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NOTICE OF APPEAL.

70-434.

In Chancery of New Jersey

Filed - May 8, 1930

Between

ELEANOR C. SMITH and
CAROLYN B. RICE,
Complainants,

and

CLARENCE D. MEYER, individ-
ually and as Executor
under the Last Will and
Testament of Julia Pratt
Babcock, deceased, *et als.*,
Defendants.

On Bill, &c.

*Notice of
Appeal.*

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The complainants hereby appeal from the final decree made in the above entitled cause on the 18th day of February, 1930, made by the Chancellor on the advice of Vice-Chancellor Malcolm G. Buchanan, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes.

30

Dated May 5, 1930.

ISRAEL B. GREENE,
Solicitor for and of Counsel
with Complainants.

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

ISRAEL B. GREENE,
Of Counsel with Complainants.

40

PETITION OF APPEAL.

*Filed - May 13, 1930***New Jersey Court of Errors and Appeals***Between*

10

ELEANOR C. SMITH and
CAROLYN B. RICE,
Complainants-Appellants,

and

CLARENCE D. MEYER, individ-
ually and as Executor
under the Last Will and
Testament of Julia Pratt
Babcock, deceased, *et als.,*
20 *Defendants-Respondents.*

*On Appeal
from the
Court of
Chancery.*

*Petition
of Appeal.*

*To the Honorable the Court of Errors and Ap-
peals in the last resort in all causes:*

The petition of Eleanor C. Smith and Carolyn B. Rice, the appellants in the above-entitled cause, respectfully shows that:

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1. Appellants find themselves aggrieved by the final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Malcolm G. Buchanan, bearing date the 18th day of February, 1930, in a certain cause in said Court of Chancery, wherein the appellants herein, Eleanor C. Smith and Carolyn B. Rice, were complainants and the said Clarence D. Meyer, individually and as executor under the last will and testament of Julia Pratt Babcock, deceased, Rev. Lyttleton E. Hubard, D.D., Dr.

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Petition of Appeal.

Otto Wagner, Alice B. Pries, Catherine A. Brady, Madam Alphonsa Lathrop, Rosary Hill Home, Lena B. Bowen and Elizabeth Orphan Asylum were defendants in this respect to wit: That the said decree adjudges that the complainants' bill be dismissed with costs of suit to be taxed.

2. And appellants appeal from the whole of said decree aforesaid upon the ground that the same is erroneous in that it orders, adjudges and decrees that the complainants' bill of complaint be dismissed with costs to be taxed, whereas the Court should have ordered, adjudged and decreed that the complainants are entitled to the relief prayed for in the bill of complaint filed in this cause. 10

Petitioners, therefore, pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioners may have such other relief in the premises as to the Court shall seem proper. 20

ISRAEL B. GREENE,
Solicitor for and of Counsel
with Appellants.

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BILL OF COMPLAINT.*Filed - Nov. 7, 1928*

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:*

10 The complainants, Eleanor C. Smith and
Carolyn B. Rice, residing in the City, County
and State of New York, respectfully show that:

1. They are nieces of Edward B. Babcock, now
deceased, who formerly resided at Lebanon,
Hunterdon County, New Jersey, and died in the
City of Elizabeth, County of Union and State of
New Jersey, on August 6, 1923, leaving a last will
and testament wherein and whereby he be-
queathed his estate to his wife, Julia P. Babcock,
20 her heirs and assigns forever, and appointed his
said wife sole executrix of his will, which said
will was probated September 17, 1923, in the
Surrogate's office of the County of Union, State
of New Jersey, a true copy of which said will is
hereto annexed, made a part of this complaint,
and marked "Schedule A."

2. The said Edward B. Babcock, in his life-
time, made a will prior to the one hereinbefore
mentioned, wherein and whereby the complain-
ants were bequeathed and devised substantial
30 shares in the estate of said Edward B. Babcock,
and after the making of the said will, the said
Julia P. Babcock exercised undue influence upon
the said Edward B. Babcock, with the result that
at the solicitation of said Julia P. Babcock, and
through the exercise of her undue influence, he
changed the will wherein and whereby these com-
plainants were given legacies and devises, and
instead executed the will hereinbefore mentioned,

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Bill of Complaint.

and these complainants say that said will was procured and executed through the undue influence of said Julia P. Babcock.

3. Immediately after the death of said Edward B. Babcock, the complainants undertook to contest the said will, and to have it set aside, on the ground of its having been procured and executed through said undue influence, and thereupon, on or about January, 1924, and at prior and subsequent times, the said Julia P. Babcock agreed with and promised to the complainants that if they, the complainants, would refrain from contesting the said will of Edward B. Babcock, and would refrain from undertaking proceedings to have said will set aside, she, the said Julia P. Babcock, would agree to make a last will and testament wherein and whereby she, the said Julia P. Babcock, would bequeath and devise one-half of her estate to the complainants.

