind of movement was used in writing the disputed signature; that the movement was somewhat slower and more of a forearm or wrist and finger movement than that used by the testator in making the "G"s of his check signatures; that the testator sometimes used the shoulder movement, and sometimes the forearm and wrist or finger movements. That all these movements are found in his writing, and that the movement used in his correspondence is more of a wrist and finger movement and slower than that used on his checks. There is no difficulty therefore so

far as the movement is concerned in concluding that the testator wrote the disputed signature. It may be also said in this connection that this is one of the points in expert testimony, in regard to which the theory adopted by the expert depends upon facts observed and to be pointed out in the disputed writing and standards.

6.—Pen Pressure.

Mr. Carvalho says the pen pressure in the standards is different from that in the disputed signature. In the three check signatures the pen pressure, he says, is greatest near the top; in the disputed signature it "begins about the middle and gradually thickens out running down to the bottom" (230).

Mr. Hagan says in the "e" in D. 59 "the pen pressure comes down very near where the turn in the bottom of the 'e' commences to move up," but in the signature to Exhibit P. 1, greater density occurs clear to the bottom of the "e", and the same thing is seen in the "o" of the disputed signature while in the "o" in D. 59, the emphasis is uniform all the way from the top to the bottom, likewise there is greater density at the bottom of the "o" in Gordon and in the other small letters in the disputed signature, which is not seen in the check signatures (325). The witness admitted that a sharp, stiff, steel pen, however, would make a very different set of marks from a soft, loose, diamond-pointed gold pen (346), and that a man writing with considerable pressure with a gold pen would find that with the same pressure with a steel pen he was boring into the paper a good deal, and that the spreading of the ink might have considerable to do with the emphasis (347).

Mr. Ames says: "My first observation was that the signature in question as compared with the standards was very heavy, * * * every downward stroke was emphasized and strong, while in the standards (the

checks only) it was a light, unemphasized line." The witness instances the first "G," where "there is a very strong emphasis at the base of the turn in the 'G' in each instance, whereas the emphasis is not strong comparatively in the standards, and where it does occur it is at the centre instead of at the extreme base" (369). "So far as the pen pressure is concerned in its place and degree there is no resemblance between the standards (the checks only) and the signature in question, not one" (370).

Mr. Tolman said there was a "wedge-shaped" characteristic in the disputed signature, the lines broadening toward the bottom, and admitted that this was possibly due to the ink in the disputed signature, but said it was not found in the standard check signatures.

The contestants' experts also referred to "the heavy and club-like" appearance of the lines in the disputed signature, as indicating an entirely different sort of pen pressure and touch from that found in the standard check signatures (230; 231; 232; 233; 234; 235).

Mr. Carvalho, however, in his cross-examination, in answer to the question whether the spreading of the ink did not account in some measure for the emphasis, or pen pressure, or "club-like appearance" of certain letters, said, "I think it is fair to say that the ink used was a very thick ink and that a great deal that makes it thick in appearance is due to the ink" (281). The witness also testified that the ink on the signatures of the testator and subscribing witnesses had spread a great deal; "not only," he said, "have they spread sideways, but they have gone through the paper, and not only gone through that paper, but they have gone through and onto the next paper or page" (278).

This spreading Mr. Carvalho attributed to damp or moisture, and explained by saying: "I mean to say that if that sheet of paper had been in a very damp place and then taken out and the signatures of testator and the three subscribing witnesses placed on it in its damp condition, such effect would take place as I see, due to the ink" (278). He thought that the appearance of

the signatures might result from writing upon a damp or moist paper, but that the ink going through the paper and over on to the other paper could not result from this cause alone, but thought that "extraordinary ink," would account for it, so that, according to contestants' own witness, the ink was very thick, an "extraordinary ink," and the paper moist or damp, and these circumstances account to a great extent, even in Mr. Carvalho's view, for the peculiar emphasis or pen pressure or "club-like appearance" of the letters of the disputed signature (278; 279; 280; 281).

Mr. Hagan also observed that the ink in the disputed signature had soaked through the paper, and thought it might be due to the fact that the paper was "merely unsized stuff" through which the ink readily filtrates, "and it makes a stained appearance on the paper on the other side. I think it is due to the character of the paper largely" (359). He stated that the ink in which the signatures were written was a "copying ink" (360).

It is admitted, then, by contestants, that there were very peculiar circumstances connected with the writing of this signature. There was a steel pen when the testator was accustomed to write with a gold pen, and greatly disliked a steel pen, and "*bore heavily and made poor work of it*" (P. 115). There was paper without any sizing and this paper, which contestants' witness calls "merely unsized stuff," was damp or moist when the signatures were written upon it, and the ink was "an extraordinary ink," a "very thick ink," which had much to do with the heavy club-like lines and the peculiar pen pressure and emphasis shown in the signature. All this is not only admitted, it is the testimony of contestants' witnesses themselves, and must always be kept in mind in considering the evidence in the case.

Capt. Rauch testified that there were evidently unusual conditions in the writing of the four disputed signatures (1006), producing an extraordinary appearance (1007), a flowing of the ink, going through to the next

page (1007), and could not say whether this was due "to the thick condition of the ink, or to the moist or damp condition of the paper, but in either event it would influence the writing and beget different writing from the usual habit of writing of the parties who wrote the names" (1008). In regard to the "blurring," in another place, the witness says "I think there were two causes for this blurring. I have no doubt the ink was very much evaporated and had become thick from that cause and then the probability is that the paper was moist" (828).

Capt. Rauch also testified that it was hard to tell whether the heavy shading in the small letters in all four of the questioned signatures was due to the deliberate pen pressure or some other cause, and said, "The probability was that the ink was very heavy and thick, and that that influenced the writer to put more pressure on the pen than usual" (1013), and that any change of circumstances, such as moist paper, color of the ink and writing with a steel pen where the writer was accustomed to use a gold pen, or a marble top table, would change not only the appearance (as Mr. Ames had testified, 431), but also the characteristics of a man's handwriting. "The influence," he said, "of a bad pen and ink, and the physical condition of the writer will influence and change the manner of writing, both as to its characteristics and form, and that, I guess, is the experience of everybody that writes" (968).

This witness also called attention to the fact that while Mr. Gordon sometimes did not shade his small letters, there were frequent instances where he shaded his small letters heavily, and directed the attention of the Court to the signature of P. 67, to the words "two and a half inches shaft," and the signature of P. 49, to the signature and body writing of P. 55, P. 78, P. 80, P. 86 and P. 93 (1014; 1015). A reference to these exhibits pointed out by Capt. Rauch will show that the testator not only varied his habit as to shading or not

shading the small letters and of course as to the degree of pen pressure, but that when he did shade the small letters he varied the place and degree of the emphasis.

Professor Ewell also called attention to the great diversity of the standards and signatures of the testator in regard to shading or emphasis, and on pages 882 to 885 of his testimony pointed out a large number of examples of testator's writing, showing this remarkable diversity. A reference to these numerous examples makes it clear that in some instances in the testator's genuine writing the pen pressure is greatest nearest the top, as Mr. Carvalho claims (but, we admit, contrary to the fact) is the case in the three check signatures (230); in other instances it is greatest near the middle and still others near the bottom of the line. This variety and diversity is so great that Professor Ewell concludes that the testator had " no rule, nor fixed habit as to shading " (884). (See also p. 921, where the same witness says that testator's practice in regard to the pen pressure in the " d " is " so varied that there is no general rule ").

Contestants' counsel endeavored on cross-examination to restrict Professor Ewell's testimony as to pen pressure to their own standard check signatures (as they had restricted their own experts for obvious reasons), and particularly to the five check signatures specially examined by Mr. Carvalho. Professor Ewell protested against this and refused to submit to the restriction, and stated that the testator had no " set rule in pen pressure ; sometimes he has none, and at other times it occurs in most unexpected places " (919).

In reference to the " wedge shaped lines," which contestants' expert, Tolman, had stated were apparent in the disputed signature, Prof. Ewell denied their existence as a general characteristic—and it will be remembered, he had examined the signature very carefully with a microscope—but to the question, " Is not the down stroke of the first ' o ' in the word ' Gordon ' (to which letter Mr. Tolman had particularly referred) of a wedge like shape ? " Answered, " Very slightly.

It would depend on the scope allowed to his imagination whether he called it a wedge or not, but I should say not" (918), and the line itself shows that he was correct in his statement.

Prof. Ewell is also of the opinion, here agreeing with Mr. Carvalho, that the paper of P. 1 was damp at the time the signatures were written (857, 912). He had experimented by writing with an ordinary fluid ink on ordinary legal cap paper which had been dampened in places and found that the ink struck through in the portions which were damp, but did not do so in the portions which were dry. He concluded as the results of his experiments that the paper was not wet, because then the signatures would have blurred considerably, but that it was simply damp (857; 858), while the checks were not damp when the signatures to them were written, and that pen pressure is modified by the dampness of the paper (920), and that the almost imperceptible increase in thickness of the stroke of the staff of the "d" toward the bottom may have been due to the moisture of the paper (920) Witness further said that he was of the opinion that if. P. 78 had been written on the same kind of paper, it would have had the same heavy appearance as the signature to P. 1 (895).

Prof. McClelland testified that the disputed signature has the same general characteristics and the same pen pressure as the standards of the testator in his correspondence or letters, but not exactly the same as in the check standards; the characteristics of the letter signatures, particularly the pen pressure, was different from the characteristics of the check signatures, the pen pressure in the former being a little heavier than in the latter (1396). In regard to the shading of the "d" of the disputed signature, the witness pointed out the fact that it was shaded precisely like the "d"s in a number of the standards, particularly as in Gordon's body writing. (1362).

Prof. Elliott also pointed out the fact that the paper of P. 1 was damp when the signatures were written

on it (and showed evidences of this fact under the microscope (1486; 1493), because of its wrinkled condition and its general appearance (1495); it looked "precisely as if it had been carried in a man's pocket and he had perspired a great deal" (1496).

Dr. Cresson testified that experiments which he had made demonstrated the fact that when paper similar to that on which the will is written has been moistened by the perspiration of the body and is then written on with moderately thick ink, the writing will have the general appearance of that in the disputed signature (1121).

The witness (1123, 1121) produced three pieces of blue paper that were evidently precisely similar in appearance and character and texture to that on which the will is written (Exhibits P. 229, P. 230, P. 231). On one of these (P. 229; 1137) he had written with moderately thick Arnold's ink, without subjecting the paper to any damp or moisture, and the writing did not seem of any different appearance from ordinary writing (1122). Another of these (P. 230) he had carried in his inside vest pocket, and subjected it in this way to the dampening influence of the perspiration of his body, and had written upon it within two or three hours afterward, when the ink in the writing ran very much in the same way as did the ink to the signature to the will (1121; 1122; 1123). P. 231 was also subjected to the action of perspiration by being carried in the witness' pocket close to his body, but the witness thought it had been carried too long. The ink used was Arnold's ink, "taken from an inkstand which had been left open for some time and was moderately thick." (1122). The witness had tried in making experiments with the paper, the effect of writing upon it with the same ink when the paper was moistened with water, or some acid solution, but the same effect was not produced as when the paper was moistened by the perspiration (1121). The sizing of the paper is "a gelatine sizing" (1121), and the witness thought the peculiar effect was caused by the fact that "the perspiration is

somewhat ammoniacal as exhaled from the body, and had a solvent effect upon the gelatine sizing"; and this paper was thus put in a condition, he thought, which caused the ink to spread (1123). The witness had made numerous experiments in order to satisfy himself of the correctness of his conclusions (1122, 1137). In the case of P. 230 he had carried the paper in his inside pocket, perhaps two hours, and the weather was not very warm (1137),

The witness testified that it was very difficult, if not impossible, in parts of the contested signatures, to separate the "supplemental blot" produced by the spreading of the ink from the original line (1131). The ink had spread wherever there had been a pause, or a change of motion, as in the "winding up of the 'o'" and the top of the "P" and each of the following letters, particularly in the down strokes, which carried more ink and showed the spreading more—the hair lines dried quicker and spread less (1161; 1162). In the hair line the spreading occurs, however. The witness instanced the terminal of the "P," which was a hair line, as a place where there was considerable spreading, which could be seen when it was put "in a proper light and highly magnified" (1162). The witness stated that the condition of the paper explained to his mind a great deal of whatever difficulty there was in the disputed signature, and the results of his experiments fully confirmed him in this view (1163). "When first I saw the signature," he says, "I was first shown letter signatures and made up my mind at once that the disputed signature was genuine" (1163).

The results of these experiments show conclusively that the peculiar spreading of the ink and blurring and whatever is peculiar in the emphasis or shading or apparent pen pressure can be fully accounted for by the condition of the ink and paper, to say nothing of the other peculiar conditions—a steel pen instead of gold pen, a marble-top table—a centre table in a reception room, with probably limited space for the paper and the writer's hand and for his legs—the fact that the

paper had been carried in testator's pocket and must have been folded and creased so that it would not lie flatly on the table, and the unusual character and solemnity of the occasion ; and also the fact that the pages that were signed were the outside pages, when folded, and therefore more subject to the influence of moisture from perspiration when testator carried the paper in his pocket.

It is a remarkable circumstance that Mr. Gordon's own letter and the reports of the U. S. Signal Service should establish the fact that the weather was very warm during the week preceding July 25th, 1868, when the testator carried this document in his pocket, and that the peculiar spreading of the ink in this paper should be shown by scientific experiments to be producible only on paper moistened by perspiration. Surely the clerk of the weather bureau, and Mr. Gordon also, must have been in this remarkable "conspiracy" with Mr. Henry C. Adams.

The testator himself has supplied most important testimony as to the influence of one of those circumstances other than damp paper and thick ink, namely, the effect of using a steel pen, instead of a gold pen, upon his habit of writing. He says (Ex. P. 115) : "Lenore has run off with my pen, as she always does, and left me to write with a steel sharp-pointed pen as best I may. Now I must have a pen suited to my *hand* or I make poor work in writing. I bear heavily and therefore must have a flowing, easily gliding pen."

7.—Patching, etc.

Mr. Carvalho says : "I think that the disputed signature is made up by sections" (237), "taking in particularly the flourish," and again : "It appears to me as though it was painted, a painted and traced signature ; * * * it is a repainted and retouched signature" (282). "I can say that any man that has eyes, by putting this under a microscope, can see that where

the line is painted, originally written the signature made, and then it is painted, and the ink put on subsequently" (282). The witness explained that by "patching" he meant that the signature "Geo. P. Gordon," after the writing had been made "has been rewritten in certain places by retouching or putting back the pen on that particular spot, and as we call it, painting" (283), but admitted that very many people did this, and that Mr. Gordon could have written his signature there, and "then taken up his pen and gone over it all, gone over * * * his signature again, but I do say that it is not likely" (283). In answer to the question whether it was unlikely, "taking the paper there was, and writing his signature on the moist paper," witness said: "Well, it is hard to say." He admitted that the pen did not run on old and moist paper as well as as on some other kinds of paper, and added: "It does not run on a linen paper very nicely; it is a different thing when you have a well sized paper to write on" (284). Some of the other witnesses for the contestants also pointed out what they thought to be evidence of patching, but no particular stress was laid upon the matter by them (482; 411). Contestants' witness, Ames, thought that in the first "G" in Exhibit P. 23, the first stroke had been made over twice (448).

Capt. Rauch says the signature is a clear, clean signature, written with a steady hand (957, 958), and he pointed out (968) the fact that Gordon sometimes "tinkered, mended or patched" his writing, as shown in the standards.

Prof. Ewell examined the signature under a microscope of 100 diameters, and found no evidence of patching. "There are places," he says, "in which there is more ink than in others, but there is not a break, a sudden change in the color of the ink which you would expect to find if the pen had been put on for the purpose of patching (889)—the ink is thicker in some places, but I do not think it has been patched." If it were patched, the witness thought it would not be sur-

prising in view of Mr. Gordon's habit as shown in certain of the exhibits which witness pointed out (889. 890). He also thought that the writer of the signature to P. 1, had not taken off his pen at the down stroke of the upper part of the first "G" (915), as contestants' witness, Tolman, had testified (482), and he attributed the heaviness of the letter at that point to the pressure upon the damp paper (916).

Prof. Elliott, who has been accustomed to the use of the microscope since 1868 (1463), testified that he had examined all four of the disputed signatures "under the microscope thoroughly," and did not find any evidence of painting or retouching to any of them (1483). He thought the thick ink, in some instances, made the signatures look somewhat as though they were patched, but his careful examination convinced him that they were not (1484). "The ink used," he says, "was very dirty or thick," but there was "no break in the continuity of the line" (1484), and in regard to the letter "m," in the signature of John Q. Adams, the witness stated, after examining it with a microscope, that there was "not a particle of evidence that those lines were touched a second time with a pen after the signature was written" (1484).

In reference to the statement of contestants' witness, Tolman, (482) that there was an abrupt stop at the bottom of the first oval of the first "G" in the disputed signature, the witness showed under the microscope that there was a hole in the paper before the writing was made and that the ink had run down into the cavity and had intensified the angle; that there was, however, no break and no separation, as the writing was continuous. This peculiar angle which the contestants seemed to regard as something not found in the standard signatures, Prof. Elliott showed was a characteristic of many of Gordon's signatures, and pointed out particularly the endorsement in D. 17, the "G" in D. 33, D. 37, D. 42, D. 50, P. 54, P. 70, P. 73 and D. 125, so that this break or angle in the disputed signature is an evidence of genuineness (1473).

The witness was an unusually intelligent and accurate one, and had evidently made his examination with great care and thoroughness, much more so than Mr. Carvalho who thought he saw the retouching and painting, but who was compelled to admit on cross-examination that most of his direct testimony was inaccurate.

The contestants certainly have not proved that there is any patching in the signatures in view of this very positive testimony to the contrary; even if they had succeeded in showing that the signature was patched, they would only have shown that the writer of the signature had done what the testator frequently did in other instances.

8.—*Tremulousness.*

Contestants' witness Tolman thought the initial line of the first "G" in the disputed signature was "very irregular, denoting great deliberation and also weakness" (482), and that the second "G" began "with a light wavering line" (482).

Capt. Rauch says the disputed signature is written with more painstaking and more care and more slowly than the general run of testator's signatures, but the moist condition of the paper and the thick ink "would doubtless beget slower writing" (833). There is no evidence that the signature was written in a feigned hand (832). The witness further said, "it (the disputed signature) is freely written and a clear, clean signature written with a steady hand" (957). He pointed out particularly the long staff of the "P" which was "perfectly clean," and such a line as from his experience it would take a man with an "extraordinary steady hand" to copy (958). "If it was a forgery it was done with rare skill" (957). On cross-examination the witness stated that he did not believe the signature was a forgery; that if it were a forgery he thought he could discover "some evidence" of it in the writing itself. There was no such evidence. "It is free," he said, "from all hesitation, it is not done by

a slow, constrained drawing" (978). There is no tremor or hesitation in P. 1, such as is common in forgeries (1012).

The witness testified, as has already been stated, that Mr. Gordon used the shoulder wrist and finger movement (1013).

Prof. Ewell says that a "simulated hand has more or less tremulousness, especially in long lines and hair lines, but there is no such tremulousness in the disputed signature to P. 1. He says : "I do not think that there " is any tremulousness or any wavering in this signa- "ture more than would necessarily result from writing "on this sort of paper" (referring to moist paper) (888). The witness pointed out the fact that there is a tremulousness or something very much like it apparent in testator's signature in P. 71, P. 49, and P. 54 (895). The signatures to D. 58, D. 59 and D. 60, he says, are probably written with an easy arm movement, although of this he cannot be positive, and while the signature to P. 1 is "not quite so easy and flowing," it is "easy and flowing and not cramped" (914, 915).

There is then nothing in the handwriting of this signature in the way of tremulousness that could be any evidence of lack of genuineness or that cannot be fully explained by the unusual character of the paper, ink, pen and other circumstances. It is natural that the testator, whose mind had so recently been deeply impressed with the certainty of death by his severe illness, should have written his signature to this will (the decrees of which could be ratified by death alone) in a slower and more deliberate hand and with fewer flourishes than when he hastily dashed off a signature to a check.

II.—DETAILED COMPARISON.

1.—The "G" in "Geo."

The Initial Stroke of the "G."

Regarding the formation of the letter "G" in the disputed signature as compared with the standards, contestants' witness Carvalho, who based his opinion on the check standards only, testified, that there was a radical difference in the manner of making the first stroke of the "G," which was made downward and and as an independent stroke in the checks, while in the disputed signature it began at the bottom and the whole letter was made in one stroke (230); but on being shown other standards—letter signatures—of the testator, the witness was forced to unconditionally retract this part of his testimony (294; 296).

Cantwell, another of contestants' witnesses, also stated as one of the evidences of lack of genuineness, that the letters "G" in the check standards were generally made in two sections, while in Exhibit P. 1 they were made all in one movement (316); this witness had seen only check signatures.

Ames and Hagan also gave substantially the same testimony on this point (371; 327), but they too had seen only check standards.

Prof. McClelland and Dr. Cresson both pointed out a number of exhibits in which the rising line of the "G" is like that of the "G"s in P. 1 (1350; 1132), while Prof. Ewell testified that the general frame of the "G" was identical with those of the disputed signature in many Exhibits—"too many to enumerate" (885). A glance at the "G"s in the Exhibits makes it very clear that the testator frequently made "G"s almost identical with those in the disputed signature.

In view of Mr. Carvalho's retraction and of the fact that the other witnesses for contestants had examined

only check signatures and of the hundreds of examples of "G"s made on the style of those in the questioned signature that are found all through the letter standards and were pointed out by the proponents' witnesses, it is unnecessary to say more on this point. Probably more of the capital "G"s in the standards are made after the type of those in the disputed signature than after the check type. This results from the fact that the testator, as was pointed out by proponents' witness, McClelland, used the whole arm movement in making the capitals in his check signatures, while he used the combined fore-arm and wrist or finger movement in his correspondence (1349).

The movement he commonly used in his writing must therefore have been not the whole arm movement but the combined forearm and wrist or finger movement, and this movement he would, of course, be likely to use when his mind was so filled with the importance and solemnity of what he was doing that he would not think of the particular style of his writing, but would write in the style most natural to him, but at the same time with solemnity and deliberation and care.

The loop of the "G."

Contestants' witness, Ames, referred to the proportion of the loop of the capital "G"s of the standards (he had seen only checks), and comparing it with the questioned signature, thought this an important piece of evidence that the disputed signature was not genuine (371; 372). Prof. Ewell, however, after an examination of both the letter and check signatures pointed out the fact that the general framework of the "G"s in the disputed signature is identical with that in many of the exhibits (885). The most casual inspection of these exhibits makes it clear that he is correct.

Dr. Cresson made exact measurements of the proportions of a number of the "G"s in the standards and

found that in the signature of "Geo. P. Gordon" to Exhibit P. 1 the same peculiarities in the proportioning of the two axes of the oval of the "G"s occurred as that which he found in contestants' standard check signatures D. 56 to D. 60 inclusive. The measurements show great variety in the size of these ovals, and also in their slant (1128; 1129). The witness also found a very great variety in the proportion which particular capital "G"s bore to the height of the small letters in the various signatures.

It is obvious that no possible evidence of forgery can be derived from the facts relating to the proportion of these capital "G"s, but, on the contrary, the fact that the ovals of the "G"s in the disputed signature have the same proportion as those of the standards and even of the check signatures is a strong argument in favor of the genuineness of the disputed signature.

The Base of the Loop of the "G."

Contestants' witness, Ames, thought that the pen came to a stop at the base of the loop of the first "G" in the disputed signature; that there was a hesitation, "the party was in doubt whether to proceed and the line is patched and broken" (450).

Prof. Elliott, however, pointed out the fact that Mr. Gordon frequently made a sharp angle or something like a break at the bottom of the oval of his capital "G"s and that this feature is very apparent in the ovals of the "G"s of the disputed signature, and in the case of the first one is intensified by a small hole in the paper, which the witness showed to the Court through his microscope (1473).

Prof. Ewell mentions this tendency to make an angle or break at the bottom of the loop of the "G" (952) as appearing in the standards and also in the disputed signature.

Capt. Rauch thought there was a pause in the "G" at

that point, and that the form is entirely consistent with the "G"s made by Mr. Gordon in many of the standards (968). Dr. Cresson showed by means of a tracing that the curve or angle made at the bottom of the oval of the "G," in the disputed signature, occurs in many standards (1131), and points out exhibits which show a particularly close similarity (1132).

Prof. Elliott, after pointing out the hole in the paper, which intensified the break at the bottom of the oval in the first "G" in the disputed signature, says:

"Now this peculiar break in the turn of the letter there is a feature of the 'G's of George P. Gordon. I had better call it an angle, because there is not a separation, as the writing is continuous. * * * * This peculiar angle is also seen in D. 17 in the endorsement," in D. 33, D. 37, D. 42, D. 50, P. 54, P. 70 and P. 73; in P. 53 it appears in both "G"s of the signatures, and is also seen in D. 125 (1473).

This is another striking characteristic, combining with many others to demonstrate the genuineness of the disputed signature.

The Shading at Top of Staff of First "G."

The peculiar heavy shading at the top of the staff of the first "G" in the disputed signature was referred to by Mr. Ames as an evidence of lack of genuineness (450) and to show that there was lack of harmony and homogenity in the signature itself as the second "G" does not appear to have so much ink at that point (450). Mr. Carvalho thought Mr. Gordon made his shadings heaviest at the top of the lines, and as the shading on this staff of the first "G" must therefore have been to his mind an evidence of genuineness, he failed to mention it (229; 230). It is, however, a feature of the disputed signature, and ought not to pass unnoticed.

Prof. Ewell pointed out the fact that Gordon greatly diversified his signature in the matter of shading, so that no stress could be placed upon how he shaded in a

particular signature (882), but pointed out instances when, as in this disputed signature, one of the staffs is and the other is not shaded, and also instances of the great variety of testator's writing in this regard (882; 885).

Prof. McClelland thought the strength of the shading in this line might have been caused by the thickness of the ink or the condition of the paper, the ink spreading at that point (1350).

Prof. Elliott showed that the testator in a number of the standards made a very heavy shading on the down stroke or staff of his capital "G"s (1473),and pointed out as particular instances of this the "G"s in Exhibit D. 101, in P. 53, in the third line in the word "Glad," in P. 122, in the signature and in the word "Give" (fifth line from the end) and in D. 124 in the word "God" in the last line. "This 'G' is," he says, "a *fac simile* of the 'G' in the will" (1473).

In view of these examples of testator's writing and of the pen, ink and paper used in this signature there is certainly no difficulty in concluding that Mr. Gordon wrote this "G."

The Spherical Triangular Terminal of the "G."s

Contestants' experts spoke of the peculiar spherical triangular termination of the capital "Gs" in the disputed signature as evidence of forgery.

Mr. Carvalho says (230): "Mr. Gordon finishes (his capital 'G's) without any effort and finishes off into a thin line, the pen pressure being about the middle or nearer the bottom, whereas in the disputed signature it passes around and makes another turn and crosses the down line to the left with the pen pressure well over to the end, showing and indicating to my mind an entirely different touch."

Cantwell says (317): "The bottoms of the 'G's in the standards are usually brought around with a free open flourish, while in the bottom of the 'G's in Ex-

hibit P. 1 there is a sort of knot or loop that characterizes that part of the construction of the 'G.'s"

Tolman says (373): "In the terminals it (the capital 'G' in the standards) ends uniformly with a uniformal sweep with no tendency to return downward or to form an enclosed space or dot, while in each of the questioned 'G's it returns very formally, forming an enclosed space, in one instance nearly triangular and in another by a long loop slanting to the left. * * * These are not sufficiently alike to be the natural handwriting of the same person; the internal evidence would be enough to stamp them as spurious"

Does Mr. Tolman think it took two forgers to make this signature?

It was, however, demonstrated beyond any question that this remarkable spherical triangular terminal with which these "G"s in the disputed signature end is one of the most striking characteristics of testator's writing, and its presence in these "G"s is therefore another strong evidence that George P. Gordon wrote them.

Prof. McClelland, on pages 1350 and 1351, points out in the standards a large number of instances of this peculiar triangular curve, some of which are almost identical with those in P. 1, but there is a variety among them, just as there is a difference between those in the two "G"s in the disputed signature. This difference is itself an evidence of genuineness rather than of forgery (1352).

Dr. Cresson, Prof. Ewell, and Prof. Elliott all added to this list of Gordon's standard spherical triangles, and an inspection of the exhibits which these gentlemen enumerate (884; 885; 892; 925; 1132; 1473; 1474) shows how utterly false and misleading is the testimony of contestants' experts in regard to this subject. The facts are entirely different from the representations made by Carvalho and Cantwell and Tolman, and what these witnesses claim is a strong evidence of forgery is one of the best evidences of the genuineness of the signature. It is an important fact in connection

with this characteristic of Gordon's writing that it is found not only in his signatures but also very often in the body of his writing, so that it may truly be said to be a general characteristic of his handwriting, and not merely an accidental occurrence in a few of his signatures.

2.—The Greek "e."

Mr. Carvalho criticises the "e" of the disputed signature, alleging that it has a different proportion with the other letters from the "e"s of the standards (231). Mr. Ames has the same objection to it, and also says that there is no loop between the parts of it, and that there is an angle at the bottom, whereas in the standards there is either an open loop or blind loop between the parts and a "round, full turn at the bottom" instead of an angle (373).

Capt. Rauch points out the fact that this "e" in the disputed signature is "identically the same in character and form" as the "e"s found in a number of the different standards (960). Dr. Cresson pointed out that in the standards (Exhibit P. 205), some of the Greek "e"s were almost identical with the "e" in Exhibit P. 1 (1464).

Even the contestants' expert, Ames, showed in his testimony (273) that the "e"s in the standard check signatures varied in form, and Dr. Cresson and others of proponents' experts from their wider and more thorough examination of testator's handwriting, as seen in all the standards, called attention in a number of instances to this variety (1163; 1164; 1352; 1353; 1354). Prof. McClelland testifies that the Greek "e," although large and "bolder and in keeping with the dashing form of the "G" in Gordon's signature," in his correspondence, whenever it is used, is in proportion to the other letters in the word in which it occurs, the top part being one-third the length of the letter, as it is in the signature to the will (1352). It is higher than the

following letters, but not so high as in the check signatures (1363).

In testator's correspondence and all through the body of his writing in his letters, it "is uniformly the same height as we find it in the signature to the will P. 1." * * * "The back or final down stroke is straight and unites regularly, and I find that in the check signature. * * * in his correspondence, wherever he uses the Greek 'e,' it is about one-third higher than the letters that follow it, while in his check signature it is very much larger and bolder" (1352; 1455). Testator's habit in "the body writing" conforms to the signature in P. 1 in that regard, that is in regard to the height of the Greek "e" in proportion to the other letters (1353).

3.—The "O"s.

Mr. Carvalho makes no point about the writer of the questioned signatures not joining the first "o" with the "P" because sometimes people do and sometimes do not join them, but he says "in the genuine signature here the final stroke of the 'o' passes up; it does not pass over and above up to the initial stroke, as it does in the disputed signature" (231). The shading of the first "o" he thinks is different from the "o"s in the checks.

In reference to the second "o" he says he finds the habit of Mr. Gordon is sometimes to leave his "o"s a little open, but he finds that in Exhibits D. 59 and D. 60 he closes them; so that the fact that in the disputed signature the "o" is closed is no evidence in regard to the different habit in that particular respect. "But when he closes them," the witness says, "he begins his initial stroke above where he is going to finish the 'o' * * * "In the disputed signature the initial stroke of the 'o' is begun below where it finishes; its finishing stroke is above its initial stroke" (232).

The same criticism substantially is made to the third "o" by this witness, who says of testator's "o"s in

general that "sometimes he leaves them open and sometimes he closes them," so that the fact that this one is closed amounts to nothing, but this "o" is faulty as compared with Gordon's "o"s in his checks in that the up line goes above the top of the down line and that the latter "is thick and club-like" (234). This last feature has already been completely disposed of.

Cantwell says Gordon's "o" in the standards is regularly smaller than the other letters, which is not the case in the disputed signature (315), and that the last "o" in "Gordon" in the standards "describes an easy swing when it joins with the 'n,' * * * while the top part of the 'o' in Exhibit P. 1 shows a loop or an attempt to make a loop, which is not to be found in the standards" (316).

Mr. Hagan thinks he sees a peculiar thumb pressure in the "o"s and other small letters of the disputed signature, causing greater density in the down strokes near the bottom, and that this is not visible in the standard check signatures (326). The question which he raises has already been fully discussed. The paper was damp, "unsized stuff," the ink was thick, the pen made of steel instead of gold, and the writer "bore hard," and the occasion was solemn and all the circumstances unusual. This witness says with reference to the "o"s in "Gordon," "in the disputed signature the 'o' is made by making a complete pass of the pen movement at the top, then carrying it horizontally with pressure (thick ink, moist paper, and a steel pen), forming almost a loop, while in the standard signatures the 'o's are left open, or if not left open, closed; no loop is found at the top" (327).

Mr. Ames tells us that that in the standard (check) signatures there is scarcely any emphasis on the downward stroke of the "o," whereas in the disputed signature, this line is "a strong line, different to the standard" (369). This is one of the heavy "club-like" lines of which sufficient has already been said.

In the standards the witness says the up stroke of the

"o" " is a light up stroke with no return in each instance, while in the questioned signature in each instance it returns and forms a dot and not quite closing with the other, the first member being short" (370). In the standards the pen goes off from the " o" to the following letter " with a uniformly round motion, no rest, continuous over and down, forming the body with a blind loop." " While in the questioned signature at the top there is a direct change of motion, an arrest of motion and a downward stroke and heavy lineage of the pen, making an exceedingly broad line" (376).

Mr. Tolman can apparently see nothing in the " o "s of the disputed signature different from the "o "s of the checks except his (imaginary) " wedge-shaped lines (483).

Prof. Ewell points out the fact—admitted by Carvalho, but apparently denied by some of the other experts of contestants—that Mr. Gordon sometimes made his small " o"s open and sometimes closed them. He can discover no departure in the making of the "o" in the disputed signature " from the normal standards" (890). In some of these standards, as P. 36, P. 37, P. 38 and P. 54, the small " o"s are "closed as in the will" (890). In P. 199 the last "o" has substantially the same characteristic but not in quite so marked a degree. The same closed " o " is found in the word " Gordon" in the sixth line from the bottom in D. 93—the same sort of a loop at the end (891). The heavier pressure near the bottom of the down strokes of the " o"s in the disputed signature is observable in standards. D. 58, D. 59 and D. 60 (919).

Capt. Rauch said the "o"s in the standards were similar to those in the disputed signature ; " they are common to writings generally, a general type" (961).

Prof. McClelland says: " The " o" in the "eo" in the signature of the will is characteristic of Gordon's handwriting," in having "the same slant as the 'e'" and also in that it "is curved on both sides, forming a complete oval." " In the will signature the 'o' is

closed at the top; in the check signatures it is sometimes closed and sometimes not, but in Gordon's body writing, *i. e.*, in his letters, it is customary for him to close it as frequently as it is for him to leave it open" (1354). The instances in which Gordon closed the "o" are very numerous and many of them were pointed out by this witness on pages 1354 and 1355 of the printed testimony. These instances occur both in the signatures and body writing of the letters.

At page 1358 the witness calls attention to the fact that, whenever an "o" begins a word in Gordon's handwriting, it slants more than the letters which follow it, and that the first "o" in the word "Gordon" in the disputed signature slants more than the "r" which follows. This is a remarkable characteristic of Mr. Gordon's writing and an important evidence of genuineness of the disputed signature (1358, 1359). The connecting line between the "o" and "r" is also identical with the connecting line generally used by Gordon in the standards (1359). Numerous instances of this are pointed out on pages 1360 and 1361.

"The 'o' in 'on' is open at the top in P. 1, the signature to the will," and this feature is frequently found in the standards. The slant of this second "o" as compared with the "n" is the same in the disputed signiture as in the standards. The line between the "o" and the "n" in the disputed signature is also characteristic of the standards (1363). On cross-examination the witness was asked to point out a standard signature in which all three of the "o"s terminated with a loop or shoulder as in the disputed signature, but of course it was impossible for him to find a standard signature identical with the disputed signature in this respect, as it is impossible to find any two of these many standard signatures that come anywhere near being identical with each other. The witness called attention however to the signature on P. 60, as having a close resemblance to the disputed signature in regard to the loop or shoulder with which the "o"s terminate (1382; 1383). He accounted for the presence of these shoulders

or loops in a marked degree, in the disputed signature, on the theory that the position of the writer's hand in making the signature was such that he did not have sufficient freedom of movement, and could not rest the elbow on the table probably, and thought also that the condition of the pen, ink and paper might have had something to do with it (1404).

The slower movement produced doubtless by the unusual solemnity and circumstances of the execution of the will might also very well account for this peculiarity. It is very noticeable that when Gordon writes a more important letter than usual and with more than ordinary care, he uses a much larger proportion than usual of these closed or looped or shouldered "o"s. A notable example of this is found in one of his important letters to Nichols & Langworthy Exhibit P. 22.

Prof. Elliott points out in his testimony (1474 ; 1478 ; 1479), a large number of examples in the standard signatures in which Mr. Gordon made "o"s of the same type and precisely similar to those in the disputed signature. There are a great many of these illustrations given and an examination of them makes it very evident that the presence of this loop or shoulder in the "o"s of the disputed signature is not an argument against its genuineness, but is rather in its favor.

Mr. Carvalho is right in saying "I specially said, we had no right to compare the "o" in that sense" (being open or not), "because sometimes Mr. Gordon left that open and sometimes he closed them" (297).

The differences between the "o"s in the disputed signature and those in the body of the will, will be noted thereafter.

4.—The "P."

The Connecting Line Between "Geo." and "P."

Mr. Carvalho makes no point about the lack of connection between the "Geo." and the "P" of the disputed signature (231) but Cantwell points to this absence of a connecting line as an evidence of forgery

(315). Mr. Ames observes that there are exceptions to Gordon's habit as shown in the standards of connecting the "o" with the "P" (369).

It is evident from the admission of contestants' experts and from a most casual inspection of the Exhibits that the absence of this connecting line is no evidence whatever of lack of genuineness; sometimes the testator made the connection, sometimes he did not (1356; 1475; 1476). In his correspondence he made the connection less frequently than in his checks (1476).

Prof. Elliott thought there was always a mental connection between these letters in testator's mind (1475); the actual connection on the paper is often but not always complete in the checks (1475), and is sometimes very faint as witness shows in a number of exhibits (1475). In many instances the line is omitted, but then there is sometimes in such cases a hook at the top of the staff of the "P" where the line, if there were one, from the "o" would make the connection (1475-6). The witness thought this hook was the visible expression of the mental connection which Mr. Gordon always made (1475).

This hook at the top of the staff of the "P" is found in D. 45; P. 53; P. 55; P. 13; P. 17; P. 18; P. 24; P. 26; P. 80 and P. 83 (1476).

This singular characteristic of Mr. Gordon's writing is also found in the staff of the "P" in the disputed signature, but it is not visible except under a magnifying glass or a microscope. It is this, however, which causes the apparent angle or break in the top of the "P" where the curve crosses the staff which some of contestants' witnesses referred to as important evidence of forgery. Mr. Carvalho refers to this "sharp angular point" (231) as not like the standards. Mr. Hagan says "the sweep" in the standards at the top of the "P" is not the same as that at the top of the disputed signature (361). A portion of what Mr. Ames has to say on the subject is unintelligible, but he says of this enlargement or apparent angle, "there is a point of hesitancy, the writer was in doubt where to turn, and in that the

line was broken and changes its direction, while it is in the others (the checks) a careless, sweeping stroke entirely without hesitation, while the internal evidence is that it (the disputed "P") is a carefully made letter and not the product of the exercise of the habits of the writer" (374).

Mr. Tolman, however, who examined the disputed "P" under a microscope (505), says: "The letter "P" begins by a little loop, turns and comes down in a wavering line to the bottom," (482) but he naturally does not mention the fact that this is a marked characteristic of Mr. Gordon's writing.

This loop is very distinctly seen in the large cartoon of the disputed "P" and all the proponents' experts directed the attention of the Court to it. That this characteristic of Mr. Gordon's handwriting should be so masked as to lead those of the contestant's experts who only made a casual examination to look upon it as an evidence of forgery, and should be revealed only upon a careful examination with a magnifying glass or microscope is certainly marvelous. It is scarcely conceivable that a forger imitating another's handwriting would mask a characteristic in this way. To do so would require a shrewdness and far sightedness on the part of the criminal to which there is no parallel in all the histories of forgeries. Prof. Ewell very properly says: "It is strong evidence of its genuineness because I do not understand how a forger would purposely mask a characteristic" (886). "The fact," says Prof. McClelland, "of this strong characteristic being hidden in the will signature is, in my judgment, evidence of its genuineness, as any one simulating the signature of George P. Gordon would not have left off so prominent a feature" (1337). Capt. Rauch says that a forger, who had observed that Gordon made a hook at the top of the staff, "would certainly not want to have it covered up; he would want to show it" (970).

The Loop of the "P."

Contestants' experts referred to the fact that the loop in the "P" did not cut the staff, but passed over the top of it, as an evidence of lack of genuineness (231; 316; 327).

Mr. Carvalho thinks the loop is too large (231). Cantwell thinks the "P" itself is too large (316). Hagan does not like the form of the loop (326), while Mr. Ames objects to the proportions of the entire letter (375).

Contestants' expert Hagan admitted that the loop crosses at the top of the "P" of Exhibit D. 93 (361), and proponents' experts pointed out numerous examples of this in the standards. After noting the great variableness of the standard "P"s (887), Prof. Ewell directed attention to the capital "P"s in P. 13, P. 206 (887), P. 36, P. 94 (890), P. 37, P. 48 (891), and showed that in some of these signatures the "P"s were nearly as high as the other capitals; the "P" in "Amos P. Barber" on the envelope, Exhibit P. 48, Prof. Ewell said "is quite "like the "P" in the disputed signature, both in the "manner, the form and shading and height also" (891).

Prof. McClelland says the top of the "P" in the signature to the will is flattened and is in comformity with the top of the "P" in Gordon's writing; "sometimes he made a bold, open oval at the beginning as well as at the finish" as in P. 61, P. 62, P. 66, P. 67, P. 58; "sometimes he made a bold oval in the first part and entirely closed it in the last part," as in P. 63, P. 64, and P. 65, and in P. 235, in the body of the letter, "but in all cases the tendency in the last part is a nearly angular turning or pulling down, sometimes almost a straight line with a strong pen pressure" (1358).

This characteristic is very distinctly seen in the disputed signature.

Dr. Cresson applied his measuring implements to the

"P"s as well as to other portions of the disputed and standard signatures and found the height of the "P"s in the standards varied considerably and that the height of the disputed "P" is less than some of the standards and greater than others (1129).

5.—The "G" in "Gordon."

Contestants' experts, Carvalho (232) and Cantwell (317) conclude that the second "G" is spurious because it is like the first one, while Mr. Ames seems to reject it because it and the first "G" "are not sufficiently alike to be the natural handwriting of the same person; the internal evidence," he says, "would be sufficient to stamp them as spurious" (373); while Tolman finds fault with the "tail end of the second "G," because he thinks it has been tacked on as an afterthought to make it look like the first "G" (483).

The "G"s in the disputed signature are obviously so alike that proponents' experts considered them together, and showed that both have the characteristics of Gordon's "G"s and are almost identical with some of those in the standards (P. 122, D. 124, P. 53, P. 22), the very slight differences being evidences of genuineness. Prof. McClelland justly observes, for example, that the "finish in the 'G' in 'Gordon,' unlike the finish in the 'G' in 'Geo.,' is in my mind an evidence of the genuineness rather than that of forgery, and is a prominent feature of Gordon's handwriting, found all through Gordon's handwriting" (1352).

A reference to the exhibits in which Profs. Elliott and McClelland directed attention to the peculiar triangular curve which is so characteristic of Gordon's handwriting shows that terminals resembling each of these two terminals of the "G"s occur in the standards (884; 885; 892; 925; 1132; 1350; 1351; 1473; 1474). The variety among them is great; it would be surprising if they were identical.

6.—**The "r."**

Mr. Carvalho points out the diversity of the type of the "r" used in the standards, and seeks to distinguish the disputed "r" from them, because it is made with considerable deliberation and the turn toward the finish is almost angular, while in the check signatures "it either turns off abruptly and is made without any effort, or if there is a bend, it is round" (233).

Mr. Ames says "there is no positive similarity either in proportion or relationship" between the "r" in the standards and the "r" in the questioned signature (376). The only thing intelligible in the report of Mr. Tolman's testimony is that he thinks he sees a wedge-shaped line in the "r" in the questioned signature (483).

Attention has been called to the facts shown by the proponents' experts, indicating that the connecting line between the "o" and the "r" in the standards is of the same character precisely as the connecting line between the "o" and the "r" in the questioned signature (1360); these experts also pointed out the fact that the "or" in the word Gordon in P. 1 is not joined to the "d," and that Gordon regularly does not join his "or"s to his "d"s in his writing (1362; 1400), and Prof. Elliott very well says of the letter itself, "Now the letter 'r' of the Gordon in the will signature, Exhibit P. 1, is a well marked feature; it is also seen of the same type in Exhibit D. 21, in the terminal 'r' of the word 'bearer,' being almost identical in form with that of the will" (1478). He enumerates a large number of exhibits where the "r" is of precisely the same type as this questioned "r," and if written with a thick pen and thick ink would look like the "r" in the disputed signature (1478; 1479).

Dr. Cresson points out that the "relationship of the parts" of the "r" is the same in the disputed signature as in the standards (1131).

The resemblance between this disputed "r" and many of the "r"s in the standards is so apparent that

it is surprising that contestants' experts could have questioned its genuineness for a moment. Doubtless they would not have done so, had they examined the letter as well as the check standards.

7.—The "d."

Mr. Carvalho declares that the "d" is one of the most characteristic features of the testator's handwriting; "Mr. Gordon makes a very large 'd' so far as width is concerned, that is to say, the belly portion (the 'o' portion),'" (in the checks on the cartoon) represents "at least one-half or very nearly so, whereas in the disputed signature the belly portion represents much less than one-half" (233). Mr. Gordon's habit is to begin the initial stroke from below, pass upward and then make the "o" portion (D. 58, D. 59, D. 60), whereas in the disputed signature the initial stroke does not start from below but from the right and almost on the line. In the standards Gordon makes a handsome curve, "artistic and very beautiful," with great rapidity, "whereas the 'o' portion of the 'd' in the questioned signature is made very slowly, with great care apparently and is anything but handsome. It does not describe a curve at all" (233–234). The staff of the "d" in the standards is a thin line, and with a considerable opening at the bottom between the up and down lines almost like a capital "A," in the questioned "d" there is no such opening and the staff is a thick, club-like line (234). Mr. Cantwell remarks on the absence of the open space between the lines of the staff of the "d" in the questioned signature, but admits that the testator's habit varied somewhat (317). Mr. Ames thinks the "o" portion of the "d" is in its proportions and shading very unlike the standards, and he reiterates the objections which Mr. Carvalho had made to the staff (376).

Mr. Carvalho, in his cross-examination, on being shown P. 17, admitted that the staff of the "d" in that signature came down in the very way which the wit-

ness had criticised, in the disputed signature, as being unlike Mr. Gordon's habit, and after having been shown a number of other genuine signatures, in which the staff of the "d" was made in the same way, admitted that we could not gain much from the fact that the downward stroke of the staff of the "d" coincided so nearly with the upward stroke and did not leave such an "A"-formed opening as the witness first thought characteristic of Gordon's writing (299; 300).

Prof. Ewell says: "The small 'd' in the word 'Gordon,' is such a 'd' as is made in many of the standards, and I will enumerate, for instance, Exhibits P. 36, P. 37, and P. 38; these are all shaded, and they are not so tall as the others; but his manner in respect to making the length of the 'd' is exceedingly variable, sometimes not above the average, and sometimes quite tall" (890).

It will be observed that Mr. Carvalho was careful to testify as to the characteristics of the "d" *only* from the three check signatures.

Prof. McClelland points out that the "d" in the signature of Gordon to P. 1 is like the "d" found in Gordon's signatures P. 107, P. 109, P. 112, P. 63, P. 60 and P. 235 (1362), and in the last mentioned exhibit the witness calls attention to certain "d"s which have the same shading throughout the entire lengths, as is found in this questioned "d" (1362).

These standards are letters, but the witness also says that the disputed "d" differs but little from the "d" in Mr. Gordon's check signature (1363).

The left side of the pointed oval, or first part of the "d" is slightly flattened and conforms to the class of small letters or pointed oval letters to which it belongs, namely, the "a," "d," "g" and "q" (1362).

Capt. Rauch says the "d" is larger than in the check standards, but there are many like it in other standards (961).

Prof. Elliott showed that in the "d"s in many of Gordon's signatures the final curve "has definite character, and you might almost call it a *Gordon curve*," and

this same characteristic is found in the " d " of the Gordon signature to the will (1479).

8.—The "n."

Mr. Carvalho criticizes the connecting line between the " o" and the "n" in the questioned signature as being " a very club-like " line and made with " great pressure," contrary to Gordon's habit in the checks, and says the second staff of the " n" in the questioned signature is much shorter in comparison with the first staff than it should be, judging from the checks, the second staff being commonly almost as long as the first (234; 235).

Mr. Ames says the " n" of the standards is in a "round hand." The first upward stroke does not separate from the first staff until two-thirds of the way to the top, and the result is a small angle at the top between these lines. In the disputed signature this angle in the " n" is much larger; the lines are heavier than in the standards and the turn from the second staff to the flourish is different from that in the standards (377; 378).

Tolman says there was a deliberate stop and apparently a lifting of the pen at the finishing of the second " o" before going on to make the " n" in the disputed signature, while the first staff shows a wedge-shaped stroke and the ink has run in the angle made by this staff and the upward stroke (483).

Nothing more need be said here about the " club-like line" or " wedge-shaped line" to which these experts refer. It would have been impossible for the testator to have avoided making such lines in view of the unusual paper, ink and pen, and doubtless very difficult for him to keep from ' bearing hard.' "

In regard, however, to this "n," Prof. Ewell is entirely accurate when he says the " final 'n' of 'Gordon' in the disputed signature I find reproduced in substantially the same way in Exhibit P. 15 " (892). The second or last part of the letter " n" is sharp pointed at

the top, not rounded (892). And the same thing occurs in P. 17, P. 25, P. 39, P. 50, P.55, P. 56, P. 78, P. 92, P. 94, P. 119 and P. 120 (892, 893). These, it will be observed, are letter standards which Messrs. Carvalho, Ames and Tolman had not seen, and of course, did not find the "n"s which Prof. Ewell pointed out. When the identical form of letter, which contestants' experts say Gordon did not make, is shown to have been made very often by Mr. Gordon in his admitted genuine writings, further argument in favor of the legitimacy of the questioned letter is superfluous.