4. At the time and times aforesaid, in the City of Elizabeth, County of Union and State of New Jersey, the said Julia P. Babcock agreed with the complainants that in consideration of the complainants refraining from contesting the said will of Edward B. Babcock, and of refraining from undertaking proceedings to have said will set aside, that she, the said Julia P. Babcock, would, in her last will and testament, devise and bequeath one-half of her estate to the complainants, and the complainants thereupon agreed to refrain from contesting the said will, and agreed to refrain from undertaking proceedings to have the said will set aside on the ground of undue influence, and the complainants did, in fact, at the request of the said Julia P. Babcock, and for the consideration aforesaid, refrain from con-

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Bill of Complaint.

testing said will, and refrain from undertaking proceedings to have said will set aside.

10 5. At the times and time and place aforesaid, the said Julia P. Babcock agreed to bequeath and devise one-half of her estate to the complainants, for the consideration aforesaid, and for the further consideration that the said Edward B. Babcock had intended to make a large and substantial bequest and devise to the complainants, but had been persuaded from and changed in said intention by the influence of the said Julia P. Babcock.

20 6. Notwithstanding her said agreement with complainants, and notwithstanding that the complainants fully and in all respects performed said agreement, and refrained from contesting or moving to set aside the said will of Edward B. Babcock, she, the said Julia P. Babcock, in violation and in fraud of her said agreement with the complainants, failed, neglected and refused to carry out said agreement with the complainants, and failed, neglected and refused to devise and bequeath one-half of her estate to the complainants, and instead the said Julia P. Babcock died without making such provision for the complainants in her last will and testament, and she, the said Julia P. Babcock, instead, died leaving a last will and testament, and codicils thereto, wherein and whereby her estate was bequeathed and devised to persons other than the complainants, and wherein and whereby the complainants were not given, bequeathed or devised any share.

30 7. The said Julia P. Babcock died testate on the 27th day of June, 1928, in the City of Elizabeth, County of Union and State of New Jersey, leaving a last will and testament, and codicils

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Bill of Complaint.

thereto, which last will and testament, and codicils thereto, were probated in the Surrogate's office of Union County, State of New Jersey, on the 10th day of July, 1928, wherein and whereby the said testatrix made bequests and devises to persons other than the complainants, and wherein and whereby Clarence D. Meyer was appointed executor, and said Clarence D. Meyer qualified, and assumed the duties of such executor on and about July 10, 1928, a true copy of the said will and of said codicils being hereto annexed, made a part of this complaint, and marked "Schedule B." 10

8. By the terms of said last will and testament of said Julia P. Babcock, a life estate was given to Annie C. Wall, who complainants are informed and believe died before the probate of said will, and by the terms of said will and codicils, there was bequeathed to the Reverend Lyttleton E. Hubard, D. D., Rector of St. John's Church, Elizabeth, New Jersey, the sum of five thousand (\$5,000) dollars; to Alice Babcock Pries, the use and income of five thousand (\$5,000) dollars; to Mrs. Lena B. Bowen, of Easton, Pennsylvania, the sum of one hundred (\$100) dollars; to Otto Wagner, M. D., of Elizabeth, New Jersey, the sum of five thousand (\$5,000) dollars; to Nora Farrell, five shares of stock in the Elizabethport Mutual Building and Loan Association, provided said Nora Farrell was in the employ of the decedent at the time of her death; to Catharine A. Brady, the sum of five thousand (\$5,000) dollars; to Clarence D. Meyer, whatever household furniture, including the Duncan-Phyfe chairs, and other chattels he wished to select in remembrance of said decedent, and all the rest, residue and remainder 30
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Bill of Complaint.

of said decedent's estate in equal parts to the Elizabeth Orphan Asylum of Elizabeth, N. J., and Madam Alphonsa Lathrop Rosary Hill Home, situate at Hawthorne, N. Y.

10 9. Complainants are informed and believe that said Clarence D. Meyer, as such executor, has assumed charge and control of the estate of the said decedent, Julia P. Babcock, and is informed and believes that said Clarence D. Meyer has filed with the Surrogate of Union County an inventory of the personal estate of the said decedent, setting forth that said personal estate has a value of approximately three hundred
20 seventy-six thousand five hundred and six dollars and thirty cents (\$376,506.30), and complainants are informed and believe that in addition to said personal estate, said decedent died seized of real estate in the State of New Jersey, the location of which, and the value of which, is unknown to the complainants.

30 10. The complainants say that the said last will and testament of Julia P. Babcock is in violation of the agreement of said decedent made in her lifetime, for a good and valuable consideration, with the complainants, and is in defraud of the rights of the complainants in said estate, and that the complainants are entitled to a one-half interest in all said personal property and real estate constituting the assets of the estate of the said Julia P. Babcock, at the time of her decease, and that the rights of the complainants therein and thereto are prior and paramount to the rights, if any, of any of the legatees and devisees named in said will.