Prof. McClelland showed, by enumerating a great many examples, that Mr. Gordon frequently made a connecting line between the letters "o" and "n" of exactly the same sort as that found between these letters in the signature to P. 1 (1363, 1369–1371). The first part of the "n," he tells us, in the questioned signature has the same slant as all the letters in Gordon's signature except the "o" beginning "ordon" (1363). This "o," the witness had previously shown, had the characteristic of all Gordon's "o" s when followed by "r," of slanting more than the following letter. "The second stroke in the 'n,'" the witness proceeds to say, "is about one-fourth space shorter " than the first part of the letter, and is more inclined " to the vertical position, or has less slant than the " first part of the 'n'" (1363). "This is the case in " all of Gordon's handwriting " (133, Exhibits P. 63, P. 205, P. 235, P. 66, P. 67, P. 62, P. 65, P. 68).

9.—The Terminal Flourish.

Mr. Carvalho says it was Mr. Gordon's habit, as shown in the three check signatures, D. 58, D. 59 and D. 60, to make the final stroke or flourish at the end of his signature "with great rapidity, and it is a very beautiful and artistic swing," while in the disputed signature, "the final stroke is made with considerable pressure in contrary distinction to the habit displayed in the genuine one, and without that wide, open space,

making almost a long egg-like shape, which may be found in all of Mr. Gordon's signatures'' (235). By "all," the witness, of course, means all the five check signatures which he had examined.

Mr. Hagan says, "the final loop of the disputed Gordon" is more heavily shaded, and the pen pressure is less uniform than in the standards (328).

Mr. Ames says, the loop of the flourish in the questioned signature, instead of being "a long, open loop," as in the standards, "is a short loop, crossing the up line at two-thirds the distance from the real terminal of the "n," instead of crossing the "n" at the base as in the standards, or nearly at the base" (378).

The terminals of several of the flourishes enumerated by Prof. Ewell, have a heavy down stroke at the finish scarcely distinguishable from that which contestants' experts condemn in this questioned signature (893), and it will be observed that the point at which the downward stroke crosses is much nearer to the base of the second staff of the "n" in some of the standards to which attention is called than in others (893).

Prof. McClelland states, what is an obvious fact, that "the terminal line or flourish at the end of the word 'Gordon' differs nearly every time he makes it. Sometimes it is heavily shaded and again not shaded; while they differ in length, shading and width, they all have the same slant, namely, forty-five to forty-eight degrees'' (1364).

Prof. Elliott also points out many instances of heavy terminal flourishes in the standards corresponding remarkably with the terminal flourish to the signature on P. 1 (1480). These vary considerably among themselves, but their remarkable resemblance to the flourish in question forms another strong proof of the genuineness of the signature of Geo. P. Gordon to this will.

10.—The Rubric.

All the experts agreed that the "scroll" or "flourish," or "paraph" or "rubric" under the disputed sig-

nature "Geo. P. Gordon" had been very badly bungled by whoever made it. Contestants' experts disagree as to whether it was made in the same manner as the standards or not, and contradict each other on this point (236; 237; 316; 328; 356; 378; 379; 380; 484; 502).

Mr. Carvalho, on being shown on cross-examination a number of Mr. Gordon's letter signatures, on which there was a great variety of rubrics or no rubrics at all, concluded that the Court might leave out altogether the consideration of the rubrics in the disputed signature (291).

Mr. Hagan on being asked, "Is it not just such a botch in a scroll that a man writing his own signature might make, and not what the forger would?" replied, "I don't think I can answer yes to that. That word 'Geo. P. Gordon' was written with steadiness and care, and I cannot think a man writing with steadiness and care would make such a terrible scroll" (349, 350). The witness apparently thought that the hand that wrote the disputed signature itself did not write the disputed scroll.

Mr. Ames does not seem to think it was copied or traced after a pattern genuine scroll, as was the view of some of the contestants' lay experts (581, 587), and he says: "Any schoolboy having a form before him that could not do better, I should consider him an unpromising pupil" (380), and it is doubtless because it is inconceivable that a forger should make such a botch that this expert at the very outset said that in his judgment the flourish or rubric "is not of considerable account in connection with this signature" (378). Mr. Tolman says that this rubric "shows very great wavering and indecision in the outline" (484).

Proponents' expert, Ewell, says, "Mr. Gordon is not at all exact in regard to the rubric, and his manner is so various that I would not put any particular stress on it at all" (894). He thinks that unquestionably a man accustomed to write with a gold pen with consid-

erable freedom would find difficulty in making an ordinary flourish, if he had to do it with a steel pen and on paper such as the will is written on (895).

Prof. McClelland makes evidently accurate observations in regard to Mr. Gordon's rubrics when he says "there are no two alike—it is evident that this is no forgery, in my opinion, because the man who is simulating this writing would not have made such a bungling character as he did in this case" (1364).

The distance of the paraph below the signature and its length depends very much on the limitations of space which the writer has before him (1364).

This rubric was evidently so badly bungled and botched that none of the experts seemed to regard it as of much consequence in showing lack of genuineness. It is far more reasonable to infer from it that the signature is genuine than the opposite.

b.—The Gordon Signature Compared with Body of Will.

The contestants, probably aware of the weakness of their testimony regarding the alleged dissimilarity of the questioned signature to the standards, sought to strengthen their case by an attempt to prove that not only was this signature not written by George P. Gordon, but that it was written by the same hand that wrote the body of the instrument, and to sustain this theory, their experts pointed out what they claimed were characteristic similarities between the body writing and the signature.

Mr. Carvalho thinks there is the same handwriting in the disputed signature as in the body of the will (267), because in both the writing is a little above the line (263) (which is also true of many of the Gordon standards), and they both have the same slant (263) with perhaps a slight variation in the case of particular letters (263) and there is a similarity between the curve or angle at the top of the second member of the letter "n" in both (264). Cantwell thinks there is a general

similarity between the small letters in the signature and some of those in the body of the will, but he does not appear very certain about it and his statement is very general (321; 322).

Mr. Ames thinks the nearly closed top of the "o"s and the heavy shaded first line of this letter (388) and the manner in which the line starts off, to connect with the following letter (390) in the disputed signature, closely resembles these same features as found in some of the "o"s in the body of the will which he points out (389, 390). The "on" of the questioned "Gordon" he says resembles the "on" in "Gordon" in the first line of the will, in that each of the "o"s has "a short member" (contrary, the witness admits, to the usual habit of the writer of the body of the will) and returns "to a point" (390); the "r" is "practically the same" in the disputed "Gordon" as in "George" and "Gordon" in the first line and "Jersey" in the third, and "memory" in the fourth, "former" in the fifth and "declare" in the sixth line of the will (390). On Exhibit D. 62, the "d"s in "date" and "declare," sixth line, "disposing" and "and," fourth line, are like the "d"s in the questioned "Gordon," while the "d"s in "and" and "land" in the third line of paragraph 2, Section 1, are of the same character but not so long. In the tenth line of Section 1 of Article I., in the word "Gordon," the whole relationship of the "ordon" "is almost identical" and "the shade of the lower stroke of the "G" at the top is the same as in the first "G" of the questioned signature" (391).

Mr. Hagan thought he saw the same thumb pressure in the disputed signature as in the body of the will, the same sort of closed "o" in both, and the same physical habit—the same lateral movement of the thumb (which he, however, failed to point out with sufficient definiteness and certainty to enable others to see it) in all the letters of the disputed signature and in the body of the will (332).

Mr. Tolman believes that the body of the will

is written with a wrist and finger movement (488), and that his "wedge-shaped" stroke is found with great regularity throughout the will and also in a number of places in the signature; he refers to the "G" in the word "Gordon" in the preamble and in Article I. of the will and the "G" of the signature as an illustration of the similarity of movement (489), and points out, he alleges, the wedge-shaped stroke in the different letters of the testator's signature and also such characteristics as indicate to him that the same was written with "a limited up and down motion, which is attributed to the fingers;" he also speaks of a "stoppage of the stroke" and an "abrupt change of direction" at the top of the "r" and the second "o" in the word "Gordon" in the body and signature (490). Mr. Tolman directs attention to a number of "d"s in the body of the will which in his opinion resemble the "d" in the signature (495), but does not specify any particular points of similarity.

On cross-examination the witness admitted that the wedge-shaped stroke could be made with a rapid arm movement (500) and says (501) that it is *not* a tendency of a finger movement to produce it, and that he has "not noticed it in any forearm movement, and it is very rare in a finger movement, very" (502).

Prof. Ewell makes the obviously sound observation that the same characteristic is often found in the writing of two or more persons and that the fact that a single characteristic of one man's writing should occur in another's writing is not surprising (923). This witness says that while there are some few resemblances between the questioned signature "Geo. P. Gordon" and the body of the will, there are characteristic differences (929). In the body of the will the pen pressure is generally heaviest near the bottom in the small letters, and this is true to some though to a much less degree in the signature (Gordon has no fixed habit, but varies his pressure in a most unexpected way (919)), but in connection with very positive differences. In the first "o" of the signature, for example, the

shading of the first line is slightly heavier near the bottom, but the character of the line is entirely different, it is "round and flowing." while in the body of the will this line comes straight down, so as to regularly make a sharp angle at the lower left hand corner (862), and the same remark applies to the second and third "o"s and to the "o" portion of the "d" (863). This striking characteristic is found throughout the body of the will, but in none of the "o"s of the signature.

The "r" also has, perhaps, a slightly heavier pen pressure at the bottom, and in this respect has a slight resemblance to the body of the will, but it is exactly like numbers of Gordon's "r,"s as shown in the standards, and is most characteristically different from all the "r"s in the body of the will, in having a smooth curve for the final upward stroke, while the "r"s in the body of the will all have a blind loop at the top and are of an entirely different type (863).

The standard of the "d" somewhat resembles the standards of a few of the "d"s in the body of the will (they all appear to be nearly straight lines, as in fact they are in most people's writing), but the "o" part is very different, and in the one case it is and in the other is not characteristic of Gordon's admitted genuine writing (927). In the last "o" of the signature the pressure is heaviest at the top and shows a habit entirely the reverse of that seen in the body of the will (926). The "on" of the signature has some resemblance to some of the "on"s in the body of the will, but there are at least two very strongly marked and characteristic differences.

The connecting line between these two letters in the body of the will regularly curves downward, and the top of the "n" is sharp and angular, while in the signatures in Gordon's writing, the connecting line is horizontal or curves upward, and the top of the "n" is not an angle but a curve (928 ; 892). The blind loop at the close of the "o" is quite a characteristic of the "o"s in the body of the will, and is found, but is less a prominent feature in the signature. There is, however, be-

sides the very characteristic differences between the first lines and the curves of the " o "s a decided difference between the slants of the terminal lines of the blind loops in the will and signature (952). In respect to the entire make-up of the "o"s including lines, angles, shading, curves and loops and terminals, the signature corresponds much more closely with the body writing of Gordon than with the body writing of the will (952 ; 862 ; 863 ; 890 ; 922 ; 919).

The body writing of the will Prof. Ewell says is "very peculiar," it is a "nervous, angular sort of writing." The capital letters are compressed and narrow. The capital "G"s are "much narrower than in the signature" (859).

Capt. Rauch says the writing in the body of the will "is an open, irregular, angular, writing" * * * "uniformly irregular throughout, and is of the same character from beginning to end, and manifestly a fixed habit of the writer. And the signature "Geo. P. Gordon" is written nearer a round school hand, nearer the hand a teacher of penmanship would teach, nearer a school hand as to regularity and uniformity " (831). It is "entirely uniform and consequently consistent with itself, no one part cramped but is consistent with itself all the way through ; the spacing is consistent with itself and I do not believe this penman" (the writer of the body of the will) "could have forged the signature without betraying somewhere the evidence of simulation," and he finds no such evidence ; "there is no nervousness betrayed, as is usual to be discovered in cases of simulation" (832). A brilliant penman like Gordon would be likely to drift back toward "a school hand, a painstaking hand, a round boy hand" in signing his will (835).

This witness had great experience and expertness in simulating handwriting (820; 821; 835; 836), and could successfully simulate any hand, except when the penman's ability exceeded his own (953). In the last case he could not do it (954). The penmanship of the body

of the will is inferior to that of Gordon's signature, and witness thinks it was beyond the capacity of the writer of the body of the will to have written the signature. "And, moreover, his strong individuality would creep out somewhere, and I do not find any, I cannot find any, traits of similarity in that signature of George P. Gordon with the writing of the body of the will" (963). "I cannot find a single characteristic (960)." The "G" is radically different, not only in form but in character (960). The "o"s are similar, though smaller as a general rule, but so they are in the Gordon signatures. "They are common to writings generally (961), a common type."

The "or" and "on" the witness says, are absolutely radically different. "The connection between the "or" and "on" is a straight horizontal line in the signature of Geo. P. Gordon to the will," and in the standards it is also a "straight horizontal line in all cases; I can find no exception" (960). "In the body of the will the "on" has a bowl shape, nearly a quarter circle downward" (960; 982; 985) showing an entirely different habit of the writer, and there are no exceptions (981; 982).

The "r" is entirely different, the finishing part having a curve downward in the body of the will, while in the signature it has no such marked characteristic, but is a plain curve (965; 966).

The "e" of the signature is entirely different in form and pen pressure from the "e"s in the body of the will and even from the capital "E"s to which the contestants' attorney called the witness' attention specially (996).

The witness, on cross-examination, stated that the shading in some of the small letters of the signature was at or near the bottom (986), which was not the *prevailing* characteristic of the standard signatures (986). In the body of the will the shading is irregular, but in the signature it is uniform (987). The shading in the signature has some resemblance to that in the body of the will in heaviness, but not in regularity nor in the place

of shading (987). In general, the shading in the signature is not like that in the body of the will.

Prof. McClelland thought that the man who wrote the body of the will was not capable of writing the signature (1348).

The slant of the body of the will is irregular as compared with the slant of the signature (1348), and the writing in the body of the will is more angular than that of the signature (1348), for example the turn of the last part of the "d" in the signature is smooth and round, while in the body it is uniformly angular (1363). The "m"s and "n"s of the body of the will taken together are "meaningless scrawls with none of the elements of writing," while the "n" of the signature is well formed, although its members differ from each other (1364).

The rising line of the "G" in the signature has the characteristics of Gordon rather than of Adams (1350). The back of the oval of the "G" in the body of the will is much flatter than it is in the signature, a characteristic not found in Gordon's signature or Gordon's writing, while there is a finishing loop in the body of the will, extending below the line, which is not found in the signature nor in the standards (1352). The spherical triangle at the end of the "G" in the signature is not found anywhere in the body of the will, but is found in the standards (1351; 1352). The writer of the body of the will was not capable of making an "e" like that in the signature; the "e"s in the body of the will show a curve which is an entirely different characteristic (1353). The "o" in the body of the will is "squatty, short and usually begins with a right curve or straight line;" the "o" in the signature is larger and both sides curve alike, making more nearly a perfect oval and corresponds with the "o"s of the standards (1354; 1363). A forger would be likely to incorporate in the forgery the characteristic straight line of the first stroke of the "o" into the "o" he was forging (1356). The slope of the "o" is greater than that of the following "r" in the signa-

ture, and this is a remarkable characteristic of Gordon's handwriting, but not of the body of the will (1358). The connecting line between the "o" and the "r" is totally different, curving downward in the body of the will, but being horizontal in the signature, which is also a characteristic of Gordon's writing (1359; 1360; 1403). The same is true of the connecting line between the "o" and the "n" (1363; 1403). The "or" is not joined to the "d" in the signature, nor in Gordon's writing, but is joined in the body of the will (1362). The staff of the "d" in the body of the will is shorter and is more pointed at the top than the staff of the "d" in the signature, which corresponds more closely in character with the "d" in Gordon's check signature even, than to the "d" in the body of the will (1363); the latter has the remarkable characteristic angularity at the finish, which has been already spoken of, entirely different from the testator's signature and standards.

Mr. Gordon very often made a loop or shoulder at the termination of the "o" (1354; 1355), although it was not his prevailing characteristic to do so, as it was of the writer of the body of the will (1380; 1381), but where Gordon makes such loop or shoulder, the terminal line going off to the following letter is horizontal as it is in the signature, while in the body of the will it is always drawn down (1403).

Prof. Elliott says the body of the will "is a running open hand with underhand curves, that turn towards the left, a little in such letters as "u," "a" and the smaller letters "m," the lower part of "h," and so on; these tend to curve toward the left, and form small curves;" on the other hand, in the Geo. P. Gordon signature, there is a tendency to overhand curves (1482).

This, an inspection will show, is a very striking and characteristic difference between the body of the will and the signature. The writing in the body of the will is irregular in most respects, has, with great regularity, sharp angles at the tops of the small letters, but the connecting lines are apt to be curves, where, in

the signature and in the standards, the tops of the small letters are generally round and not angular ; an apparent exception to this is found in the last part of of the " n," which is more nearly angular at the top than the first part in the signature and some of the standards, but this feature of the second part of the "n" is very different from the sharp angle in the body of the will, and the finishing stroke of the " n " has an entirely different slant in the signature and standards from that in the body of the will (1364).

The actual resemblances pointed out by contestants' experts were very few and slight ; the surprising thing is that they found so few resemblances in such a great mass of writing as that which makes up the body of the will.

B.—SPECIAL CIRCUMSTANCES AFFECT ALL FOUR OF THE SIGNATURES.

It is evident that the special circumstances such as thick ink, paper unsized and moistened with perspiration, a steel pen instead of a gold pen, a marble-top table instead of an ordinary one, and the peculiarly solemn character of the instrument, affected the writing of all four of the signatures to a considerable degree in the same ways, producing in each case a somewhat heavier effect, slower movement and a somewhat unusual appearance of pen pressure and shading. The experts on both sides agreed that the special circumstances would have a decided effect, but disagreed in regard to the extent of it.

Carvalho says the ink has spread sideways in all four of the signatures and gone through the paper and on to the next page, and he attributes this to the damp paper and extraordinary ink (278), and the blurring too in the witnesses, Henry Adams' signature, is due to the same cause (256), and of course Mr. Hagan's remarks about

the effects of the "unsized paper" and dampness apply just as well to the witnesses' signatures as to that of the testator.

Capt. Rauch says the sameness of general appearance would not exist throughout the signatures but for the fact that there was an extraordinary condition, an unusual circumstance, such as thick ink, or moist paper, or both, which existed at the time of the writing, and affected all four of the signatures (957; 1006; 1007; 1008; 828; 1013), and that such circumstances would probably render stronger any family resemblance that might exist between the ordinary writing of the witnesses (828); witness thought the pen pressure was probably influenced by the thick ink or moist paper (1013), and stated that any change of circumstances, such as moist paper, color of the ink, and writing with a steel pen where the writer was accustomed to write with a gold pen, or writing on a marble top table, would change not only the appearance, as Mr. Ames had testified (431), but also the characteristics of the handwriting (968), and thought that every man's experience would teach him that such was the fact.

Practically, everything that has been said by the experts in relation to the peculiar circumstances of pen, ink, paper and table, in connection with the testator's signature, applies with equal force to the witnesses' signatures (857; 895; 912; 920; 1493; 1495; 1122; 1123; 1131; 1137; 1161; 1162).

C.—THE ADAMS SIGNATURES.

Contestants' experts undertook to maintain their hypothesis that the three Adams signatures to the attestation clause were forged, not by showing that these signatures differed from admittedly genuine writings of the witnesses, but by endeavoring to prove that there were resemblances between each of them and the body of the will and the Gordon signature. Wherever

these experts found a resemblance they argued that it was an evidence of forgery, and in like manner, whenever they found a dissimilarity they claimed that this too was an evidence of forgery—the similarities resulting from the unconscious habit of the alleged writer of the four signatures and the body of the will, and the dissimilarities being the result of the writer's effort to disguise his own handwriting.

a.—Signatures compared with body of will and each other.

1.—Testimony of Contestants' Experts.

Mr. Carvalho was of the opinion that the finger movement was used in the three witnesses' signatures as well as in the body of the will (258), and thought that the slope of the body and of the three witnesses' signatures was the same (252), although he admitted that there were differences (257). The witness says that in the three signatures "Henry Adams," "Alonzo C. P. Adams" and "John Q. Adams" there is "no dot put after them," that in each of them the "A" and "d" and "ams" are made separately and alone, and that in these respects the signatures exactly correspond (253).

The capital "A" in the first Adams in respect to bagging out is, in his opinion, of the same pattern as the "A" in "Article VI." and "Article VII." of the will (257), and he thinks that through the microscope he saw the same habit as in the three witnesses' signatures of making the initial stroke of the small "a." The staff of the small "d" of the three Adamses and the "d" of Woodbridge in the body of the will "passes down and suddenly turns and makes a very sharp bottom, as it were, before going upward to the 'a'" (255; 256). He admits that the "m"s do not correspond in all three, the "m" in the signature of Henry Adams being made sharp at the top, whereas in the others it is round, and he also admits that the "m" of the second and third Adams "do not exactly comport with each

other," but thinks that "for two staves they were approximately the same" (253).

These differences, as well as the resemblances, the witness regards as evidences of forgery. The witness also calls attention to the "J" of the John, the upper portion of which he thinks closely resembles the "J" in July, in the body of the will, but admits that the slope is different (256), and says the "z" in Alonzo resembles the long space in the "J" of John (257), and he thinks he sees in the body of the will an effort to make straight lines, like those indicated in the "l" in Alonzo, but admits that this "l" is different from the "l" in the will and calls it an exaggeration of the writing of the will (355). This witness testifies that the signature of Edward L. Adams to the affidavit annexed to the will has a stronger family resemblance to the signature "John Q. Adams" than either of the other two Adams' signatures to the will (310), and also admits that there is a resemblance between Edward L. Adams' writing and that in the body of the instrument, but does not think that Edward L. Adams wrote the will (309; 310).

Cantwell thinks the general style of the writing and the capitals, the "d"s and "s"s in the three Adams' signatures resemble the same features in the body of the will (320). The three Adams signatures he says resemble each other in "the method of construction, the pen pressure, and the amount of ink used" (322), but he could not give details when asked by the Ordinary to do so (322).

Hagan thinks he discovered the same thumb and forefinger movement in the witnesses' signatures as in the body of the will, and points out several letters in which he claims it occurs (329; 330). His testimony on this point is not very intelligible, and rests upon his peculiar theory of thumb pressure rather than upon any basis of facts in the examples which he cites, as appears from a careful inspection of those examples. The witness thinks that the "a" and "m" in all three of the witnesses' signatures are "uniform in appear-

ance, in the manner of making and in the physical habit shown in their detail" (331) (in this respect contradicting Carvalho), although he admits that in the signature, "John Q. Adams," they are "written heavier" (331), and states that the terminal "s" in the last two witnesses' signatures with the exception of the flourish is written "with the same habit" and thinks that the same physical detail is manifested in the production of the letter "s" "throughout the instrument" (331).

Prof. Ames describes the writing in the body of the will and its special peculiarities as "an angular and shaded hand" (415), "somewhat irregular of about an average slope, written mainly with the finger movement" (416); "somewhat vacillating as regards the slope, more so than most writing; the loops, or extended letters, such as the 'h's, 'l's, 'b's and 'f's are open loops instead of being the customary loops for those letters in writing" (416). He thinks the three witnesses' signatures resemble each other in "the pen pressure, the general rift of the writing, the angularity, the manner of joining the letters * * * every upward line is a hair line and the downward line is a shaded line, and all the same shape and shade, * * * although there has been some effort made to vary the writing so that they may not appear to the observer to be the same" (381). He thinks that the body of the will is "more uniformly shaded than most writing" (416). The signatures, however, were written on a little larger scale, "and a little heavier" (419), and "with more bluntness and boldness, because they are stronger lines" than the Gordon signature, and "more ink was used" (443). In his opinion, the pen pressure in the body and in the Henry Adams signature is alike (392); and he sees a similarity between the finish of the "n" in John and the base of the "r" in the Gordon signature, both being heavily shaded (383) and this manner of "cutting off ending lines obtains throughout the body of the will" (384); they are heavily shaded and end abruptly at the bottom, keeping their entire width to the extremity, and in regard

to the finishing stroke of the "G" in "Gordon" in the Gordon signature, he thinks it identical in form and pen pressure with the finishing stroke of "P" in "Alonzo C. P. Adams"; in his view the identity of form is not of much consequence as the two terminals are used for different purposes, but the pen pressure is important (454; 455).

The writing in both the body of the will and the signatures is just a little above the line, he says (454).

He admits that the slope of these signatures varies as between themselves, and that the slope of the writing in the body of the will also varies, but he thinks there is a general resemblance between the signature and the body in this respect although he admits there are differences (416; 427–430). He also observes that in each of the witnesses' signatures there is a long space between the "m" and the "s" (386), but admits that the spacing varies somewhat in the three signatures (447), and that there is a difference in the space between the "m"s and the "s"s in the second and third witnesses' signatures, which he endeavors to explain by pointing out the very marked difference between the signatures, in that the "Adams" in the John Q. Adams' signature is nearly twice the length of the "Adams" in the Alonzo C. P. Adams signature (446). The witness also thought there was a resemblance between these witnesses' signatures and the Gordon signature in respect to the curve running from the "m"s to the "s"s as compared with the curve running from the "n" to the terminal flourish of Gordon,

He admits that the third Adams signature varies from the other two in having a connecting line running out from the "d" to the following "a," but says that the three are alike in that the pen is lifted in each case before the writer begins the "a," although the place of lifting it varies (385). The first stroke of the "H" in Henry Adams' signature is different, but in other respects the "H" resembles the capital "H" in the will (391). This variation, the witness on cross-examination stated, did not in his judgment amount to any-

thing, because fifty different men writing "H" would write it this way, and ten out of fifty might coincide with this (423). He thinks the "e" in the signature "Henry Adams" resembles that of "Henry Adams" in Article III, Section 2 of the will, in be-being somewhat longer than the letter following it (391); but admits that the "m" and "r," and in fact the whole latter part of the "Hemry" are quite unlike the "Henry" in the body of the will (391; 392). The capital "A" in "Henry Adams" the witness thinks is of the same type and almost identical with some of the capital "A"s in the body of the will (387; 392). The witness thinks the small "e"s or loops in the initial lines of the capital "A"s of the Alonzo C. P. Adams signature are "so formally made and so unusual to handwriting that I am forced to the conviction that they are disguised" (381).

The same characteristic was, however, shown by Prof. Ewell and Prof. Cresson to exist in the undisputed writings of Alonzo C. P. Adams (see Ex's P. 178 and 183, pp. 878; 1114; 1115). If these preliminary loops were removed, Mr. Ames thought these two capital "A"s in the second signature would be about the same as the capital "A" in the first signature (381), and this he regards as important, because the curve of the first long stroke of the "A" is of an unusual character (423). The small "a" used as a capital in the last witness' signature "is the same in its proportion and in the shading and everything as the small "a"s are in the body of the will" (386). The small "a"s in "Henry Adams" and in "John Q. Adams" are, in his opinion, "all identical, they are almost alike" (385), while the small "a" in "Alonzo C. P. Adams" differs somewhat, but is "substantially the same." He thinks he finds the "d"s in the first two witnesses, signatures identical, but the third somewhat different, but points out "d"s in the body of the instrument which he thinks are like both styles (382). He admits that the staff of the "d" in the third Adams, begins thin at the top and increases as it

comes down with a heavy emphasis near the base line while the staffs of the "d"s in the other two Adams "are as broad at the top as they are at the bottom" (382), and again that there is a difference in the "d"s of the three signatures; in the first two the staffs end abruptly at the base line, while in the third, the outward stroke from the "d" touches the base of the letter "a" (385; 392), and also admits that the "d" in the Gordon signature is better proportioned than in the Adams signatures (443).

The witness points out a very characteristic difference between the "m"s in these three signatures, the connecting lines in the "m" of the first signature are "like curves" "after the manner of u's," those in the second and third signatures "are closed at the base and connected with the left hand curves instead of the right," (382). In this respect the "m" in "Henry Adams" is like the "m"s in the body of the will, while the "m"s in the other two "Adamses" are the reverse (382). Again however, he says, contradicting himself, that the "m" is not the same in the body as in "Henry Adams," but it is the same as it is in "Alonzo C. P. Adams" and "John Q. Adams" (392). The strength of shade, the witness thinks, and the proportion of the "m"s are the same in each instance; the witness however failed to mention the other characteristic differences between the "m"s of these signatures which were pointed out by Carvalho on page 254.

The witness on cross-examination stated that he thought that the differences between the "m"s were the result of the effort of the writer to vary his habit to some extent (420).

The "s" in the body of the will is nearly identical, both in form and spacing and distance from the "m," with the "s"s in the signatures (392); in spite of the fact that he had just before testified that they look considerably unlike the one in "Henry Adams," being quite different from the others, but he asserts that, barring the flourishes, the "s"s in the last two signatures are identical (386). The witness thinks that certain

small "s"s in the body of the will are identical with the final "s" in "Alonzo C. P. Adams" (382,383), but admits that he has been able to find no "s" in the body of the will quite like the "s" in the Henry Adams signature (427). The top of the "J," in "John," Mr. Ames regards as similar to the top of the "J" in "July," in the attestation clause (384), and also to the "T" in the word "Township" (387; 388). He also thinks he discovers some resemblance between the compound curve in the staff of the "h" of "John" in the signature and the "h" in the word "his" in the attestation clause (383), but he admits that the extended lines such as the staff of the "h"s and "k"s and "t"s and "l"s turn or curve to the left on the downward stroke in the body of the will (416; 418), but that this characteristic is not found in any of the disputed signatures (418).

The scrolls at the end of "Henry Adams" and "John Q. Adams," the witness thinks, are both "made with hesitation and the loop in both instances is a heavy and hesitating line, showing that it was not made by the man that was accustomed to make the scroll" (386) and the "C" in Alonzo "C. P. Adams" was apparently not common to the handwriting of the person who wrote it, and witness doubted very much whether a single "Q" such as the one in "John Q. Adams" could be found in the handwriting of the writer of that signature (425).

On cross examination the witness admitted that he should not under ordinary circumstances think that the same man wrote the signature, "Henry C. Adams," to one of the papers annexed to P. 1 and the signature, "Henry Adams," to the will (405; 406), agreeing on this point with Mr. Carvalho; but he disagreed with Mr. Carvalho in that he was not able to see any resemblance between the signature of Edward L. Adams and the questioned witness' signature (406).

Mr. Ames admitted that the Adams signatures are more blunt and bold and heavier than the Gordon signature (443), and that the small letters in the Gordon

signature vary less than those in the body of the will (429 ; 440).

On being asked whether he thought the handwriting in the will and signature "substantially alike in appearance" he answered "yes, except that the signatures are written on a little longer scale, and a little heavier" (419). He did not think, however, that they were so alike in appearance as to lead an observer on a casual inspection to conclude that they were written by the same hand. On a casual observation he himself would say that they were not written by the same hand (419).

This witness for the contestants made the remarkable admission that *each* of these signatures *differs from the other* "*in vital essentials*" *and* "*in many details*" (421). The resemblances the witness thought were due to "the unconscious habits of the writer," while the differences were "from design," and he agreed with Mr. Carvalho in holding that both the similarities and dissimilarities were alike evidence of forgery (388).

Mr. Tolman says the characteristics are the same in all the four signatures and in the body of the will, and notably the unusual characteristic wedge-shaped lines are found in the down strokes in all the signatures, "so that it looks almost as if patched on each one of the downstrokes," and "these three-cornered or wedge-shaped strokes" are found "with great regularity all through the will" (489), and he points out instances in the signatures and will where he thinks he sees this characteristic (488 ; 489 ; 490). It is not easy for any one else to see them however. The letters in the two last signatures are a little larger, Mr. Tolman admits, than is generally the case in the body of the will (503).

The witness points out a very marked difference between the body of the will and the Adams signatures, showing that the words "George P. Gordon" in the first line of the will have wavering angular lines, which have a tendency to make the writing appear cramped, "whereas the Adams signature shows an exceedingly smooth, even and unembarrassed way of writing" (489). Mr.

Tolman is of the opinion that the initial stroke of the capital "A"s in the first two Adams signatures, and in the word "Adams" in Article III. of the will was in each case made from the bottom up (491). The first letter in each of these signatures is disconnected with the second (491). The word "Adams" occurs again in the same paragraph of the will, and the capital "A" in it and in the word "Article" have, in his view, the same characteristics (491). In regard to the letter "e" he says: "It does not have any individuality; don't have anything to hang on one way or the other" (492). But proponents' expert, Elliott, points out almost a facsimile of it in one of the standards of Henry Adams' signature (1481).

The first down stroke, Mr. Tolman says, in the letter "n" of "Henry" in the signature is higher than the second and also in the letter "n" in the signature "John Q. Adams," and is a characteristic of the whole body of the will. "The letter is very sharp at the top, very broad at the bottom, and the second stroke shorter and less indication of rapidity or trying to get through with it. That is a characteristic all through the will and in many or most cases where the letter "n" is the only one, the second stroke goes off slightly out of angle from the first." This language is not very intelligible. The witness points out illustrations of "n"s in the body of the will, which he thinks are similar to those in the signature (492; 493). He thinks, too, that there are "d"s and "s"s in the body of the will, which resemble the "d" and "s" in the Henry Adams signature (493), although he does not point out in what way they resemble each other, and he also finds "d"s all through the will which appear to him to closely resemble the "d" in the second Adams signature, except that sometimes these "d"s in the body of the will connect with the next letter, while there is no such connection in the signature (494). The "m" in "Hemry Adams" is about the same shape and width as those in the will, but he admits that it is somewhat heavier (503). The witness

finds numbers of "s"s in the will like the terminal "s" in the second Adams signature, but without the long flourish which, he says, "is added afterward," as he thinks appears under the microscope (495).

The letter "l," the witness says, is generally made in the will with a blind loop, but in "Alonzo" in the signature, has a very delicate loop to it (494), but he thinks the "l" in the word "legatee" in the last clause in the will closely resembles the "l" in "Alonzo"(494).

The witness cannot find any "z" in the body of the will to compare with the "z" in "Alonzo" (495). He might have found a small "z," had he examined the instrument with proper care, as one occurs in Article I., Section 6, which shows no resemblance to the "z" in "Alonzo."

In a general way the "J" in "July" corresponds, the witness says, with the "J" in "John"; "it begins by a light loop, turns to the right, then downward and up again, being made in one stroke, but ends in connection" (495). (This seems to be about the way in which a "J" is ordinarily made by any writer.) There is also a resemblance of this "J" in "John," the witness thinks, to the "T" of the word "Township;" they have "the same slope, and in general the characteristics are the same" (495).

Mr. Tolman states that in those families "which bear strong family characteristics there are found what may be termed 'family resemblances' in handwriting" (510). The witness thinks that the body of the will is without question the natural handwriting of the person who wrote it, and that all four of the signatures were feigned and in varying degrees, the signature of Henry Adams being nearest to his natural writing, and Alonzo C. P. Adams' signature next, and John Q. Adams' signature next, while the best disguise is in the signature of George P. Gordon. He thought the handwriting of the Gordon signature impressed one as better than that of the body of the will "because it is so heavy" (507).

This witness particularly remarked upon the fact that in the signature of Henry Adams, who, it will

be remembered, was seventy-three years old when the will was executed, there were evidences of feebleness or indecision in the hand which might be attributed to old age or other causes (485; 486; 509), and says that the second signature, that of Alonzo C. P. Adams, "shows more hesitation and internal evidence of an attempt, it might be called of simulation, aside from any comparison" (485). The extreme wavering, not only in the upper part but in the down stroke of both the letter "A" and "l" are very marked, and the final "o" is entirely separated, while the letter "P," the capital, also shows the extreme wavering, and there are other unusual things about the signature which might be pointed out (485; 486). This wavering and unsteadiness the witness thought might be due to the weakness consequent to the habitual use of alcoholic liquors, even "if the person were not under the influence at the time" (509).

It was shown that Alonzo C. P. Adams was very much addicted to the use of intoxicating drinks (1431; 1451). It is a remarkable coincidence that this expert called by the contestants should show that the Alonzo C. P. Adams signature bears the marks of being written by a man who habitually indulges too freely in intoxicating beverages.

2.—Testimony of Proponents' Experts.

The contestants' evidence was almost entirely based on a comparison of the disputed signatures with each other and with the body of the will. They attempted to make some comparison of the first witness' signature with one standard and of the second witness' signature with two standards, but had no standards for the third. In view of the circumstances, it is impossible to treat this alleged comparison seriously or to consider it at all fair and just. On the other hand the proponents introduced a large number of standards of the handwriting of the subscribing witnesses and the testimony of their experts was based not merely on a

comparison of the disputed signatures with the body of the will, but also on a comparison of the witnesses' signatures with the numerous standards admitted to be genuine. For convenience, the testimony in rebuttal of that given by contestants' experts to show that the same hand wrote the body of the will and all the signatures will be first reviewed

Prof. Ewell does not think that the body of the will and the signatures or any two or more of the signatures were written by the same hand (869), and finds no indication that the writer of the body of the will wrote the signatures and tried to disguise his hand, as contestants' experts claimed (869).

The writing in the body of the will, he tells us, "is nervous and angular," "the capital letters are compressed somewhat" and narrower than in the signatures; there is quite a noticeable angularity in the lower left hand corner of the letters in the body of the will, and this characteristic, which witness considers very important, is not possessed by any one of the signatures (859). Besides he points out the fact that "the convexities of the curves of the lines joining the small letters point downwards and not upwards" in the body of the will; they do this uniformly, and Mr. Ewell says: "This I regard as a very important characteristic of the document," (860) but he does not find it in any of the signatures and illustrates this characteristic difference by pointing out examples (860). And he further says: "I find no such convexity to the small letters (in the body of the will) either at the top or at the bottom as exists in these signatures of the last Adams" (866). He refers to the round curves or convexities of the smaller letters of the Alonzo C. P. Adams and John Q. Adams signatures in contrast with the sharp angularities in the body of the will.

There is a single exception to this rule; the connecting line between the "o" and the "n" in "Alonzo C. P. Adams," but this peculiar connecting line is also found in the Alonzo C. P. Adams standards.

In the body of the will all the loops extending below

the line are "bent as it were to the right" (860; 861) and not to the left of the line designating the angle or slope of the word ; when they do not bend to the right then they are parallel to this line designating the angle of the main parts of the letter ; while in the signatures they bend to the left in every instance (861).

On the other hand, the tall letters above the line in the body of the will in most instances have a tendency, as the witness shows by example, to curve with a convexity to the right, whereas in the signatures there is a tendency to curve in the opposite direction (866 ; 867).

Again, he points out the fact that the small letters in the body of the will have regularly a tendency to decrease in dimensions as the writer proceeds in writing any word, while the same tendency is not seen to any such marked extent in any of the signatures; but he finds some slight tendency of the same sort in the word "Henry" in the signature, and also in the "n" in the Gordon signature ; he points out the fact, however, that the "Henry" and "Gordon" are very similar in this respect to their respective standards (868). The small letters in the signatures Alonzo C. P. Adams and John Q. Adams do not show this tendency to converge as in the body of the will, but quite the contrary (869).

The pen pressure, the witness says, in the body of the will is as a rule near the bottom of the letters, and this is true also of some of the small letters in the Gordon signatures, but not of all of them nor of all parts of those in which a heavy pressure near the bottom occurs. In the last "o" in "Gordon" for example, the pen pressure is heaviest at the top, and while there are resemblances in the shading of the small letters in the body of the will and the Gordon signature, there are in each instance important differences (925; 926; 927). The signatures and the writing in the body of the will are, for the most part, slightly above the line (929), but this is also true of many of the standards as well as of most writing.

There is a convexity in the right staff of the capital "H" in the signature "Hemry Adams," which is not

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found in the body of the will (873). On the contrary, the second staffs of the "H"s in the body of the will are straight (864), as the examples which the witness enumerates on p. 864 show.

The "e" in the "Geo." of the Gordon signature is of an entirely different type from any found in the body of the will (862). The "e" in "Hemry" of the signature is round and taller than the other letters, while the form is different from the "e" of the writer of the body of the will, the "e" in the body of the will being either angular in the lower left hand corner or much broader and almost circular (863; 864).

The "m" in "Hemry" differs from the "n" in "Alonzo," which in turn differs characteristically from the "n" in John (870).

The "r" in the body of the will has regularly a blind loop at the top, which is most characteristic; the "r" in the Gordon signature is made without this characteristic at the top, but with a smooth curve, while the "r" in the Henry Adams signature is of a totally different type from either of the others, and has neither a curve nor a blind loop at the top (864; 874).

He points out the fact that the loop in the "y" in "Hemry" bends to the left, while the loops of the "y"s in the body of the will are either straight or bend to the right (861; 864.)

In reference to the capital "A"s of the three signatures, the witness directs attention to the initial loop that is found in the two "A"s of the second Adams, but not in the "A's" of the first Adams. In some instances there is some resemblance or similarity between the capital "A"s in the body of the will and those in the first two signatures, but as a rule there is no similarity (872). Generally the writer of the body of the will makes the apex of his capital "A" curved, although not always so, while the staff commonly shows a tendency to curve to the left (872). There is, however, a slight resemblance between the bellying out of the first line of the "A" in the first Adams signature and the first line in the letter "A" in "Article V" in the

body of the will (930). The witness finds no small "a" used as a capital in the body of the will.

The "d" in "Hemry Adams," the witness thinks, in some respects resembles some of the "d"s in the body of the will, but its staff has its curvature with its convexity to the left as they have not (930). Whenever there is some general resemblance there is also some characteristic difference (931). The staffs of the "d"s in both the Henry Adams and the Alonzo C. P. Adams signatures curve to the left, the "d" in the last Adams signature does not have the curve in so marked a degree; the first two of these "d"s terminate abruptly, while the third has quite a large hook (871). The finish of the "d" in the first Adams signature resembles somewhat the finish of the "s" in the same signature (871), whereas the "d" in the Alonzo Adams signature has "a curve upward or hook" as its terminal (871). The stem of the "d" in the second Adams signature is higher than those of the other signatures absolutely, and also relatively higher, when compared with the other letters in the same word (871). The "d" of the staff of the last "Adams" is thin at the top and more shaded at the bottom (871). The "d" in "John Q. Adams" is relatively larger than the rest of the word and there is a tendency noticeable, but somewhat masked by the spreading of the ink to form a loop in the staff (871).

The separation of the "A"s and "d"s and "m"s in the three Adams signatures to which the contestants' experts directed attention, Prof. Ewell states, is found not only in these signatures to the attestation clause of the will, but regularly in the standards of the Adamses (874; 949; 950). The "ams" in the Henry Adams signature does not in general appearance resemble the "ams" in the Alonzo C. P. Adams signature (938).

The "m," the witness says, is quite oval in its upper outline in the third Adams signature, less so in the second and quite angular in the first (870).

The "s"s in the second and third Adams signatures

have loops, the third especially has an open loop, and in this respect, they differ from those in the first Adams signature and in the body of the will (864). Those in the body of the will differ also from the "s" in "Hemry Adams," because they have a characteristic curl at the end, while the "s" in "Hemry Adams" ends abruptly (932–5). In each of the Adams signatures the space between the "m"s and the "s"s is greater than that between the other letters; but this is also true of the standards (938).

None of the "o"s in the signatures, Prof. Ewell says, have the distinctive characteristic angularity in the lower left hand corner which is found regularly in the "o"s of the will (865).

There is no such type of "z" in the body of the will as the "z" in "Alonzo" (865). Besides, the loop of the "z" in "Alonzo" bends to the left, that of the "z" in "Elizabeth" in the body of the will bends to the right (861).

The "P" of "Alonzo C. P. Adams" is quite different from the "P"s found in the body of the will (865). In both cases the letter is made without taking the pen off the paper but in the body of the will the ascending curve of the "P" goes to the right of the staff, in the signature it goes to the left (865.)

Witness finds no "J" in the body of the will resembling the "J" in the signature in the peculiar turn to the left and shading of the terminal (865). The angle of the "J" in "July" approximates 90 degrees; that of the "J" in "John" is only about 45 degrees (952). These formations resemble each other somewhat (943), but differ very much in the size of the angle, and the "J" in the will is a blind loop, while the "J" in "John" is an "open loop with the shading on the outside" (943), and has the peculiar shading to the last terminal curve of the staff which is not found in the body of the will (865). The "T" in the word "Township" also has a slight resemblance (943).

The "o" in "John Q. Adams" differs from those in

the body of the will, which are angular, while this one "is round and flowing" (865; 862).

The letter "h" in "at his request" in the attestation clause of the will does not have the same characteristics as the "h" in "John Q. Adams" (944).

The witness thinks there is some resemblance between the Adams signatures, which might be accounted for by the fact, if the fact existed, that writers were near relatives or intimately associated in their writing or copying or in their school exercises. In such case witness should expect to find a certain degree of resemblance. If Alonzo C. P. Adams and John Q. Adams were sons of Henry Adams, and had been accusatomed in their earlier days to copy documents written by their father, the witness thought this might produce resemblances (870).

Capt. Rauch sees a strong similarity between the signature of Henry and Alonzo C. P. Adams, "which," he says, "I would call a family resemblance, in the writing itself, but that is intensified by the peculiarity of the ink and in addition of the paper at the time of the writing, which would make it very black and which intensified that similarity and would make it still stronger. I do not think they would look so nearly alike as they do at first sight, were it written on dry paper and with ordinary flowing ink" (828). "The signatures," he says, "were manifestly written under circumstances and under certain conditions that beget a sameness of appearance" (1006; 1007), and in the case of the first two Adams signatures there was a family resemblance which was intensified by these conditions (1007).

The writing of the body of the will, the witness testified, is "uniformly irregular" (831), "an open, rolling irregular hand, and has no characteristic of the signatures, which are uniform and regular" (960). The unconscious habits of a writer will appear in a forgery, but the witness has been unable to find any traces of the hand that wrote the body of the will in the writing of these signatures (968). "I cannot find a single

trace" (960). There are, it is true, similarities in respect to portions of certain letters, but as a whole the differences are radical (1002).

All the signatures and the writing in the body of the will are slightly above the line, but it is the habit of most people to write on the line, near the line or above it (981). Part of the Gordon signature is on and part above the line (980).

There is some resemblance between the shading in the small letters in the will and in the Gordon signature, the witness thinks, but with very important differences; in the Gordon signature the shading is uniform, while in the body of the will it is very irregular (986–7).

The "h" in the "John" of the third signature resembles the "h" in "his" in the fourth line of the attestation clause, in that the initial line begins in each case away above the top of the line of the small writing, the witness admits (997), but he points out the very important fact that this initial line in the "h" of "his" is merely a continuation of the crossing of the "t" which preceded it,and therefore not a characteristic of the writer. There is no such cause for the initial line of the "h" in "John" beginning so high up (998). Besides, the witness states that the loops of the two letters differ in proportion, and the pen pressure is entirely different (998; 999), beginning at the top in the body of the will, whereas in the signature it is at the bottom; the forms are similar, but the pen pressure entirely different (962). (It is this top of the "h" in "his" which Mr. Hagan said was a perfect *fac simile* of the top of the "J" in "John" (330)).

Witness says there is a similarity between the "A" in the Henry Adams signature and some of the "A"s in the word "Article" in the body of the will, in that the up stroke bellies out somewhat in each case (964; 994; 995), but this same tendency appears very strongly in the Henry Adams standards P. 144, P. 157, P. 166, P. 170, and P. 171 (1016).

In other respects Capt. Rauch says the "A" in the "Hemry Adams" is radically different from the "A"s in

the body of the will (964). The loops of the " A"s in the Adams' signatures are both "open," while the loop in the capital " A" of the body of the will is " nothing but a sharp triangular form" (964).

Some of the " d"s in the body of the will have some similarity to the " d"s in the signatures, but there are decided dissimilarities in each case (994; 995). The stems in a few instances have a resemblance, but with a very few exceptions have quite a different character from the stems of the " d"s of the Adams signatures (1017), while the loops also are very unlike (995), and have sharp angles at the lower left hand corners (1000). The " d"s in the body of the will vary greatly, there are no two of them alike (1001), but none of them are like any of the " d"s in the signatures (1000 ; 1001), all four of which are different from each other and from those in the body of the will " in important particulars" (1017).

The " s" of the Henry Adams signature is a straight dash downward with no tendency to curve, while the " s"s in the body of the will all have curves (995). There is some similarity between the " s"s in the second and third Adams signatures, but they are not identical, as Mr. Ames (386) has asserted. The difference is obvious.

The witness finds no " l" in the body of the will like the " l" in Alonzo in " character and formation," although one of the " l"s in dollars in Article IV., Section 3, somewhat resembles it (999 ; 1000), but thinks that the long loop of the "z" in Alonzo is " similar in character of the swing of the pen" to that of the " J" in the third Adams signature (1004) and the terminal of the " P" in " Alonzo C. P. Adams" was somewhat similar to the terminal of the first " G" in the Gordon signature (1005).

Capt. Rauch's conclusion after his study of the body of the will and the signatures is that the only real similarity between the will and the signatures is that between the initial part of the " J" in " July " and the " J" in "John," but " there are," he says, " plenty of

people making "J"s in a similar manner" (966); "they are very common" (966), "but the dissimilarities far outweigh the similarities," and this slight similarity does not tend to lead his mind to the conclusion that the same hand wrote the signatures and body of the will (967), and after having had certain other alleged similarities pointed out to him the witness' opinion was still unchanged (996).

Dr. Cresson finds as between the three signatures of the Adamses that there are "strong family resemblances; as much so as if one of them had taught the others to write, but independent of that there are individual characteristics. The comparison with the test signatures satisfies me in my own mind that each man wrote the signature that is assigned to him by test signatures" (1123; 1124).

Witness thought the first "I" in Article I. in the will had not the characteristic of the "J" in "John Q. Adams," while the "T" in "Township" had but one characteristic of the "J," and this was that each had a sharp top; in other respects they were very different (1160).

Prof. McClelland did not think the person who wrote the body of the will was capable of writing the signatures (1348). While there are some similarities between the signatures, "there are different characteristics in each which are sustained throughout, but each different from the other" (1365). There is a difference in the spacing of the letters of the Adams signatures, the first being the closest, the last the widest; but each is consistent with itself (1365). The writing in the body of the will is more angular and the slant more irregular than in the signatures (1348). The slant of the "n" and "m" in the signatures in the Henry Adams signature is the same throughout (1368). The small ovals in the "d" and "a" of the Henry Adams signature have less slant than in the body of the will, and correspond in this respect with the Henry Adams standards (1368). The "s," also, of the Henry Adams signature and

standards is always slanting in about the same degree, while the "s" of the body of the will is more nearly vertical (1369). The last line of the letter "h" in the body of the will slants much less from the perpendicular than the last line of the "h" in "John" (1372). This habit of the writer of the body of the will of making the last stroke of the "h" nearly vertical, the witness thinks is a habit which the writer would have been apt to incorporate into a writing in which he was trying to simulate some other hand (1372).

The Henry Adams signature is consistent with itself throughout; the loop in the "H" and in the "A" are alike (1365), but entirely unlike those in the "A"s in the body of the will (367), and differ from those in Alonzo's "A"s which, however, are like each other (1365). The difference between these loops in the capital "A"s is very striking. The closest resemblance between the first two signatures is in the "dams," and yet the "dams" of the first signature differs from that of the second and is "totally different" from that of John Q. Adams (1365).

The top of the "d" in Alonzo's signature differs from the top of the "d" in Henry's signature, in being rounded, showing a tendency to make a loop, which he would probably have done in this case had his pen been better and the ink not so thick (1366). The staff of the "d" of the "Henry Adams" is sharp and the line ends abruptly; there is nothing like it in the body of the will (1366).

Henry Adams connects the lines of his "m"s both in signature and in the standards by full right curves, "whereas the writer of the body of the will always makes his connecting lines waved between the parts of the 'm's" (1369).

The similarity existing, the witness says, between the Henry and Alonzo Adams signatures is such as is frequently found between members of the same family or between those who have long been associated in business together or been taught by the same instructor, or copied documents of the same superior.

Sometimes members of the same family will write so nearly alike that it is almost impossible to distinguish their signatures from each other (1365; 1366). It would be much easier for a forger to simulate on the same paper two signatures differing widely than two that had a family resemblance, and at the same time preserve the different characteristics in each (1365).

Prof. Elliott says there is "a broad similarity" between the Adams signatures, "the same as is seen in the firm signatures of men who are in business together" (1482), but the similarity he finds also in the standards. These signatures and the body of the will differ. The latter is in a running, open hand, with underhand curves that turn toward the left a little in such letters as "n," "a," "m," and the lower part of "h," while the signatures are all varied in this respect (1482). "The Gordon signature is easy but there is a tendency to overhand curves" (1482). "'Henry Adams' has sharp, close angles above and below" (1482).

"'Alonzo C. P. Adams' is also angular but a little more open; the writing is a little more spread out, not so cramped" (1482). "'John Q. Adams' is open and bolder, and has overhand curves very similar to those of "Geo. P. Gordon," but they are bolder and the writing is more spread out" (1482-3).

These characteristic differences are very apparent to the most casual observer who examines the Will and signatures in question. That strong resemblances are frequently found between the handwriting of members of the same family is a matter of common knowledge. Contestants' experts bear witness to this fact. Carvalho has "seen family signatures which very closely resemble each other" (305). Ames has seen resemblances so close that he "might not be able to separate them at first" (399), and Tolman is aware that "family resemblances" in writing exist (510). The resemblance between the writing of Edward L. Adams and the body of the Will Mr. Carvalho considers a family resemblance, and says that the "Adams" in Edward L. Adams' signature to his affidavit resembles the

"Adams" in the John Q. Adams signature to the Will more than the "Adams" in either of the other signatures resembles it—so strong does he admit the "family resemblance" in the writing of the Adams family to be (310). It is also a matter of common knowledge that members of the same firm or persons closely connected in business or taught in the same school, often show decided resemblances in their handwriting. Mr. Ames would expect to find "coincident forms numerous" in writings of persons "who had learned in the same school and practiced under similar circumstances" (402), and in this respect agrees with proponents' expert Rauch (828); McClelland (1365); Cresson (1123), and Elliott (1482).

b.—WITNESSES' SIGNATURES COMPARED WITH STANDARDS.

I.—The Henry Adams Signature.

1.—Testimony of Contestants' Experts.

The one solitary standard of Henry Adams' writing which contestants used for comparison was a signature, "H. Adams," in a bank book, Ex. D. 1 (258; 259). None of contestants' experts appear to have seen this standard until they went on the stand. Mr. Hagan says distinctly that he has not seen it before, and evidently hesitates about giving an opinion (335), and Mr. Carvalho and Mr. Ames also appear not to have seen the standard before (258; 393).

These experts, with the one standard of Henry Adams' signature, not studied beforehand, and only shown to them for the first time on the stand after they had sworn the disputed Henry Adams signature was a forgery, were of course compelled to see remarkable differences between this solitary standard and the disputed "Henry Adams." Mr. Carvalho promptly declared that "other than the fact that the letters in 'H.

Adams' (D. 1), are patterned after the same style of letters in the signature of Henry Adams to P. 1 there is no resemblance at all" (258). The "H" in the standard, he said, began with a dot and a curved initial stroke, while the first staff of the "H" in the questioned Henry Adams signature is a straight line. The second staff of the standard "H" begins with a dot and finishes off with a little turn at the bottom, whereas in the disputed "H," the second staff begins with a sloping curve, there is no dot and the line ends abruptly; the mark or cross bar also differs (259). The capital "A"s differ in pen pressure and the curvature of the initial stroke and in the cross bars (259) while the small letters approximate more nearly to the size of the large letters in the bank book than in the questioned signature (259). The final stroke of the "d" ends abruptly in the questioned signature, but passes over to the "a" in the bank book. There is no pretext of resemblance between the "m,"s and the "s"s have no common characteristic (260). (An inspection of the numerous standards of Henry Adams' signature before the Court, shows that this testimony is simply ridiculous, and besides, it is evident to any one who looks at the two signatures which Mr. Carvalho had before him, that his statements are not true.)

Mr. Hagan says, apologetically, in his embarrassment, "Well, from such examination as I can make here, I don't think they are writing of the the same person" (335). (He had, be it remembered, the questioned Henry Adams signature, and the "H. Adams" bank signature only.) "From such examination," the witness concluded that the whole pressure of the pen movement was different in this Henry Adams standard from the signature, the manner of making the "A," the staff of the "A," the proportion of the lobe to the staff of the "d," and of the "a" to the other letters, the regularity of the "m" at the bottom, and the movement of the pen in making the "s"s were all very different (335).

Mr. Ames, from a like examination and in similar circumstances, concludes that "There is not the remotest resemblance, that is, characteristic resemblance," between the Hemry Adams signature to P. 1, and this standard. In D. 1, "the whole character is that of an unpracticed hand, the lines are stiff, the letters are made with such hesitancy almost as a school boy would hesitate in his first lesson" (394). (It will be remembered that this is contestants' one standard signature of Henry Adams, which the witness is now describing, and that Henry Adams, who wrote so "*unpracticed*" a hand had been for many years an eminent lawyer, accustomed to write a great deal, and his hand was anything but an unpracticed hand, as his other standards show). The witness, nevertheless, proceeds to say, "The strokes of the "H" are unpracticed lines" (394). The first stroke of the "A" is made with a downward motion, while the first stroke of the "A" of the questioned signature is "a hair line and made with an upward stroke" (394). "The 'd' is different in proportion, different in its relation of parts, the 'r' also. The 'm' and the 's' is also different in their shading and degree of articulation" (394). "In short, there is not a stroke or a line or any form or letter or any combination that show or are characteristic with the same letters in the genuine signature" (394). Of course, after this most sweeping sentence of condemnation, so easily and volubly pronounced after so slight a comparison *with one standard*, it was needless for the contestants to show the witness the large number and great variety of genuine signatures of Mr. Henry Adams, which proponents offered, and from the careful study of which their experts came prepared to show that the questioned signature was beyond question the signature of Henry Adams.

2.—*Testimony of Proponents' Experts.*

Proponents offered as standards of Henry Adams' handwriting thirty-nine check signatures, Exhibits P.

134, to 172, inclusive (798; 799); also an assignment of a mortgage, a lease, a bond, a mortgage and a deed of trust all executed by Henry Adams and marked respectively P. 173, P. 174, P. 175, P. 176, P. 208 (789–800). These standards, which were all admitted by contestants to be genuine, showed a great variety and diversity in Mr. Henry Adams' writing, even the check signatures, in which most men try necessarily to preserve uniformity, differing from each other in a most remarkable degree. Proponents' experts had studied these standards and compared the questioned signature with them, line by line, and letter by letter.

Dr. Cresson says of the standards of Henry Adams' writing, "All the exhibits are irregular in the construction of the individual letters, the writing is at various slopes and with considerable modification of the forms of the letters" (1109). The name is commonly written "H" instead of "Henry Adams" (1109).

Dr. Cresson points out the fact that in all the standards except one the "A" is written separately from the "d," although in one other the final line of the capital "A" touches the "d" (1110), and that the "d" is also written separately, although sometimes the final line of it touches the following "a" (1110), and that the "ams" is always written together, except in one case where the failure of the ink causes a break (1110).

Prof. Elliott also observes that it is a characteristic of the writer of the standards to separate the "A" from the "d" and that the "d" is frequently broken off short from the following "a," "just as in the questioned signature" (871; 832).

Prof. Ewell says that in almost every one of the standard Henry Adams signatures he finds the convexity of the left staff of the "H" to the left (874), and also in a very marked degree in the second staff of the "H" of the questioned signature "Hemry Adams" (864), "I find," he says, "in one or two of them (the standards) it is very slight, but it exists in all of them, and in many of them there is a little loop at the top"

(874). This convexity is not found in any "H" in the body of the will (875).

Prof. Elliott comments on the fact that the curved top of the second stroke of the letter "H" is a feature of the Henry Adams signature, and is found in nearly all the exhibits, but is more conspicuous in P. 131, P. 132, P. 133, P. 152, P. 159, P. 167 and P. 208 (1481).

The "H" of the questioned "Henry Adams closely," Dr. Cresson states, resembles the one found in Exhibit P. 174, and is practically identical with the one in P. 175 (1110). The loops in some of the "H"s of the standards closely resemble the loop in the signature (1110).

Prof. McClelland points out the fact that the first stroke or line of the "H" in the Henry Adams signature is similar to the first parts or strokes of the "H"s in P. 173, cartoon P. 166, P. 157, P. 156, while the last stroke of the "H"s in the disputed signature and in the standard signatures, P. 174, P. 166, P. 136, P. 135, P. 134 and P. 173, all have the same slant of 50 degrees (1366). He shows, too, that the loop of the questioned Henry Adams signature is characteristic of the Henry Adams standards, and is found in P. 174, P. 136, P. 135, P. 134 and P. 173, and the same feature is found in the "A" in P. 134 (1376). Whenever a connecting stroke occurs in the "A"s of the body of the will, it is entirely different; "there is no loop in it, but it is made angularly, uniting with the latter part of the 'A'" (1367). The "H" in the disputed Henry Adams signature, he says, is as like that in P. 173 as it is customary for a man to make one of his signatures like another (1367).

Dr. Cresson points out the fact that the "m" in "Hemry" is of less height than the "e" which precedes it, both in the standards and in the questioned signatures (1110).

Capt. Rauch says that Henry Adams in his standards frequently made the "e" taller than the following "nr" in "Henry" and notably so in the Trust Deed P. 208 (1016).

Prof. Elliott says that in the signature to the Trust

Deed P. 208 the "e" in "Henry" is almost a fac simile of the "e" in "Hemry" of P. 1 (1481).

Prof. Ewell shows that the imperfect form of the "r" in "Hemry" in the questioned signature resembles the "r" in "Henry" in P. 173 (875), where Mr. Adams "makes an abortive loop of the letter 'r'."

In other respects he thinks the "em" in "Hemry" is substantially like that combination in the Henry Adams standards and in the body of the will (930; 875).

Contestants' expert Ames admits that "the "n" and "r" are unlike. In fact the latter part is quite unlike the "Henry" in the body of the will" (391–2).

Mr. Carvalho was of the opinion, that "other things aside," he should regard the obvious blunder of an "m" for an "n" in the Henry Adams signature as "evidence of genuineness" (305) in this respect agreeing with Prof. Ewell, who also thought that so gross a mistake was evidence, not of forgery but of genuineness (874; 875), while in Mr. Hagan's opinion, a man who was in the habit of writing "H" merely, instead of "Henry," as his first name, would be more likely to make such a blunder than if he always signed his name "Henry," and admitted that he would not expect a forger to put such an error in purposely (348).

Coming now to the "Adams" of the signature, Prof. Elliott points out the obvious fact that the heavy pressure at the initial stroke of the letter "A" is found in the Henry Adams signature to P. 1, and in P. 139, P. 146 and P. 153 (1481). Of course the heavy pressure is intensified in the will by the thick ink, and the paper moist with perspiration.

And Dr. Cresson comments on the fact that the capital "A"s in the standards bear a very strong resemblance to the "A" in Henry Adams' signature to the will (1111), even to "the initial curve of the first stroke, and the connecting loop" (1111).

Prof. McClelland says the first line of the "A" in the Henry Adams signature is made with an upward

movement, and this is true also of the "A"s in some, though not all, of the standards (1368).

Capt. Rauch says there is also a tendency to belly out the first stroke of the "A," and instances are enumerated on page 1016, and Prof. Ewell also points out the fact that the first staff of the "A" has a characteristic bending to the left in the standards as in the questioned "A" (872).

Dr. Cresson says the "d" in the Henry Adams signature is formed with an open loop and a solid staff similar to the "d"s of exhibits P. 173 and P. 174, and these standards show his statement to be accurate.

Prof. Elliott says the curve of the staff of the letter "d" of the questioned Henry Adams signature is a prominent feature. This also is found in the standards particularly in P. 174, P. 173 and P. 208 (1481), and Prof. Ewell also also points out that this characteristic curvature of the staff of the "d" is common to the standards and to the questioned "Henry Adams" (874; 871).

Prof. McClelland directs attention to the oval of "d" and also of the "a," which he says is pointed and flat and contracted in the back and open at the top in the Henry Adams signature to P. 1 and to P. 174, P. 136, P. 135, P. 134 and P. 173. This is a singular and marked characteristic (1368).

Prof. Elliott says the "a" in the signature to the trust deed is almost a fac simile of the "a" in the disputed "Henry Adams." It and the "e" are both very perfect letters and close resemble the "a" and "e" of the questioned Henry Adams signature (1481).

Dr. Cresson says the "m" in Henry Adams signature has the same turn at the top and the same characteristics of wrist writing as the "m"s of the standards (1111).

Prof. Ewell frequently finds the same terminal "s" in the standards as in the questioned signature, as in P. 160 (874), but it is not universal in the standards.

Dr. Cresson remarks that the standards present two different styles of "s,"s one of which styles terminates

in a dot placed on the hair line, while in the other the line "descends from the top of the letter and ceases in space without any attempt at the formation of a finish of any sort." This style is found in a number of the standards and in the questioned signature (1111), but is not in the body of the will, as contestants' expert, Ames, admits (427).

Notwithstanding that the proponents' experts pointed out these many striking and characteristic similarities in both the questioned and the standard Henry Adams signatures, characteristics found in every letter and every line of the disputed signature, and showed that the standard contained letters almost identical with those of the questioned signatures, contestants' expert Carvalho blows away all these solid facts and characteristics with a single breath. When recalled he had photographed a few of these standard signatures' which he tells us he took "at random" from the whole number (instead of taking only those which benefited his side), and he says he had seen most of these standards. Testifying from his photographs of five of the standards he says: "I have to say that other than there is a certain resemblance between some of the letters in the sense of being made of a kind, that they are utterly different both in respect to character, quality, way of putting together and general make up" (1503). It is needless to remark that Mr. Carvalho's statement is sadly wanting in details, and that he admits on p. 1500 that he has not seen all of he Henry Adams standards. He had evidently, from the language he uses, seen only "a block of five."

II.—The Alonzo C. P. Adams Signature.

1.—Testimony of Contestants' Experts.

Contestants produced two printed books on the flyleaf of each of which the name "A. C. P. Adams" was written in lead pencil (50). These signatures were offered and admitted as standards and marked Exhibits

D. 2 and D. 3 respectively. They also produced a small pass book containing an entry in which occurs the "A. C. P. Adams," and a bill also containing two signatures of "A. C. P. Adams." These two papers were also offered and received as standards of Alonzo C. P. Adams' writing (51), and marked Exhibit D. 4 and Exhibit D. 5 (50, 51).

The value of a lead pencil signature which has been dashed off on the fly leaf of a book *as a standard* is evidently not very great, even according to contestants' experts (408). While a signature made in an entry in a small pass book, where the space is limited and the signature necessarily cramped, is by no means reliable as the proper measure of a man's writing. The standards D. 2, D. 3 and D. 4, therefore, while admitted to be in the handwriting of Alonzo C. P. Adams, are manifestly of far less value as standards than the signatures in Exhibit D. 5, and in proponant's exhibits.

Contestants showed only one of the signatures in D. 5 to Carvalho, and this was after he had committed himself to the theory of forgery on the stand; he had not seen it before, he says (306), and had no time to study it, but coyly admits on cross examination in answer to the question whether he thought it was a "fair" thing to do to make up his mind that the Adams signatures were forgeries without having seen genuine signatures: "I would rather have seen genuine signatures" (307), and adds "after seeing genuine signatures, I find that I am right." He was asked to give his opinion off-hand on the question whether the Alonzo C. P. Adams' signature to the will was in the same handwriting as the signature "A. C. P. Adams" under the words "received payment" in Exhibit D. 5 (260).

The witness' attention was not directed to the other signature of Alonzo C. P. Adams, which is also admitted to be genuine in this Exhibit D. 5, and is quite different from the signature at the end of the receipt.

Mr. Carvalho did not think that the standard and the questioned signature were written by the same hand; the signature to the receipt he thought written "off-hand freely" while the "one on the will is labored and a very hard to write signature." There is ten degrees difference in the slant. In the standard the capital "A" was begun from the top and there was considerable pen pressure, making a very beautiful and artistic portion of the letter "A," whereas in the questioned signature the first line of the "A" was begun from the bottom (261). The letter "C" in the standard "is an enlargement of "a small c and the other is a capital, so they do not compare at all" (261). "In the letter 'P' one stands up perpendicularly and the other lies right over." The position of the loop also differs (261). There is no comparison to be made between the "d"s, which are made after almost entirely different patterns, one having a strong and straight staff to it, and the other cutting itself in the lower portion of the "d" and passing over to the letter "a" (262). (This is the loop which proponents' experts point out as characteristic of Alonzo C. P. Adams' "d"s, and traces of which are found in the questioned signature). The "m"s are made "exactly opposite each other;" if the one were turned upside down it would look like the other (262). The "s"s are patterned after each other, but differ in that the one in the receipt has no disposition to make a blind loop, but has the usual flourish at the end, while in the questioned signature there is a blind loop with a "sort of labored flourish" at the end (262). The word Adams in the receipt is all written in one piece, while in the questioned signature the "A," the "d," and the "ams" are each separated from each other (262).

Mr. Hagan was also shown the standards D.2 and D.5 after he had committed himself to the view that the questioned signature of Alonzo C. P. Adams was a forgery and had so testified. He was evidently greatly embarrassed and hesitated about giving an opinion, in view of the circumstances. He says

in answer to the question put to him, whether the questioned "Alonzo C. P. Adams" was written by the same hand that wrote the standards: "So far as I can make an examination in Court I should say it was not. It is pretty difficult to give a positive opinion without making a thorough examination, and I am not able to do that here" (333). The answer was evidently unsatisfactory, and contestants' attorney tried to improve it by asking: "In general character and appearance is it different or alike?" to which the witness loyally responded, "Oh, it is different, different. I have never examined that paper before" (333). The contestants wisely concluded not to pursue this subject any further with Mr. Hagan.

Mr. Ames was also shown Exhibit D. 2 and D. 5 only, and asked on the stand to compare them with the questioned "Alonzo C. P. Adams." He thought there was "no characteristic resemblance between the "Alonzo C. P. Adams" as it appears as a witness to the will with what appears on the Exhibits D. 5 and D. 2" (393). "There is no resemblance in any of the letters whatever, taking the word 'Adams,' particularly in D. 2." D. 2, it will be remembered, was written with a lead pencil on the fly leaf of a book, and of course is of far less value as a standard than D. 5, but it is a stronger support evidently for Mr. Ames than the far-better standard D. 5. This witness on cross examination was shown a pencil signature purporting to be that of George P. Gordon, but refused to express himself with any degree of positiveness in regard to its genuineness, because he had never seen any of Mr. Gordon's writing in pencil (408) and it required some fifteen minutes for him to make up his mind whether or not ten other signatures of Mr. Gordon written in ink were genuine (407; 409). But he did not hesitate for a moment to give an opinion based on this pencil signature of A. C. P. Adams.

In this pencil Exhibit D. 2, Mr. Ames thought the first member of the "A" was made beginning from the top, while in the questioned signature it began from

the bottom; the "d" had a loop in the pencilled, but not in the questioned, signature. The "C" was a different type; "The 'a's 'm' and 's,'—there is no relationship whatever, either in the flourish or anything else. And the same in the 's'" (393). "There is no relationship whatever," he says, "taking the letters separately or in a bunch" (393). In D. 5, he says the "A"s begin with a downward stroke which is different from the questioned signature (393). The "P"s, however, he admits are the same, except that they are joined together and have connecting lines (393).

The witness did not, however, seem to be very confident about his conclusions, for he prefaces some of his statements with the saving phrase, "taking it that these two signatures are genuine and fair signatures" (393).

2.—Testimony of Proponents' Experts.

Three of the checks of Henry Adams produced by the proponents were to the order of Alonzo C. P. Adams, and endorsed by him, the name appearing in each case, "A. C. P. Adams." These are Exhibits D. 137, D. 138 and D. 139, and by consent the endorsements were admitted as standards of Alonzo C. P. Adams' handwriting (798). The endorsements of A. C. P. Adams on the checks P. 131, P. 132 and P. 133 (798–9) and his signature as a witness to the lease P. 174, his signature written "Alonzo C. P. Adams" to a legal document P. 177 (800), also his signature "A. C. P. Adams" to a promissory note P. 178, and his signature "A. C. P. Adams" endorsed on two letters of Henry Adams, Exhibits P. 179 and P. 180 (800), also four letters written and signed by A. C. P. Adams, P. 181, P. 182, P. 183 and P. 184 (801), were admitted as standards.

The mere enumeration of these exhibits shows that they include signatures to checks and legal documents, and writing in and signatures to ordinary correspondence. It goes without saying that they far more

fairly represent the writing of Mr. Alonzo C. P. Adams than the so-called standards submitted by contestants.

Alonzo C. P. Adams was in the habit of drinking to excess. Mr. Laing tells us that his habits were intemperate from the time the Adams family went to Woodbridge to live. "I used to see him," the witness says, "in liquor very often, but not always; sometimes he was right" (1431). Mr. Camille Baumann also testifies that he was a man of intemperate habits. It will be remembered in that connection that contestants' expert Tolman testified that the peculiar wavering and unsteady character of the Alonzo C. P. Adams signature might be due to "the weakness consequent to the habitual use of alcoholic liquors, even if the person was not under the influence at the time" (485; 509).

Prof. Ewell tells us that there is considerable variety in these standards of Alonzo C. P. Adams' handwriting (876), and again that Alonzo C. P. Adams, judging from these standards, was quite a variable writer, "especially in capitals" (878), and for this reason Mr. Ewell bases his comparison chiefly on the small letters (876).

Dr. Cresson says all the standards "are carelessly written and have very few common characteristics, common characteristics of configuration" (1115). No one of these standard signatures, he tells us, that he has seen, conforms either with any other one or with the questioned signature "Alonzo C. P. Adams" (1143), while Prof. McClelland says "the Alonzo C. P. Adams standards differ one from another as much as any one of them differs from the signature to the will, P. 1" (1366). These standards and questioned signatures of Alonzo C. P. Adams have, Dr. Cresson tells us, commonly the characteristics of wrist writing, but there are variations (1114), and changes from wrist to elbow movement and back again, which is indicated by the lack of rythm in many of the signatures (1158). The total length of the word

Adams in P. 177 and P. 179 is very nearly the same as that of the disputed "Alonzo C. P. Adams" (1115).

The disputed signature slants somewhat more than many of the standards, Prof. Ewell and Dr. Cresson tell us (958, 1144), but there is not so much difference between the slant of the questioned signature and the standards as there is between the questioned signature and the body of the will (939), which contestants' experts claim were written by the same hand.

Prof. McClelland says the rising line of the "A" in the disputed signature, in the word Adams, corresponds to within one degree of the standards, and he thinks the "d" also compares favorably (1259), and on the whole, he thinks, the disputed signature and the standards have nearly the same slant (1397), notwithstanding some of the letters appear to be different (1397).

Prof. Elliott points out the fact that the "P" in the questioned signature of Alonzo C. P. Adams has a decided slant or inclination toward the following "A"—a greater slant than the other letters of the signature—and that the "P"s in the standards P. 179, P. 133 and P. 174, have the same characteristic (1481).

A period is regularly found after the initials in the standards, and also after the initials in the questioned signature (1115).

The experts Ewell and Cresson point to the separation of the "A," "d," and "ams" and the connection of the "a," "m," and "s" as very strongly characteristic resemblances between the disputed and the standard signatures. The exceptions are very rare (876, 1114, 1115).

In most of the standards Prof. Ewell says the "A" of Alonzo Adams is made beginning at the top, but in some of the standards, as in the questioned signature, it is made in one line beginning at the bottom (876). In P. 178 and P. 173 there is the same sort of preliminary loop or flourish before beginning the upward movement of the first line, though not quite so marked as in the questioned signature (878). Dr. Cresson points

out the same characteristic of these standards (1114, 1115). (This loop was one of the evidences of disguise which contestants' experts based their theory of forgery on.) Dr. Cresson concludes from his examination *and experiments* that the first long stroke of the "A" was made from the top as in the majority of the standards (1145, 1152, 1153, 1154). The downward stroke need not necessarily be shaded ; it is not in P. 182, and P. 183 (1153, 1162). Prof. McClelland says the characteristic shading in the lines of the "A"s in the standards is the same as in the questioned signature (1369). In but a very small proportion of the standards, the "Alonzo" is written in full, "A. C. P. Adams" being the form (877), so that it is not possible to tell with accuracy what the writer's characteristics were in making the "l" and "z," which are peculiar to this part of the signature. The "l"s differ somewhat from each other, as they do from the "l" in the disputed "Alonzo" (1155; 1156; 1164). The connecting line between the "o" and the "n" is concave in the disputed signature, as in the standards (935). The experts showed a remarkable resemblance between the combination "zo," in the disputed and standard signatures, in that the "z" is not connected really with the "o," which is added but not joined (877 ; 878). Cresson says: "this 'o' seems to be made independently of the rest of the word."

Capt. Rauch thinks the "z" is different in type from the standards, and this is the view also of Dr. Cresson and Prof. Ewell (1004; 1156 ; 1164; 938), but these experts point out the fact that the characteristic square top of the "z" is found, but not to so marked a degree in P. 177 (877), and also that the three "z"s in the standards differ materially from each other " in the types and in the method of formation and looping" (1164). Nothing resembling the "z" of the disputed "Alonzo" was pointed out in the body of the will by contestants' experts, and the "z," "in "Elizabeth" in the body of the will is entirely different.

Many of the standards contain a "C" of a different

type from that in the disputed "Alonzo C. P. Adams," but "C"s similar to the one in question are found in P. 179 and P. 180, Alonzo C. P. Adams having apparently used both types indiscriminately (1114). The "C" is evidently a badly bungled one, particularly in the initial stroke. Prof. Elliott points out that this "C," which he regards as a characteristic feature of the questioned signature to the will, "is found to be the same in Exhibits P. 133 and P. 162" (1481).

The same general type of "P" is found in all the standards, and the peculiar polygonal or indented form of the top, which is highly characteristic, is found, as Prof. Ewell points out in P. 133, P. 177, P. 181, P. 174, (877; 1114; 1115). Prof. McClelland says: "the 'P.' in Alonzo's signature is very consistent with all the standards; the stem tending to angularity at the base and the top" as is seen in P. 177, P. 182, and P. 183 (1370). Prof. Elliott also points out the peculiar broken top as a notable feature of the letter "P" in some of the standards and in the disputed signature (1481).

The height of the "d" in the disputed signature, Dr. Cresson shows, is greater than that in P. 178, and less than that in P. 179 (1115). The "d"s of the standards have in most instances in the stems a curve to the left, as in the disputed signature, where they do not have loops, as is the case in the majority, though not all of them, as in P. 131, P. 132, P. 178, P. 181 (877, 941). In the disputed signature the "d" has a blind loop, as in some of the standards (1115, 1157, 1158). Prof. McClelland is of the opinion that the "d" would have had an open loop in this case, had it not been for the quality and condition of the pen, ink and paper (1366).

The "s," Profs. Ewell and McClelland both say, is of the same general type as that of the standards (876, 1369), even the slant being exactly the same in some instances (1369), but the flourish is less elaborate, though of the same type in the standards as in P. 1 (876, 1115), while the shading and distance from the

signature of this paraph is nearly the same in the disputed signature as in the standard, P. 178 (1370).

In view of the dissimilarities between the standards of Alonzo C. P. Adams' writing and of the strong resemblance existing between the questioned signature and numbers of these standards, notwithstanding the unusual condition of the ink and paper, and of the writer's nerves from the effects of too great indulgence in liquor, there can be no question about the genuineness of Alonzo C. P. Adams' signature.

To controvert all these facts and striking characteristics which proponents' experts had pointed out to the Court, and which leave no doubt as to the genuiness of the disputed signature of Alonzo C. P. Adams, contestants recalled Mr. Carvalho, who said he had seen some of these standards of the second Adams signature and had photographed six of them, selected "at random;" of these six he said "there is no resemblance at all, when we come down to an analysis of the handwriting" (1504), but he failed to venture down to an analysis or to an examination of the other standards or to point out to the Court a single fact or reason to support his opinion. The Court had frequently reminded counsel and witnesses that mere opinions without any facts pointed out to support them were of very little value; in view of these reminders, had there been any facts or reasons to support Mr. Carvalho's conclusion, he would undoubtedly have shown them to the Court. Mr. Carvalho did not venture an opinion on the numerous other standards of Alonzo C. P. Adams' handwriting, while proponents' experts, it will be remembered, supported their conclusion that the questioned signature of Alonzo C. P. Adams was genuine by an actual, minute and detailed analysis of all the standards and the signatures to the will, and by many important facts and good reasons.

III.—The John Q. Adams Signature.

Contestants did not see fit to produce any standards of John Q. Adams' handwriting in order to support their theory of forgery, or to point out any facts derived from a comparison of the genuine with the disputed writing, being apparently unwilling to risk their elaborate theory of forgery by subjecting it to the test of fact disclosed by such comparison.

The proponents, however, produced a number of standards of the genuine handwriting of John Q. Adams, which were thoroughly examined by their experts, who pointed out to the Court in detail the results and facts established by such comparison. These standards, Dr. Cresson says, show great irregularities as to form and construction; they are chiefly wrist writing, although in some of the standards the elbow movement was used (1166), and all vary in emphasis and slope, but there is "a general family likeness between them" (1117). There is the same general individuality in these standards as in the questioned "John Q. Adams," except that the "Q" of the latter is of a different type from the standards (1159). Contestants' expert Ames had said he doubted very much whether a "Q" like that in the disputed "John Q. Adams" could be found "in the handwriting of the person who wrote it, whoever it was" (425).

Prof. Ewell thought that the habit of forming the letters and manner of joining them in the standards and questioned signature was the same (947). The writing in the "John Q. Adams" to the will, the witness observes, is much larger than that of either of the other signatures to the will and of the body of the will. The writing in the standards varies in size, but in the letter Exhibit P. 187, it corresponds in size with the John Q. Adams signature on P. 1 (880). Exhibit P. 185 also shows that he sometimes wrote a large hand (880).

Dr. Cresson points out the fact that there is a great

quantity of ink on the questioned signature, and that it has spread, causing, apparently, heavier shading than that usually found in the standards (1161). The thick ink and moist paper operated in the same way on the "John Q. Adams" as on the Gordon signature, except for this circumstance, the witness does not think the pen pressure and shading of the questioned signature is different from the prevailing characteristic of the standards (1160; 1161).

The manner of combining the letters in the "John" of the questioned signature, Prof. Elliott says, is the same as that in the "John" in the standards P. 194 and P. 195 (880). The "J" is not connected with the "o" in the disputed "John"—nor in standards P. 194 and P. 186, though it is connected in some of the other standards (1119),

The "A" and "d" and "ams" are disconnected in the disputed "John Q. Adams" and in nearly all of the standards (1119; 1120).

The "J" of the questioned "John," like the "J"s in all the standards, is made in one piece without taking the pen from the paper, and has a loop with the same style of curve though somewhat exaggerated as in the standards (Prof. Ewell, 878). It shows the same peculiarities, habit and motion of the standards (Cresson, 1159). It is made in a peculiar fashion in the standards but there is the same general construction in the "J" in P. 1 (Cresson, 1118). The same rudimentary lines and the same sharp top are found in the standards (Cresson, 1119). "The general habit of forming the 'J' as it appears in the standards and in the will never varies; in the details it is more exaggerated here in the will" (Ewell, 946). The initial loop of the "J" is the same as in the standards (Rauch, 1003). The beginning of the "J," and the loop or oval in the first part of the "Q" in this standard signature are of the same character (McClelland, 1371). In the second page, ninth line from the bottom, in the body of the standard Exhibit P. 185, in the word "Jersey" we find the same tendency to emphasize the loop in the beginning of the

staff of the "J" (Ewell 88). There is a shade in the terminal loop of the "J" in Exhibit P. 199, which is something llke the "J" in the signature to the will, and there is a similar movement of the hand in both (Ewell, 945).

The "o"s in the standards are varied (Cresson, 1117), and the connecting line between the "o" and the "h" is made "with a sort of elbow" in Exhibit P. 1, and in all the standards in which the word "John" occurs. This characteristic is somewhat exaggerated in the disputed signature (Ewell, 880).

The "h" in the majority of the standards has a stem which is curved to the right toward the top as is the stem of the "h" in the disputed signature (Cresson, 1117). The stem is, however, curved to the left at the bottom in the standard P. 190, and the questioned signature (Ewell, 119). There is no patching in this "h," Prof. Elliott says, after a very careful examination with the microscope (1483; 1484), nor has the pen been removed from the paper at the bottom of the staff.

The "n" is made with a wrist movement in some standards, and with a "free movement" in others. In the disputed signature, it is made with the wrist movement and much resembles that of Exhibit P. 190 (Cresson, 1117; 1119).

The "Q" is of a different type in the will from that found in the standards (879; 944; 1003; 1159; 1120), but the oval of the "Q" in P. 1 is similar to that in P. 191, while the irregularity of the curvature which appears at the top of the "Q" in the disputed signature finds a counterpart in Exhibits P. 192, P. 194 and P. 195 (Cresson, 1120).

The shading of the "Q" and the "A" in the questioned signature is alike, and that of the "A" corresponds with the standards, (1372; 1373, McClelland). So that the "Q" in the questioned signature, while not of the same type as those in the standards, still shows in its make-up the characteristics of the same handwriting.

The contestants claimed that the fact that a small "a" was used for a capital in the John Q. Adams signature to the will was an evidence of an attempt to disguise the "forger's handwriting." It was shown by proponents that all the standards but one have the same type of "A" (Ewell, 879; Cresson, 1117), and that the "A" in the disputed signature is of the same character as that of Exhibit P. 194; both of these "A"s are also separated from the rest of the word (Cresson, 1120). The shading of the "A" in the will signature corresponds with that in P. 194, P. 190, and P. 189 (McClelland 1373).

The "d" and the "A" in the will signature correspond in their shading (McClelland 1373) while the staff of the "d" is curved as it is in the will signature in P. 185 (Elliott, 1482). In the standards the writer uses "both roundpointed 'm's and sharp pointed 'm's," examples of the former (corresponding with the questioned signature) are found in Exhibits P. 192 and P. 186 (Ewell, 879; Elliott, 1482).

The same loop at the top of the final "s" is found in P. 190 (Ewell, 880).

In six of the test signatures the "Adams" terminates with a well formed "s" ending in a flourish beneath the word "Adams" (879; 1118). In three test signatures this terminal flourish is not found (1118); the terminal flourish in the disputed signature much resembles that of Exhibits P. 186, P. 192 and P. 194, "except that it appears that the pen has caught in the paper before the reverse curve was commenced and the line evidently turned from its natural course" (Cresson, 1120).

Mr. Carvalho was called upon to deliver an opinion on the genuineness of the John Q. Adams signature, after having seen and photographed three of the standards—it does not appear that he saw any except the three, P. 185, P. 186 and P. 187—and with a single wave of his hand he brushes aside all these important facts and characteristics. "The handwriting," he says "is totally different in the sense of pen pressure,

in the sense of make-up, in the sense of size, quality and line, and one written with a slower cramped movement, and the other is written with a free hand and a quick movement, one with a swinging sweep and the other not so. I do not find any resemblance between the name of John Q. Adams as it appears in the disputed signature and the standards which have been offered" (1504; 1505). He calls special attention to the "Q" in the questioned signature as of a different type from the standards and like in type a "Q" in P. 236.

Why did he not examine the other standards of John Q. Adams' signature, and attempt to meet the important facts and characteristics shown by the proponents' experts to be common to the standard and questioned signatures?—his general assertion that there is no resemblance in spite of these many specific and characteristic resemblances is obviously of no value.

A careful reading and examination of the foregoing analysis and compilation of all the professional expert testimony shows how utterly baseless is the charge that the signatures of testator and the subscribing witnesses of this will are forged, and proves conclusively, that, judged solely by the kind of testimony on which contestants relied, and leaving out of view the great amount of positive and direct testimony to the drafting and execution of this will and the surrounding and corroborating facts and circumstances, the genuineness of the signatures and the integrity of the will are fully established.

Dated, at Jersey City,
December 16th, 1891.

Respectfully Submitted,
COLLINS & CORBIN,
Proctors and Counsel for Proponents.

BLACK & KING,
BOORAEM, HAMILTON & BECKETT,
Counsel for Beneficiaries Under the Will.

New Jersey Court of Errors and Appeals,

IN THE LAST RESORT IN ALL CAUSES.

Between ADELINE J. GORDON *et al.*, Administratrix *cum testamento annexo* of George P. Gordon, deceased, and Augustus Sidney Doane,

Appellants,

and

WILLIAM W. OLD, Executor, &c., of Lenora M. Van Wyck, deceased; Pauline Theresa Reitz, Samuel Richard Ruyssenaer, *et al.*,

Respondents.

Brief for Respondents.

STATEMENT.

George P. Gordon, inventor and manufacturer of the Gordon Printing Presses, died at Norfolk, Virginia, January 27th, 1878, leaving a widow, Lenora M. Gordon, and a daughter, Mary Agnes Gordon, his child by a former wife.

George P. Gordon left a genuine last will and testament, dated July 26, 1873, the text of which appears at p. 69 of Exhibits. This Brooklyn will was presented for probate to the Surrogate of Kings

County, New York, and on a hearing before Hon. A. H. Dailey, Surrogate of that county, after the filing of objections by the said widow and daughter, was rejected as a last will and testament. Henry J. Cullen, Jr., Public Administrator of Kings County, N. Y., was appointed temporary administrator, and subsequently, May 1, 1878, administrator of the estate.

The Brooklyn will provided liberally for the wife and the daughter, Mary Agnes Gordon, for brothers and sisters, and others named therein; after its probate had been refused, the beneficiaries under it, other than the widow and daughter, applied for a rehearing; citations were then issued by the Surrogate of Kings County to all the parties in interest, and a hearing granted on the question whether there was sufficient new evidence to justify a new trial as to the due execution of the will. Surrogate Bergen denied the application for a new trial.

This genuine will, drawn by one G. W. Thorne, a lawyer of Rahway, N. J., was thus finally rejected.

There was no question as to the genuineness of its signature, which is one of the most valuable standards of handwriting in the case.

After it had been thus finally rejected, a compromise was effected and payments were made to most of the beneficiaries named in it, including Adeline J. Gordon.

The estate of George P. Gordon was then distributed as that of an intestate, his widow and daughter receiving it all, and paying through trustees, Henry J. Cullen, Jr., and Josiah Porter, to the contestants, through their attorney, Joshua M. Van Cott, the various sums received by them respectively. Adeline J. Gordon, one of the petitioners herein, had in her possession, at the time she presented the forged will, about $9,000 of

the estate of George P. Gordon, which she has neither returned nor offered to return.

This was the situation of the estate of George P. Gordon at the time of the death of his daughter, Mary Agnes Gordon, in Paris, in or about May, 1890. She left an instrument purporting to be her last will and testament, by which she devised the bulk of her estate to the respondents, Reitz and De Ruyssenaer.

When this last named will was presented for probate to the Surrogate of New York County, objections were filed by the next of kin of Mary Agnes Gordon, and a contest ensued, which is still undetermined.

Notice of this contest appeared in the N. Y. *Evening Telegram*, in an article entitled "Battling for a Fortune," which reached the eye of Henry C. Adams, upon whose evidence rests entirely the claim that the disputed will of George P. Gordon is genuine.

This Henry C. Adams is an old lawyer, at present upwards of seventy years of age. He was the son of a well-known and reputable lawyer, Henry Adams, now deceased, formerly of Fort Plain, New York. Henry C. Adams abandoned the practice of law and left Fort Plain in 1868, removing in that year to Rahway, N. J., where George P. Gordon had a summer residence. Since 1868 he has been engaged in the preparation of a legal glossary, one or more volumes of which have been published. He has had no stated home, but has moved about and lived in various boarding-houses in New York, Brooklyn, Newark and Orange (Vol. I., pp. 11–17). He is a poor man, living on very small sums of money, and has no occupation, whatever, except the work of preparing the glossary. He had musical tastes and formed the acquaintance of various reputable people in Orange and elsewhere in a social way.

Henry C. Adams states (Vol. I., p. 63) that while at work on his glossary in Orange, in 1890, he noticed the article in the *Evening Telegram* above referred to relating to the contest of the will of Mary Agnes Gordon, and feeling, as he says in his letter, that "cruel injustice" would be done by the establishing of that will, he wrote the letter which appears at page 63, folios 10, 20, Vol. I., to the attorneys for the contestants in that case, Messrs. Black & King, of 71 Wall Street, New York, saying:

> "I this day read the article in the *Telegram* of Wednesday, 'Battling for a Fortune.'
>
> It astounds me and grieves me too that such cruel injustice has been done.
>
> If one of you will come over here on Sunday morning, Chambers street ferry, Erie Depot, 9.20 A.M., bringing no brass band, fife or drum, I will tell you something worth knowing."

Messrs Black & King kept the appointment and heard from him, as he states, that Mary Agnes Gordon had no property to leave, as there was a will of George P. Gordon (the disputed instrument), which he (Henry C. Adams) had drawn and which had been executed by George P. Gordon; that he had a copy of it; that if the original instrument could not be found, the copy might be established through his testimony in the Court of Chancery as a lost will. He also informed them that the will had been in the house occupied by his father, Henry Adams, in Rahway, and that he would cause a search to be made for it.

In their interview with Henry C. Adams Messrs. Black & King and Mr. Beckett, of Booraem, Hamilton & Beckett (who were interested as attorneys and counsel for the contestants in the Mary Agnes Gordon case in New York), were not content to

have the copy established as a last will, but pressed him to find the original. Henry C. Adams then states that he made a visit to the old house at Rahway, in which his brother Edwin A. Adams was then living (not letting him know what he came for, Vol. I., p. 38), and told his brother to make a thorough search throughout the house for the instrument, which would be found in a brown paper envelope.

A few days afterwards (vol. I., p. 39) Edwin A. Adams informed his brother that he had found the instrument.

Henry C. Adams at once wrote a letter to the attorneys, Black & King, informing them that the will had been found, and notified them in theatrical style, so characteristic of his whole testimony, of the contents of his letter, by writing on the envelope the word " Eureka."

This forged will, bearing date July 28, 1868, which it was pretended had thus been found after twenty-three years' sleep, was admitted to common probate by the Ordinary, upon the petition of Adeline J. Gordon, on the 16th day of January, 1891, without notice to the representatives of the estate of Mary Agnes Gordon, and without notice to the representatives of the estate of Lenora M. Gordon, who died in December, 1890, the only members of the immediate family of George P. Gordon, and the persons most interested in resisting its probate, both having died before it was brought to light.

Subsequently, and as soon as the probate was made public by the filing and ancillary probate of the instrument in Kings County, New York State, on the petition of Henry J. Cullen, Jr., and, later, of W. W. Old, executor of the estate of Lenora M. Gordon, an application was made to the Chancellors to revoke the probate on two grounds: first,

that George P. Gordon was not a resident of the State of New Jersey at the time of his death in January, 1878; and, secondly, that the instrument was a forgery. The beneficiaries of the contested will of Mary Agnes Gordon also appeared and joined in the contest at bar.

The Ordinary thereupon directed probate to be made in solemn form, and testimony was taken before him on the two questions above stated, continuing during the year 1892. The Ordinary subsequently, after many months' consideration, rendered his decision, holding upon the evidence that the probate could not be revoked upon the ground of residence, as the existence of personal property in the State of New Jersey gave jurisdiction for the purpose of primary probate in this State; but holding, also, that the paper propounded could not be probated upon the testimony of Henry C. Adams, as his testimony, in connection with all the evidence in the case and with the surrounding circumstances, failed to establish to his satisfaction that it was the will of Geo. P. Gordon, deceased, and led to the conclusion that the instrument was a forgery, the work of Henry C. Adams, done about or shortly after the time of the rejection of the Brooklyn will, in or about 1879.

By the provisions of the forged will the most meagre provision was made for the wife of the testator, with whom his relations at the time of the execution of the alleged will were most affectionate, as evidenced by his letter written to her July 25, 1868, two days before the execution of the alleged will.

This failure to provide suitably for a beloved wife needed explanation; to add plausibility to the story that the will was genuine, Henry C. Adams was forced to attack the character of the wife of the testator, testifying, before he knew of the exist-

ence of the letter referred to, that she was unworthy of any provision by her husband. In this attempt he failed, and was confused by the production of the affectionate letter from the husband to his wife written at the time of the execution of the alleged will.

Henry C. Adams assumed the role of an honorable and disinterested lawyer, claiming that he notified Black & King of the existence of this paper because he felt it to be his duty, as the lawyer who had prepared it, to bring it to the attention of the parties interested and to file it with the Ordinary. He admitted (Vol. I., pp. 77, 78), however, that he had never attempted to call the attention of the wife and daughter to it, the parties most interested in it; but that, on the contrary, he had during the progress of the Brooklyn contest in 1879 called it to the attention of the testator's brother, Cuthbert O. Gordon, and of his son, Cuthbert C., and also of Sydney A. Doane, the nephew and confidential business secretary and associate of George P. Gordon, and that neither of these gentlemen would recognize the instrument as a genuine will. Henry C. Adams having nothing to gain by offering it to the wife or daughter, who received practically nothing under it, allowed it to sleep until after the death of both, when he offered it to the contestants of the will of Mary Agnes Gordon, as above shown, who took it up for probate and have stood sponsors for its genuineness ever since.

In perpetrating this forgery Henry C. Adams was careful to choose as subscribing witnesses (with whose signatures he must have been familiar) his deceased father and two deceased brothers, standards of whose signatures it was most difficult to procure at so late a date as the time of the trial.

We asserted on the trial, and maintain here, that the body of the will of 1868, the signature of

George P. Gordon and the signatures of the three subscribing witnesses, Henry Adams, Alonzo C. P. Adams and John Quincy Adams, are all in the handwriting of Henry C. Adams.

It will be noticed that in petitioning the Ordinary to admit to probate in solemn form this instrument dated in 1868 (twenty-three years before the time it was produced, and not filed until more than twelve years after the death of the testator, and not until after the death of both members of the testator's family, the Ordinary was asked to overturn the vested rights of innocent holders of personal and real estate derived from the administrator of the estate of George P. Gordon, and from the trustees of his wife and daughter, upon the unsupported evidence of Henry C. Adams as to the *factum* of the execution of the instrument, which had been suppressed by him upwards of twelve years, and while he knew that, during the time he was so suppressing it, a later instrument (will of '73) was being presented for probate in another jurisdiction.

Thus, by the common probate of this instrument in a stealthy manner, without notice to those interested in the estate, and after the death of both members of the testator's family most interested in resisting it, the vested rights of innocent holders of personal and real estate, derived from the administrators of the estate of George P. Gordon and from the trustee of his wife and daughter, were sought to be overturned.

An examination of the instrument presented under such circumstances, and the evidence by which it was sought to bolster and establish it as the genuine will of George P. Gordon, certainly called upon the Ordinary to exercise the most rigorous scrutiny, both as to the instrument itself and as to the character of the man who presented it.

In this proceeding the *onus probandi* was not

upon the contestants, but upon the proponents, who were required to establish it by evidence satisfying the requirements of the law and the conscience of the Ordinary that it was a genuine instrument.

ARGUMENT.

I.

FORGERY.

The evidence is overwhelming in its force that the instrument was forged.

This is not the case of an ordinary will contest, where disinherited persons, shortly after the death of decedent, attempt to set aside a testamentary act. It is a case in which, after a long term of years, a spurious instrument is produced with theatrical incidents and an incredible history.

Indeed, as it appears in this case, *one* witness, who was willing to swear to all that is necessary to establish a will, can prove by his own testimony an old will, whereas, in ordinary cases, two witnesses are required to establish a recent will.

This fact should not be disregarded; nor should it be overlooked that the common probate was partly founded upon the testimony of Lawyers Shaffer and Hall, neither of whom was asked a single question as to the signatures of the subscribing witnesses.

The attempt to establish this bogus instrument under the circumstances, *if successful, would overturn rights that have been vested for years.*

Not until Mary Agnes Gordon and Mrs. Gordon are dead, and both are incapable of protecting their rights, is this instrument brought to light!

It may be of little consequence to the petitioner, whose reputable counsel, Mr. Joshua M. Van Cott

received for her $9,000 in the Brooklyn settlement, that Mr. Cullen, as the chosen Trustee of all parties, and one of the contestants herein, in good faith, believing there was no will, executed warranty deeds of real estate, from the proceeds of which her money was paid; it may be deemed moral and proper by her, but we submit that it reflects upon her and her case to attempt to prove this will, under which she gets only $10,000, while she retains $9,000 in her pocket, proceeds of the testator's estate, and that she would leave Mr. Cullen to the mercy of the beneficiaries under this forged will.

The Court will be slow to overturn such vested rights at this date, except upon the most conclusive evidence as to the genuineness of this alleged will.

The Court must be satisfied beyond doubt that the instrument is genuine, and the burden of proof still rests upon the proponents to satisfy the judicial conscience.

The question we submit here is: Has the conscience of the Court become satisfied? (1) that this is the true testamentary disposition of the property of George P. Gordon, conceived and directed by him; (2) that it was declared to be his last will and testament, and (3) that it was actually executed BY HIM in the presence of the witnesses?

In considering and determining these questions, the Court will inquire into

(1) The character of the man producing it, upon whose testimony all three of the points to be proven by the proponents rest.

(2) The naturalness or probability of the circumstances attending the production of the alleged will.

(3) The internal character of the instrument itself (*a*) as to its provisions and make-up, in the

light of surrounding circumstances, and (*b*) as to the genuineness of the signatures themselves, as compared with standards, and as compared with the handwritings of the alleged forger.

FIRST.—THE CHARACTER OF THE MAN PRODUCING THE INSTRUMENT, UPON WHOSE TESTIMONY THE FACTUM OF THE POINTS TO BE ESTABLISHED BY THE PROPONENTS RESTS.

The Court, in determining the case, must weigh the testimony of the chief witness, Henry C. Adams, and determine whether, as he portrays himself, he is the honest, reputable, disinterested person he would have the Court believe.

Henry C. Adams was on trial in this case. He knew it, and attended the hearings as regularly as any defendant under criminal indictment.

He is a man of no responsibility or property. He has been a wanderer since 1868, when he retired from his alleged lucrative practice at Fonda, N. Y.

He left Fonda, evidently with little money and less reputation, to try his fortunes elsewhere.

He went to Rahway and found a communicative, self-made, self-asserting and self-reliant man, in whom he saw possibilities of gain.

Adams is cunning and deliberate; he is cool, conceited and crafty; and, like many falsifiers, depends upon the minutiæ of the incidents detailed to enforce belief in his stories.

Judge him by his own story!

We submit that the detailed statement he gives as to facts and circumstances happening over twenty-three years ago is inherently improbable; such facts and circumstances are not related by an honest witness.

He seems to testify with a motive for all he says, so far as he foresees the necessities and possibilities

of situations. All his statements are careful mosaics; but he has neither breadth nor great ability.

Why should he remember so circumstantially that the will was executed "toward evening" (29); that Mr. Gordon said, "I want it kept secret"; that he sent Alonzo to get wafers, and that his father said that wafers were better than mucilage; that Gordon said, "I have examined this: I won't alter it"; and then, that they all went in the house; that Alonzo was on the piazza with his father and that he called John Q. in, as a witness; that in June, 1868, when Gordon was sick, and when Libby May shook her pocket handkerchief from the window, he told Mary to go up and "put her arms around her father's neck and kiss him"; that Gordon did not want anybody but Henry C. Adams to draw his will: "I want you"; that he took his hand and squeezed it, and invoked God's blessing every time he saw him, and said, "I shall never forget you."

His relation of the minutiæ of the circumstances as to the execution of the will is exactly such evidence as a falsifier would give.

His method of speaking, in the first person, with all such details, stamps his testimony as made up for the case.

How could he know that "Mr. Gordon carried the instrument in his pocket for several days"; and why should he testify to this, as a fact *within his own knowledge*, unless to meet the necessities of this case and justify the theory and apology offered for the shabby forgeries, that the signatures were written upon damp paper?

Henry C. Adams was ready and willing to swear to all that was necessary to establish the case.

His detailed statements as to the circumstances attending the execution and publication of the will

were fitted to the necessities of the proof required by law to establish a will, with painstaking care so far as he foresaw, at the time he was testifying, the possible developments of the case.

Busy, disinterested lawyers do not remember every incident that happened twenty-three years before, even to the color of an envelope.

His falsification and self-contradictions respecting the "original" draft referred to hereafter, will place him as a falsifier before the Court.

Henry C. Adams here presented a portrait of himself exactly corresponding with the picture furnished by an honorable and disinterested retired Judge of the Supreme Court of the State of New York.

The testimony given by Judge Fish was of such telling force that there was no answer to it. What could the proponents do or say?

They could not answer him, and their only refuge was to speak of him as a "shameless" witness. Why?

Should a Judge of any Court, should any honest man of position, when informed that a great wrong is being attempted by a dishonored man in a foreign jurisdiction, refuse to perform a disagreeable duty and abstain from telling the Court what he knows about the witness upon whose testimony the case solely rests? Would it be honorable, or even decent, for a person with such knowledge, to permit a great fraud to be perpetrated in another jurisdiction on the ground of delicacy?

It may be severe, as it is in cases where ex-convicts attempt, in foreign States, to palm themselves off as reputable witnesses, to show them up; but it is one of the ugly and unpleasant things that such men bring upon themselves by attempting to swear through a case.

We respectfully submit that the testimony of Judge Frothingham Fish is that of an honorable and disinterested witness, testifying from a sense of duty, and presenting to the Court a vivid picture of Henry C. Adams as he was and is—an "unscrupulous affidavit maker."

(2.) THE NATURALNESS OR PROBABILITY OF THE CIRCUMSTANCES DETAILED AS TO THE EXISTENCE AND PRODUCTION OF THE ALLEGED WILL.

Henry C. Adams poses before this Court as an honest lawyer, an honest member of an honorable profession.

He asks the Court to believe that Mr. Gordon passed over his father, a well-known and reputable lawyer, far more skillful and reliable than himself, to prepare his will, and then left the will in the custody of the father whom he would not have draw it!

Although he claims Mr. Gordon wanted him and no one else to prepare this will, according to his own story he is not made the custodian of it, nor does he charge or receive any fee for this "most important job of his life" (Vol. I., fol. 77).

Why was not Henry Adams employed to draw the will? Henry C. Adams only accounts for it by the alleged circumstance (where he becomes once more circumstantial, to induce belief) that Mr. Gordon became deeply attached to him because he administered some quack remedy which he claims brought Gordon through an alleged spree. Only thus can he account for Gordon's calling upon him, rather than upon his father, to draw the will.

Why was he then not made the custodian of the will? Where a counsel draws a will, he is apt to

be made the custodian, or the clients keep it. Wills are not generally deposited with third persons.

In the case of the '73 will, Mr. Gordon was the custodian, and it was produced from his safe. Why was this alleged will left *with Mr. Adams, Sr.*, who was not counsel, and who, according to Henry C. Adams' statement, had no intimate relations with Mr. Gordon, and could not have known of the provisions for the purchase of his farm?

He says he told A. Sidney Doane, Mr. Gordon's confidant, shortly after the Brooklyn will was rejected, of *this* alleged will.

Mr. Doane's shrewd rejection of Mr. Adams and his will stamps Adams as a discreditable man.

Mr. Doane would not have rejected a will in which he was a large beneficiary if he had believed such will was genuine. Mr. Doane was a man of sufficiently high character to prove any genuine will Mr. Gordon might have left, irrespective of its provisions.

It does not answer the question, why did Doane reject it, if not fraudulent, to say that Mr. Doane had settled with Mary Agnes Gordon and her mother. There is negative testimony that he was not settled with, for the moving papers showed that he was not a party to the settlement.

Nor does it answer to say that he was retained in a place that he occupied during Mr. Gordon's lifetime in payment for his corrupt suppression of this will! Every consideration of self-interest on the part of Mary Agnes Gordon and Mrs. Gordon required the continuance of Mr. Doane in his position in the business that he had so successfully filled during Mr. Gordon's life. To ascribe such a motive, makes Doane both fool and knave; if he had been a knave, we cannot imagine his refusing

this will and its generous provisions for him, in lieu of a clerkship. Doane was neither knave nor fool.

There is no answer to the rejection of this alleged bogus will by Doane and Cuthbert Gordon and his son, except the one answer—they knew Adams and knew that any alleged will he might produce would be a fraud. They would have none of him nor of his will.

Again, what honorable or decent lawyer, such as Adams would have the Court believe him to be, would have carefully suppressed the will from the wife and daughter, the persons to whom he should have gone? He testifies (564): "I did not tell them. *I don't know why I didn't;* but I didn't." Seeing the weakness of his position, he was forced to give the excuse: "I was very much occupied at that time with my own matters and affairs." Nevertheless, he was *not* "too much occupied" to go to Doane and to the trouble of writing Cuthbert Gordon, and writing the petulant note he wrote the son; even a letter shorter than this, to the wife and daughter would have been just as easy to write.

Why did he not go to them? This question has not and cannot be answered satisfactorily on any theory of honesty and fair dealing. If Doane, as executor, refused it, so much more the necessity of notifying *wife, daughter or the Ordinary.*

The answer is, he had nothing to sell to either wife or daughter; he thought he might sell the will to either Doane or Cuthbert O. Gordon if he could tempt their honesty.

What interest *to him* were the provisions of the will if it were genuine and he were honest?

Every honorable obligation, personal and professional, required him to notify *some one who would see to the proof of the will* of his "dear friend." He knew where to file alleged drafts; why did he not find and file the original will with the Secre-

tary of State in 1879? It could then have been acted upon, and both Mrs. Gordon and Miss Gordon would have had an opportunity to test its genuineness, upon facts within their personal knowledge and upon the testimony of Doane and other living witnesses, capable of throwing light upon the instrument. Not until all these persons, closest and dearest to Gordon, are silent in death, did Henry C. Adams see fit to find and produce the alleged instrument.

This circumstance of suppression from wife and daughter in itself is an utter condemnation of proponents' case and of Henry C. Adams.

Imagine a Whitehead or a Frelinghuysen adopting such tactics or following such procedure; yet Henry C. Adams ranks in honesty with such honorable members of the profession if appellants' estimate of him be accepted!

And then, when he does produce it, how is it produced? We submit his methods are those of a dishonest schemer *feeling* the man he hopes to deal with.

Never did a green-goods confidence man adopt more cautious and more suspicious methods in trying, first, Doane and Gordon, and then the New York attorneys who have since adopted this will as genuine and presented it for probate, than did Henry C. Adams, *in his methods* in twice attempting to bring this forgery to light.

The cunning Henry C. Adams could not fail to see the position in which he placed himself by practically secreting the will from both wife and daughter, during their lifetimes, and of bringing out a will by which the wife is practically cut off.

It does not answer to say that there is no proof as to Mr. Gordon's property. The printing press patents referred to in the will were his property and were of great value. They were in existence

in 1868. They are most carefully referred to in the forged instrument; and yet it is said his wife was amply provided for!

Adams made a curious exhibition of himself, very unnecessary, and evidently very distasteful to the proponents' counsel (in the light of the summing up), when driven to admit his hatred of Mrs. Gordon. This exhibition of Adams' malice, when he said that Gordon was afraid of being poisoned; and again (Vol. I., 74), "Mrs. Gordon had all that was decent. She never treated Mr. Gordon like a good wife;" and again, "I don't think she should have been provided for;" (78) "I think she should have been driven away;" (80) *I* did not want her to get her clutches on such a large fortune:" were evidently *unexpected* revelations of Adams and his character to proponents' counsel. It seems this unconscious portrayal of *Adams by himself*, "*I* did not want" shows *he* had a great deal to do with the preparation of this will.

This exhibition Henry C. Adams made of himself at this time, and the later exhibition when he testified on October 23d as to the draft will are onerous loads for proponents.

According to the counsel's statement in the summing up, it was thought necessary to justify Mr. Adams' statements concerning Mrs. Gordons' suggested unchastity.

Yes, it *was* Henry C. Adams who was on trial, as they admit, when they had to attempt to bolster up his statements. The letters contradicted him; he *needed* corroboration badly.

But yet, how miserable a failure was this attempted smirching by Adams of a dead wife, Mrs. Gordon, either to justify himself as a witness, or to justify the meagre provisions for her in the instrument, in view of the affectionate letters of her husband, George P. Gordon, written July 27th, 1868, *two days*

after he had *practically disinherited* her, and subsequently, in other letters, which were read on the argument; and in letters to Van Wyck, also read on the argument. (See Record Exhibit, p. 85.)

Not only does the failure to notify the wife and daughter stamp Adams as a dishonorable, discreditable and unprofessional lawyer, upon whose testimony no will should be established, but the circumstances attending his opening communication and dealings with Black & King, and his method of correspondence (p. 63), show him up as a cunning, unprincipled man.

"He doth protest too much" his own disinterestedness.

When Mr. King comes to him, he at once assumes Mr. King is going to bribe him and be as dishonest as he is himself; so he tells him, "Don't you offer *me* any reward; you can have the use of the draft and you can have it all, without money and without price" (p. 37).

These repeated Pecksniffian asseverations characterize the man just as much as his testimony and conduct on the points above referred. He does admit, after a time, that he expects to be rewarded for his services; at least, he feels that he would reward another rendering similar service to him!

His testimony shows a low cunning. He seems to have been apprehensive of trouble from the moment he saw King. He fortifies himself in advance of any known or supposable contest by doing such acts as a man of his intelligence and cunning believes will place him in the favorable light of a disinterested witness who is to go on the witness stand "untrammeled," as he expresses it.

Can it be believed that he was acting "without money and without price;" that is, without hope and promise of reward?

Henry C. Adams knew, and the New York attorneys who have brought this instrument to light

knew, that thereby the estate of Mary Agnes Gordon in New York is dissipated, and the interests of their clients, in that case, thrown overboard. How can the practical abandonment of the interests of the clients in the Mary Agnes Gordon case and the adoption of this forgery be explained? Not a syllable of explanation is offered of this remarkable somersault, in the desertion of one set of client's interests and the taking up of another.

Then again, Henry C. Adams pays a visit to the Rahway mansion, where he "takes a survey" of the house carefully (p. 38) *before* Edward is told of the object of his errand; after a short search of a day and a half, this remarkable instrument is quickly and conveniently found, after a Rip Van Winkle slumber of twenty-three years, in a house that had been *out* of the possession of the Adams family a large part of the time.

In keeping with the theatrical finding is the statement on the envelope—"Eureka!"

Still, all the time, Adams fails to explain why this short and easy search was not made during the lifetime of the wife and daughter, and why the envelope containing the magic word "Eureka!" was not sent, either to Mrs. Gordon, Mary Agnes Gordon or to the Ordinary of the Prerogative Court, during all these years when Mr. Adams was so busy on his Glossary—so busy that he had no time to write or see any one, *except* A. Sidney Doane and Cuthbert Gordon, who *rejected* his goods, and the New York contestants of the Mary Agnes Gordon will, who *accepted* them.

It is strange that he should have had *so much* time during the six months of the trial to devote to attending it, and to the posting of the attorneys who were trying it, and *so little* time during the eleven years that preceded it, to inform Mary Agnes

Gordon and Mrs. Gordon, or the officers of the law, *although his occupation has continued to be the same during both periods.*

An *over-busy* Glossary maker!

Again, the circumstance of filing the brown envelope without indorsement, with the statement, which he parades, that he did not open it, is a badge of fraud itself.

Honest attorneys do not remember for twenty-three years the color and contents of unindorsed sealed envelopes.

(3.) THE INTERNAL CHARACTER OF THE INSTRUMENT ITSELF.

The inherent character of the instrument militates against its genuineness.

We are not called upon to explain how or when the forged instrument was written, as to its body, or as to the signatures.

It is enough that it is not George P. Gordon's will.

If it be such, how are the following circumstances explained?

1. In the structure of the will, and in its language and divisions, it speaks like Henry C. Adams, the glossary maker, as we have become accustomed to him from hearing and reading his testimony.

2. The remarkable and unprecedented article wherein the supposed testator directs his executors to buy the Adams farm, at a high, fixed price, and *pledged his whole estate for the purchase price.* (Art. IX.)

We challenge reference to any will like it.

Never was such a will heard of before. It is overdone.

3. That Henry Adams (father) was present at the time of the execution of the will, and was a subscribing witness, and had the custody of the will, *and did not know* its provisions respecting the farm.

Yet, in 1874, when the property had fallen in value to practically one-third the price named in the will (Sanders, 702), the father, Henry Adams, executed a trust deed of the Adams place, instead of selling the property, at the high price directed to be paid by the alleged will. (See terms of the trust deed.)

It is incredible that he should have done this if he had a genuine will, such as is now offered, in his possession.

Furthermore, in 1879 when the property was depreciated in value Henry C. Adams was quite willing to receive the income of his proportion of the proceeds of such a sale, swelled as they would be beyond the market value of the property, and he was careful to insert the unusual expression in this forged note that the executors, their "grantors or assigns," should sell. These provisions and those cited by the learned Ordinary in parallel columns in his opinion, coupled with the bequest to Doane which he was not to receive unless the sale was effected, are the wolves ears which stick out and point to this man as the author of the whole will as well as of the signatures.

The following ten items of evidence, brought out in the proponents' case, condemn hopelessly the instrument propounded:

1. The offer of the instrument to Doane and Cuthbert Gordon and son, and their rejection of it.

2. The letter of February 18th, 1870, to Van Wyck, in which Gordon speaks as a man would

who had never drawn a will and who was about to make one, but which the Ordinary by his decision excludes.

3. The deception practiced by Adams in attempting to mislead the Court as to the original draft, until cornered by evidence upon eosine, and his contradictory statements and confused admissions when cornered.

4. The fact that Gordon signed his *will*, as well as deeds and checks, with *one style of signature*, wholly unlike the one under dispute.

5. The suppression of knowledge of the instrument from the wife and daughter, on the pretext that he was too busy to bring it to their attention, when he was not too busy to bring it furtively and persistently to the attention of others.

6. Its production from a suspicious place, where such a valuable paper was not likely to be kept, in a house for a long time out of the possession of the Adams family.

7. The too-ready finding of the instrument when it was wanted.

8. The method of trying Black & King and associates before he offered the will to them, resorting to a style and method of communication with them which is not common, we believe, among straightforward, honorable lawyers.

9. The overscrupulous care of Adams in saying that the instrument was unopened, and his evident feeling that such opening would militate against the instrument.

10. The remarkable memory of Mr. Adams as to details no one would remember over twenty years,

even to the contents and color of an unendorsed envelope, which he had not seen for twenty-three years.

Furthermore, this case is not only prejudiced and tainted by these circumstances, *but it rests solely on statements of a discredited and impeached witness, Henry C. Adams.*

Declarations.

Declarations by Mr. Gordon to witness that he had made a will are inadmissible.

They are hearsay, and proof of such statements do not establish the execution of a will before witnesses in conformity with the Statute of Wills.

Rustling *vs.* Rustling, 9 Stewart, 603.
Boylan *vs.* Meeker, 4 Dutcher, 274.

The will cannot, therefore, be established upon the testimony of either Adeline J. Gordon, Agnes C. Doane, Ernest Philip Bauman or Amos P. Barber.

If the law were otherwise this will should not be established upon the testimony of Adeline J. Gordon, who still keeps nine thousand dollars, received in the Brooklyn settlement, in her possession.

Such interest seriously affects the value of her testimony and the credibility of the witness. It would be a very easy matter under these circumstances for Miss Gordon to imagine and convince herself that the conversations she referred to were had in *1870*. If such conversations took place, it was probably in a later year, as was part of the conversations between her and George P. Gordon, about the Brooklyn will, in which he used his

handkerchief and said: "I have provided for a few outside of my wife and daughter" (1195).

So, the same thing may be said as to the testimony of Agnes C. Doane.

She places herself singularly in the position of reflecting upon the conduct of her husband, who denied that there was any such will as the one propounded. Whether she means by the use of the word "drawn," "drawn and executed," is left to inference.

Such testimony of interested witnesses, even if honest, may become so warped and distorted by their constantly dwelling upon it, that it is wholly unreliable.

There is no value in the testimony of Ernest Philip Bauman that Gordon said, "that he had arranged Mary's affairs so that no gambler nor anything like that could get hold of her property" (779); we submit, that his hedging under cross-examination, when, after contradicting himself, he pretended to recollect two or three conversations with Gordon, and then tried to extricate himself by saying his first answer to the questions on cross-examination, upon this important conversation with Gordon, was a *lapsus linguæ* (787), stamped him as a witness who had prepared his testimony; the impression is confirmed by the fact that he was a witness who would not look counsel in the eye.

In the same way Amos P. Barber contradicted himself (743), when, after being crowded on cross-examination, he left out the very point of his direct testimony by omitting to use the past tense in connection with Gordon's language that he "had" made a will. He was compelled to give as a reason for his conflicting statements "I did, inadvertently" (page 743).

If the testimony of these witnesses had been ad-

missible, it is valueless; but it is inadmissible, as was held by the Ordinary.

The case turns out, however, upon the signatures to the will, and not upon the statements of disinterested and self-contradicting witnesses.

Handwriting.

H. C. Adams is not an expert penman.

But he has shown himself to be a man capable of attempting just such a piece of bad work as is here found.

He is conceited.

The fact that the signatures are the bungling, inartistic work of a conceited man, does not tend in the least to establish their genuineness. Furthermore, it would be remarkable indeed if, in all four signatures, there were wanting some letters which resembled the handwriting of the persons whose names were forged; yet counsel triumphantly points to one or two resemblances, in one or two places, as evidence of genuineness, in spite of the tell-tale and marked variances between the standards and the disputed signatures.

The writing of the signatures of Henry Adams, Alonzo C. P. Adams and John Q. Adams is so bad that we are led to the conclusion that Henry C. Adams had no standards before him of these names, but was vain enough to believe he could reproduce them from memory, adding such variances and fantastic terminals (see scroll to Alonzo C. P.'s name), as would (he thought) make it appear that there was a diversity of handwriting. This trick is not uncommon among both skilled and unskilled forgers. Probably Henry C. Adams thinks all of the signatures are well done!

As stated by Mr. Carvalho, there is lacking in

the disputed name, George P. Gordon, the "life" of Gordon's genuine signature.

As expressing individuality nothing can be found to take the place of handwriting. The conformation of the hand, the co-ordination of the muscles and nerves, and the temperament of the writer, give it the individuality which affords the safeguard to property rights.

Unless the forgery is most skillful, it lacks the "*life*" of a genuine signature; such skillful forgeries can only be made by patchwork, which is revealed under the microscope.

It is pointless to compare by measurements; a wax effigy may have the same measurements as the living subject; but it lacks the *life* of the original, just as simulated handwriting lacks the *life* of the genuine.

There was a marked difference between Mr. Gordon's manner of using the pen, with the free-arm motion of the Spencerian system, and Adams' method of writing with the pen on the side. This difference in style of holding the pen is the key to the difference between the style and peculiarities of the contested signature of Gordon and those of all his genuine signatures, whether to letters, checks, deeds or wills.

Fortunately, contestants were able to find Gordon signatures the day before and two days after the date of the alleged will. No pretense can, therefore, be made that Mr. Gordon was ill at the time the disputed signature was written. If these signatures had not been found, Adams would probably have thrown Gordon into a fit of sickness or intemperance on July 25, '68!

The respondents did not find it necessary to refer to the writing of the body of business correspondence of Mr. Gordon. They had nothing to excuse

or apologize for; they had better standards than letters.

It is most fortunate that the proponents did resort to letters, for the eye of the Court will become better trained to the rounded, smooth and characteristic style of Gordon's handwriting, especially in small letters.

If we did not supply the Court with copies of the business correspondence, *we did supply it with a standard of the way in which Mr. Gordon executed a* WILL. This piece of evidence is of telling force, and was not answered, and cannot be answered by the appellants.

The execution of a will is one of the solemn and more important acts of a man's life, when he is likely to write a deliberate and formal signature, such as he attaches to a deed, to a check, or to any important agreement.

If one or all of the four signatures to the will were forged by Adams, it is to be expected that he *attempted* to conceal his own individuality and characteristics of writing.

Has he succeeded?

If it be shown that there is present in any one or all of the four signatures characteristics of the handwriting of Henry C. Adams, this instrument is condemned.

Further, if it be shown, as we do show, that there is a marked dissimilarity between each of the signatures and the standards; and if we show also, as we do, that there is present, not only in the disputed signature of George P. Gordon, but in each of the remaining three signatures, one, two, three or four of the characteristics of the writings of

Henry C. Adams, the condemnation becomes absolute; for, according to the doctrine of probabilities, the chances of each of four signatures being unlike standards, and of each of four signatures containing characteristics of the handwriting of one person, are not one in millions.

We assert that the most casual examination of the signatures will show:

(1.) That each is unlike, in style, the standards.

(2.) That each has characteristics of the handwriting of Henry C. Adams.

THE DISPUTED SIGNATURE "*Geo. P. Gordon.*"

1. The conformation of the last "on" of Gordon in the disputed signature is so strikingly like the writing of the same letters in the same name on the first line of the first page, and in "Lenore M. Gordon," on the first page, and in the "on," in the name "Compton," as to stamp it as the handiwork of the writer of the body of the will.

Even the combative witness Ewell, who was never willing to admit anything adverse to his expressed opinion, was compelled to admit they bore some resemblances; "they might have been written by the *same person*" (Vol. III., 928).

2. The writing is above the base line, as is the writing of the will, and as are all the signatures of the subscribing witnesses.

This is a *singular and prevailing* characteristic of the *will*, and of *all four signatures*.

3. The capital letters are unlike any formal or informal letter signatures in their cramped, angular style.

The closest resemblance in general *shape* found

in any letter writing was pointed out by Mr. Barber in the signature to P. 74 (Vol. II., 739).

Gordon never ended a "G" with the cramped, *downward*, angular stroke, made by the first finger and thumb, appearing in both the "G's" in the disputed signature.

4. The angle at the top of the P, where it crosses the staff, is *unlike anything produced in* ALL *the standards*, but is a cramped production, like one of Adams' best efforts.

It is incredible that this capital letter should be genuine, and that out of the two hundred and more standards, *not one P* should be angular at the top.

It was an *invariable* characteristic of Gordon's writing that he made a perfectly smooth, round, dome top to his P. Rausch admits this (988).

5. The small letters in the standards are different from those in the disputed signature, in that the former are the result of an arm movement and are rounded in Spencerian style, shaded not at the bottom, but in the middle, if at all; generally they are not shaded.

This style of arm penmanship produces full or *rounded tops in small letters*, light shading and *no wedge shading*, which is so prevalent in the body of the will and in the disputed signature. Ewell admits this (Vol. III., 926).

6. Gordon never made a shoulder or loop at the end of his small o, as in the disputed signature; Adams always made it, as he did also in three places in the disputed signature, and as he invariably did throughout the body of the will.

The proponents' witnesses were challenged to find a signature, from the many in evidence, where

even the right angle terminal of the "o" was used in the *three* o's in any one name; they were *unable to find one instance.*

Adams did the *same thing* in writing the contested "Geo. P. Gordon" in Exhibit P. 236, draft will, when the original was not before him.

McClelland can only account for this shoulder to the "o" by admitting it is due to the position of the hand when writing (1404).

So we say, Gordon did not hold his pen in the way to produce such o's; Adams did.

7. The shading in the will and in the disputed signature are at the bottom of the letters, the shading in Gordon's writing in middle of the letter.

8. The "d" of "Gordon" is Adams' "d," and not the d of Gordon. The latter generally made an unshaded staff, the down stroke being often separated from the up stroke, while the first or "o" part of the "d" started with a full, round curve, which can only be made by one using the pen in the Spencerian style.

9. The small or Greek "e" of "Geo." is the same "e" as appears in "executors," and in other places in the will.

10. The relative slant of the "o" and "r" in Gordon is the same as appears in the word "foregoing," and in other places in the body of the will, and in "or" of "Gordon," Ex. P. 236, admittedly made by Adams.

11. The separation of the "r" and "d," which appellants' witnesses, McClelland and Ewell, testified were of such importance in determining genuine signatures, is a feature of the copy signature "Geo. P. Gordon," written by Adams. Ex. P. 236.

12. The scroll is a monstrosity, and shows the nervous, studied, painful effort of an *unskillful* forger, who lacked the necessary pen skill to copy.

In all Gordon's writings no such scroll is found.

13. The *form* of the signature is not the one that Gordon used on *formal papers*, and not the one he used on *the only will he ever made.*

This one circumstance in itself, unexplained, even if the small letters were more cleverly forged, would stand as a condemnation to the signature.

Henry Adams.

This name resembles the standards more closely than the others in form, but the individuality of the genuine is lacking.

In the following particulars its authorship is shown:

1. In "H" in the patching of the second staff.

2. The spelling of the name "Hemry," a peculiarity not appearing in any of the standards, and not shown to be characteristic of Henry Adams.

3. The diminishing effect of the letters "em," which compares with the same features in these letters in the word "Henry" in the body of the will, written by Henry C. Adams.

4. The "A" is like the "A's" in the words "Article" throughout the will, especially the "A" in Article V.

5. The letter "y" is made in two pieces, with a characteristic (H. C. Adams') finish to the "y," made by a down pressure of the pen, guided by the

index finger and thumb, as in the bottoms of the two "G's" in the disputed Gordon signature, and in the "P" in Alonzo C. P. Adams' name.

Henry Adams always finished the standard "y's" with an *upstroke*. McClelland even admits that the "y" in the disputed signature was made in two pieces (Vol. IV., 1390). Such piecing is a tell-tale incident of the nervous effort of a forger.

6. The separation of the capital "A" from the "d" and of the "d" from the "a" following in *each* Adams' signature, is an unconscious betrayal of the forger's work, which Mr. Ewell admits (Vol. III., 949-50), is a feature of "controlling importance" in detecting forgery.

7. The style of the letters "d" in Adams which compare with so many letter "d's" pointed out in the will.

8. The marked similarity between the name Henry Adams and the name Alonzo C. P. Adams following, admitted by McClelland (Vol. IV., 1391) and Rausch (Vol. II., 828).

9. The distance of the final "s" in each "Adams," from the "m" preceding it; a marked characteristic of these signatures also seen in the will, in "James" of "James Compton."

10. Mr. Ewell admits that in three respects this name Henry Adams is similar to the writing of Henry C. Adams, to wit: in the capital "A" it is like the "A" in Article V; the "em" has a diminishing effect as in the same word in the will, and the letter "d" is similar to the "d" in "deposition" and "declared" in the will (935).

Alonzo C. P. Adams.

1. This name is totally unlike the standards, *except in spelling!*

It is with difficulty that the counsel for the other side can find a *single letter* that compares with the standards.

Here, again, the proponents are driven to apologize for the signature by stating that Alonzo was addicted to the use of liquor. Why did not *this habit show itself in the writing of the standards?* It is claimed that they were done by the same man, who had the same habit.

2. The letter A, in the standards, is uniformly begun at the top, with a down stroke of the pen.

In the case of the disputed signature, it is clearly made from the bottom, as are all the A's in the words "Article" throughout the will.

Mr. Cresson attempted to show that this A could be made as it appears in the disputed signature, by beginning at the top, but he failed; but when he tried by beginning at the bottom, he made it the first time. This is a matter that can be settled by experiment.

3. The small "l," small "z," capital "C" and capital "P," and the slant of the signature, are *all* admitted to be unlike the standards in these characteristics (Cresson, 1156–59).

4. The capital P has a terminal exactly like and made in the same way as the terminals of the G's in the disputed signature of Geo. P. Gordon. Rausch (1005) admits that they are similar, and he at the same time says that terminals betray the forger!

5. The scroll is the fantastic creation of Henry C. Adams, put in, probably, for diversity.

It was made from imagination, and thus is uncramped and free.

This accounts for its smoothness, while the scroll attached to the name of George P. Gordon shows a poor and nervous attempt to *copy*.

Not a single signature of Alonzo C. P. has a scroll in form like this pretentious one.

The habit of separating the capital A from the small "d," and the small "d" from the "a" following, pointed out by Ewell as of "controlling importance," again appears in this signature and is absent in the genuine standards. This admission put Mr. Ewell in a ridiculous position (949–50).

6. We hardly needed the emphatic testimony (467) of Joseph W. Allen, the brother-in-law of Alonzo C. P. Adams, to prove that the disputed Alonzo signature is not genuine.

John Q. Adams.

1. This is also wholly unlike the signatures of the standards. It shows throughout, except as to the "ams" of Adams, evidence of "painting" or doing over.

2. The J is, in type and character, like the J of "July," in the date to the will, and shows the same pen habit of the writer of the will exhibited in "T" in "Township" and in the "I's" and "J's" throughout the will. In the standards, the staff of the J passes through the loop; the capital J in the body of the only letter in evidence written by J. Q. Adams, the handwriting of John Quincy Adams, is not the tremulous, uncertain J of this disputed signature.

3. It is unlike the standards in slant and shape of letters.

4. John Quincy *never* used the Q in question. His were always made like the figure 2, but *it is* the Q which Henry C. Adams made to Ex. p. 236, when the original was not before him!!

5. The "oh" shows the same pen habit as appears in the "h" made by the writer of "his" in the attestation clause.

In this connection, it is scarcely necessary to repeat at length the admissions made by proponents' experts as to the various points of resemblance between the writing in the body of the will and these signatures. *We submit that never before was a respondent's case so thoroughly established by appellant's witnesses!*

EWELL says (928) the terminal "on" of the disputed signature and the "on" of Gordon on the first line bear some resemblance, and "may have been written by the same person."

That three resemblances in the pen habit of the writer of the name Henry Adams appears in the will (935).

That the diminishing effect of "en" in Henry has its counterpart in the will.

That the capital A of Adams compares with A in the words "Article" in the will, and the "d" in "disposition" and "declare" in the will are similar to the same "d" in Adams.

He also admits that the final "s" in all three names "Adams" is removed, as in the word "James" Compton in the will (938), from the letter preceding it.

He stated, *before he observed* the peculiar feature

of the separation of the "d's" in Adams from the preceding and following a, that the habit of connecting or disconnecting letters was, to his mind, "of controlling importance" in detecting forgery!

RAUSCH admits the following similarities:

1. That the shading of the will and signatures, as a rule, corresponds (Vol. III., 987).

2. That there is not a P in the standards like the P in the disputed signature (988).

3. That in the writing of the word Henry, in Henry Adams, there is a striking similarity to the writing of the same word in the will (991).

4. That the capital "A" in each "Adams" is the same as the A throughout the will, a thing a forger "might have overlooked" (994).

5. That the J in John Quincy shows the same pen habits as the writer of the will.

6. That the "h" in "oh" is of unusual form, and resembles in that respect the "h" in "his" in the attestation clause (998).

7. That the small "d" in each signature has parallel or "*similar*" d's in the will, but "is not like" them.

8. That the small "z" in Alonzo is totally different from the standards (1004).

9. That the terminal of the "J" in John Q. and the small "z" of Alonzo are similar (Vol. III., 1004).

10. That the capital "C" in Alonzo C. P. is, "as a whole, unlike the standards" (1005).

11. That the "P" in Alonzo C. P. Adams, and the G's in the disputed Gordon signature have similar terminals (1005).

12. That there is a *sameness in all four signatures*, but attributes it to the possible hypothesis of dampness of paper, without anything to sustain his claim, except that we may infer that *some* apology or explanation is needed; he admits, however, that the similarity *might* have been accounted for by their being "the work of one person" (1008).

13. That he is unable to say why Alonzo, a poor writer, should make a good scroll, while a good writer like Gordon made a poor scroll. "A. I cannot explain it" (1010).

We have explained it above.

Cresson admits (1) that the standard signatures of Alonzo C. P., as a whole, have not the appearances of the contested one.

2. That the capital "C" is entirely unlike the standards in characteristics.

3. That the standards of Alonzo C. P. are more perpendicular than that name in the will.

4. He floundered, however, in trying to maintain that the "A" was made as Alonzo C. P. Adams made his A's in the standards, beginning at the top, and not as Henry C. made them, beginning at the bottom in the will.

5. The slant of the contested and genuine signature, the "l," the "z" and the "C" are totally different from the standards (1156).

As we have shown above, it was with the utmost difficulty that either of these experts could find letters that resemble the standards.

If either signature of the subscribing witnesses is a forgery, the whole intrument is a forgery.

McClelland.

1. McClelland tripped up on the final loops or shoulders in all three of the o's of the contested signature (Vol. IV., 1380).

2. After he had stated that a forgery could be detected by the unconscious habit of the writer, either in (a) the crossing the small t, (b) in the slant of his letters, (c) in pen pressure or shading, (d) in absence or presence of connecting lines; he goes on to *admit* (1385–7–8), that in *all these particulars* there were correspondences in Henry C. Adams' writing with the disputed signatures.

3. He admits that the final "y" of Henry Adams is made by an added stroke where the tail to the "y" is put on, and is not like the natural writing of Henry Adams.

4. The similarity between Henry Adams and Alonzo C. P. Adams' names.

5. The Q (1399) is the only one of this type, except the one made by Henry C. Adams in Exhibit P, 236.

6. That the separation of the r and d in Gordon was repeated by Henry C. Adams, when he wrote the name of Geo. P. Gordon to Exhibit P, 236, at a time when he was not copying.

He admits that the final terminals to all three of the o's of Geo. P. Gordon in the disputed signature, which are like the terminals in that letter throughout the will, are unlike the same letters in the standards, and are due to the position of the hand of the writer (1404). *It was written by a man holding his pen as Adams did, and as Gordon did not.*

It is most strange that Gordon, in all the two hundred and odd exhibits, *never wrote with a cramped* hand, in a cramped position, to produce such sharp-pointed (at the top) small letters as are in the contested signature!

Experts.

We were compelled to call expert witnesses, whose testimony was valuable in that it pointed out resemblances in and differences between the various writings compared.

We got the *best* that could be had in the country.

It is a broad assumption to make that any of these leading experts *could* have been secured by proponents to sustain such a *wretchedly bad* forgery.

We submit the appellants *were* in *the field* for experts *before* the respondents. Notwithstanding the suggestion that it is a matter of retainer to get any expert, we believe the *good ones* think more of their reputation than of fees.

The other side produced men of local or no reputation. It does not avail to say that we had secured the best. We did, we admit; but, unfortunately

for appellants, *all* the best experts were of the opinion that the will is a forgery.

2. The paying-teller, Ralph Matteson (78), and the cashier, W. H. Rogers (185), who have been for thirty years in the Nassau Bank, where Mr. Gordon kept his principal account, promptly pronounced the signature a forgery.

What evidence is there in the case of equal value? Proponents knew the value of this testimony *and attempted to get it, but could not.*

The force of this testimony was so unanswerable, the only thing that could be said to meet its force was to say that they were "bought," because they used a carriage and received a small fee, which was voluntarily paid them (fol. 199), without any agreement, for their trouble in coming to a foreign jurisdiction!!

The case might well rest solely on this testimony, in connection with the circumstances admitted by proponents as to slumber, finding and production of the will.

Mr. Woodruff, who was years ago president of the National Bank of Rahway, where Mr. Gordon kept an inactive account, differs from the bookkeeper and teller, Drummond (461), in opinion, and testified in an unfortunate manner for proponents; he did not show the frankness and certainty of a candid witness; he had evidently been coaxed to come and he made the best showing he could in protecting himself; he "did not remember," when pressed as to interviews with Mr. Savage concerning his statements about this signature.

Had such interviews not taken place, would this have been his method of testifying?

3. The testimony of the non-professional bank experts, called by the contestants, outweighs, in

character and value, the testimony of similar witnesses called by the proponents; all of the latter, with one or two exceptions, were connected with banks in which one or the other counsel for the proponents in the case have acounts, and who evidently wanted to accommodate clients.

After having heard the testimony of these various experts, we believe that the Court and counsel have been taught to see all that can be seen by any human being, as to the peculiarities, character and style of the various contested signatures. In the light of what has been heard and seen, and with the impression that must have been made by an examination of these signatures, coupled with the admissions of the proponents' experts, Ewell, Rausch, McClelland and Cresson, it seems incredible that the proponents should seriously prosecute this case and maintain that it is a genuine instrument.

If it be so, it is the first case in which, in the handwriting of *four different men*, it has been found that there are *marked differences between each signature and its standards; and not only marked resemblances between each signature and the writing of Henry C. Adams, but also marked resemblances between the signatures when compared with each other.*

It is a combination of differences and resemblances, we submit, that could not exist in honest, genuine signatures.

Eosine.

It was left to the Atlas of this case, Henry C. Adams, on whose shoulders it rests entirely, to make a final spectacle of himself, before the case was concluded, and to present to this Court the

same photograph of an unscrupulous witness as was shown by Judge Fish in his testimony.

We submit that the photograph as Adams exhibited himself to this Court, and the photograph as presented by Judge Fish, are of the same person.

It was unnecessary for Mr. Adams to file an original draft, with the statement paraded in large letters on the envelope: "Original Draft of Will of Geo. P. Gordon filed, &c." He intended to make the Court believe that there was a draft, and that he had preserved it, as is generally done by careful attorneys who draw important wills.

Here, once more, Adams was circumstantial; and in this case, once again, is repeated the spectacle, so commonly seen in criminal jurisprudence —the criminal betraying himself in some relatively unimportant and unnecessary act of folly.

The proponents said nothing about it in their case. It was filed with solemnity, and with the evident intent to impress the Court with the idea of its genuineness and the entire regularity as an original draft.

Before the examination of September 10th, when Mr. Adams swore this draft through, it now appears that the subject whether it was or was not an original *had been discussed* between him and counsel; that he had been helped, according to his own story, over the bridge of his scruples (?) by the suggestion of plausible counsel, and that after all this experience he went upon the stand and swore (Vol. V., 1461):

"Q. This Exhibit P, 236, was written as it now stands in all respects, except as to the signatures, but in respect to red and black ink as it appears now? A. Yes.

Q. Of that there is no *question*? A. *No sort of doubt.*"

When, on the next hearing, it was shown by respondents by the conclusive testimony of Profs. Morton, Leeds, Hodges, Doremus and Stebbins, and the testimony of all the leading ink manufacturers of the country—Stafford, Thaddeus Davids, and Hodges (expert for Carter & Dinsmore), (Vol. IV., 1505–1587), and also by the valuable testimony of Mr. Pickard, the aniline importer, that the red ink on the instrument (P. 236) was *eosine* which was not discovered until 1874, it was too much for even the hardy Adams to stand, and he went on the stand and made the spectacle of himself shown in following parallel column:

TESTIMONY OF HENRY C. ADAMS.

BEFORE EOSINE EVIDENCE.

Q. I call your attention to Exhibit P 236, and heretofore referred to as C. L. C., which counsel on the other side has spoken of as paper No. 2, and which you identified as the second draft of the will of George P. Gordon. You stated here that this paper was completed in all respects as it now appears, both as to black and red ink, before Exhibit P 1 was executed? A. Yes, sir. P 1 was drawn from this.

Q. This was written as it now stands, in all respects, except as to the signature, but in respect to red and black ink as it appears now, before it was executed? A. Yes.

Q. Of that there is no question? A. No sort of doubt.

(Vol. IV. p. 1461.)

AFTER EOSINE EVIDENCE.

Q. You have informed me that you desired to qualify your testimony with respect to Exhibit P 236, is that the fact? A. Yes, sir.

Q. In what respect? A. I am not certain, as stated on the former examination, that this was the original draft. I am not certain whether this was the original draft used in 1868, from which the will was drawn, or whether it was a copy made at a subsequent date for another purpose. (Vol. V. p. 1624.)

* * * *

Q. Can you tell, in view of all the circumstances, whether the paper in Court, Exhibit P 236, is an original or a copy, or are you in a state of uncertainty about it? A. I do not like to testify with any uncertainty about it; if it is not the draft of 1868 that was used when the will was drawn then it is a fac-simile of the draft of the will prepared for

Mr. Gordon at some point of time between 1875 and 1877, of which I am not sure.

THE ORDINARY:

Q. That is, as I understand you, you would write it in black ink first? A. First write the text as it was originally, then erase and then interline the same as in the original.

Q. Just following the process you went through in preparing the original? A. Yes, sir; so as to have the satisfaction of showing what sort of job we had had in the matter.

Q. I do not see why you should like that satisfaction; you were a busy man; now why should a busy man who was in the habit of preparing many wills and had prepared many wills in his time, doubtless, why should he want the satisfaction of making a facsimile of a paper such as this? A. I should like the satisfaction in a job like that because the job was a much greater one than I had ever had, and I wanted to show how I had worked on it to get it to suit Mr. Gordon and all those things. (Vol. V., pp. 1626–1627.)

* * * *

THE ORDINARY:

Q. But I understand you to say that you have no recollection of ever making a copy at all? A. I would not like to swear positively about it. (Vol. V, p. 1629.)

* * * *

THE ORDINARY:

Q. Do I understand you are now swearing to what did occur, or what might have occurred?

A. I do not like to swear to it. (Vol. V, p. 1633.)

Q. And you are induced to think that this may not be the original draft? A. Well I would not undertake to swear which it is.

Q. You will not now undertake to swear whether this is the original draft of the will or a copy that you made or have made between 1875 and 1877? A. It is very probable that this is a fac-simile that I made; it is very probable, but I have no distinct recollection in my mind that I did give him that original draft at the time; that has always been my belief that I gave it to him, and I think so now. (Vol. V., p. 1634.)

* * * *

Q. You are sure now that you did make a duplicate of the draft? A. Yes, sir.

Q. Then you testify now that it is not a matter of doubt now in your mind that you did make a duplicate, now it is settled that you did make a duplicate of the draft? A. Yes, sir. (Vol. V, p. 1636.)

* * * *

Q. Why didn't he call, or what conceivable motive could he have in wanting the draft of the will instead of the will? A. Well, the will was not in my control and the draft was in my control, and if he asked for it I could honor his order for the draft and give it to him. (Vol. V, p. 1637.)

* * * *

Q. Tell me, when sworn before, and you said that you thought that was the original

draft, why didn't you express that doubt then? A. I was not in mind of it at that time when I testified before.

Q. Since June? A. I was very sanguine then.

THE ORDINARY:

Q. That is about a month ago. the tenth of September only? A. I was very sanguine then that this was the original draft, but I could not reconcile the fact of its being on white paper until after thinking about it in the vigils of the night and so on; I came to the conclusion there was some mistake, now I cannot tell you—(interrupted).

Q. Why didn't you, on the tenth of September last, express that doubt? A. I did not get at it then; *I do not know.*

Q. Has this chemical testimony anything to do with creating this doubt? A. Well, I do not think it has, because I think that is all bosh; I think very little of it.

MR. COLLINS:

Q. I presume the possibility of this ink being made of a substance that did not exist in 1868 would have some weight in any man's mind, would it not? A. *Well, it would be likely to wake him up a little.* (Vol. V., pp. 1646, 1647.)

The proponent's counsel required a very long adjournment to find out something that might appear, in some respects, like eosine.

Finally, a crysanaline or aurine was brought forward, which gives some reactions common to eosine.

Though it is not fluorescent when dissolved in water, as is eosine, and can be distinguished from

eosine by this test and by the shade and stability of color, there is neither evidence nor pretense that aurine or crysanaline was used commercially as red ink in 1868!

The long adjournment was insufficient to enable the other side to produce any ink manufacturer who had used these substances commercially in ink. How hard they must have tried to find such evidence, harder even than they tried to get Matteson and Rogers!!

Notwithstanding all these idle pretensions about aurine, counsel does not and cannot answer our position, which is conclusive, namely: That *Henry C. Adams had to buy ink as other people did in 1868, and neither aurine nor crysanaline was sold in 1868.*

Nothing daunted by the terrible force of this testimony, proponents brought in experts, who, like cuttlefish, attempted to becloud the water. It was all they could do. None of them can say positively it is not eosine. They were *chemical agnostics* only!

It was a desperate case that made necessary the unusual practice of an attorney going on the witness stand to help out his client from the awful predicament in which the client had placed himself.

"Why was not question asked with reference to it on his examination?" was a very pertinent inquiry of the Ordinary (Vol. V., 1657).

The scene in the court room that memorable day is not often witnessed, and the impression made by such a spectacle is not often felt.

There was the man upon whom the *onus probandi* solely rested, discredited by himself, *unable to answer directly, truthfully or consistently the same question, twice over, in as many minutes.*

Conclusion.

Adams has shown himself to be a man *capable* of forging the instrument with signatures added in 1868, or later, trusting to use it in the event of Gordon's death, in case no other will was made or proven; or of making the instrument, or of putting on the signatures, either or both, in 1878 or 1879, when he sought to dispose of it to a Sidney Doane and Cuthbert Gordon. The exact method and time of operating of such a cunning criminal can rarely be ferreted out, twelve years or more, after the forgery.

He had always shown cowardice about producing it. He preferred to prove it in Chancery, as a lost instrument, when his eosine draft would serve him better, with his own unscrupulous ability to testify to all that was necessary to establish a lost will.

When required to produce it by King and Beckett, before they adopted it as the will of Gordon, it was found with consummate ease, familiar only in fairy stories and in yellow-covered literature.

Having brought it forth, he has been obliged to make the best defense of the instrument he could. He has been on the defensive thoughout.

Every material position, assumed by the appellants or their witnesses has been one of apology or explanation.

It seems unnecessary to follow this subject further.

Men of the education and cunning of Henry C. Adams may cover their tracks to some extent; at this late day, it is simply impossible to follow the forger in prosecuting and completing this forgery done by him *alone, at some time* (undoubtedly about 1879), in one or the other of his "sanctums."

All the light that can be had, at this date, has been thrown upon the case.

In the last analysis we are remitted to the question with which we started in this case: Does this instrument bear the signature of Geo. P. Gordon, and are the signatures of describing witnesses genuine, and has the will been proven to the satisfaction of the Court?

We submit that an inspection of the paper, an inspection and study of the signatures, and a consideration of all the surrounding circumstances, lead to the inevitable conclusion, not only that there is wanting satisfactory evidence that it is the genuine will of George P. Gordon, but, on the contrary, there is conclusive evidence, in the instrument and in each signature to it that it is bogus.

Argument cannot add to or change one line or stroke of the pen exhibited in these signatures.

In this respect this case is one of unusual certainty and not of theories.

The *facts* in the case are the signatures of Geo. P. Gordon, and of the three subscribing witnesses.

In closing we point to them.

We appeal for judgment that it is a forgery, to the pictures, which these signatures make upon the mind of the Court, when compared with the standards, and with the admitted writings of Henry C. Adams.

November 21, 1893.

Respectfully submitted,

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