40 11. The complainants have applied to said Clarence D. Meyer to have their said one-half

Bill of Complaint.

interest in the said estate in his hands paid over to them, but that he has refused and neglected so to do, and the complainants charge that one-half of the said personal property of the estate of Julia P. Babcock, now in the hands of the said executor, or wherever the said estate may be, is the true and lawful property of the complainants. 10

12. The said Clarence D. Meyer is attempting or purporting to administer the estate of said Julia P. Babcock as executor of her said last will and testament, and such attempted or purported administration, and such assumption of said property and control or administration thereof by said executor, is in derogation and in violation of the rights of the complainants therein and thereto. 20

The complainants are without adequate remedy in the courts of law and therefore pray:

1. That Clarence D. Meyer, individually and as executor of the said last will and testament of Julia P. Babcock, deceased; the Reverend Lyttleton E. Hubard, D. D., Rector of St. John's Church, Elizabeth, New Jersey; Alice Babcock Pries, Mrs. Lena B. Bowen, Otto Wagner, M.D., Nora Farrell, Catharine A. Brady, Elizabeth Orphan Asylum of Elizabeth, N. J., and Madam Alphonsa Lathrop Rosary Hill Home, who are the defendants to this suit, may answer this bill of complaint, and each statement therein made. 30

2. That the said Clarence D. Meyer, as executor, be restrained from administering, taking charge of, or controlling said estate of said Julia P. Babcock, deceased, and be restrained 40

Bill of Complaint.

and enjoined from paying any monies to any persons out of said estate, except to these complainants, and that he be restrained from selling, transferring or disposing of any of the assets of the estate of said decedent, Julia P. Babcock, and that said defendants, Clarence D. Meyer, 10 individually and as executor of the last will and testament of Julia P. Babcock, deceased, the Reverend Lyttleton E. Hubbard, D.D., Rector of St. John's Church, Elizabeth, New Jersey; Alice Babcock Pries, Mrs. Lena B. Bowen, Otto Wagner, M.D., Nora Farrell, Catharine A. Brady, Elizabeth Orphan Asylum of Elizabeth, N. J., and Madam Alphonsa Lathrop Rosary Hill Home, be restrained from taking or receiving any legacy, devise, bequest, monies, goods or 20 articles of said estate of Julia P. Babcock, deceased.

3. That said Clarence D. Meyer, as executor of said estate of Julia P. Babcock, deceased, be decreed to hold anything in his hands belonging to said estate of Julia P. Babcock, deceased, in trust for the complainants.

4. That said Clarence D. Meyer, as executor of the estate of Julia P. Babcock, deceased, be 30 decreed to show and set forth all monies, goods, articles, lands, or other property of said estate of said decedent, and to account therefor to these complainants, and to this court.

5. That the said Clarence D. Meyer, executor of said Julia P. Babcock, deceased, be decreed and directed to pay over and to transfer to these complainants one-half of all the estate of whatever nature of said decedent that has come into his hands.

Bill of Complaint—Schedule A.

6. That an account be had of the estate of said Julia P. Babcock, deceased, and that an order be made directing and decreeing that one-half thereof be declared to be the property and possessions of the complainants, and directing and decreeing that said one-half share of said estate be transferred and paid over to the complainants. 10

7. That the complainants may have any other equitable relief to which they may be entitled in the premises.

8. That a writ or writs of subpoena may issue commanding said defendants to answer this bill of complaint, and to abide by such decree as this court may make in the premises.

ABE J. DAVID, 20
Solicitor for and of Counsel
with the Complainants.

"Schedule A."

LAST WILL AND TESTAMENT
OF 30
EDWARD B. BABCOCK, deceased
Died Aug. 6, 1923.

In the Name of God, Amen.

I, Edward B. Babcock, residing at Lebanon, Hunterdon County, New Jersey, being mindful of the uncertainties of human life and of sound mind, memory and understanding, do make, publish and declare this my Last Will and Testa- 40

Bill of Complaint—Schedule A.

ment hereby revoking any and all former Wills by me made.

First: I order all my just debts and funeral expenses to be paid as soon as conveniently can be done after my decease.

10 Secondly: All my estate real personal and mixed and wheresoever situated, I give, bequeath and devise unto my beloved wife, Julia P. Babcock, her heirs and assigns forever.

Lastly: I hereby appoint my said wife sole executrix of this my Will and she shall not be required to give bond in any place where I have property.

20 In Witness Whereof, I have hereunto set my hand and seal this twenty-eighth day of October in the year of our Lord, One Thousand and nine hundred and twenty-two.

Edward B. Babcock (Seal)

30 Signed, sealed, published and declared by the said Edward B. Babcock to be his last will and testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of said Testator in his presence.

Clarence D. Meyer, Elizabeth
Mary J. Cameron

Died Aug. 6th, 1923

Admitted to probate Sept. 17, 1923.

Bill of Complaint—Schedule B.

“Schedule B.”

LAST WILL AND TESTAMENT
AND CODICILS

of

JULIA P. BABCOCK Died June 27, 1928 10

In the Name of the Father and of the Son and
of the Holy Ghost, Amen.

I, Julia Pratt Babcock, residing at 124 West
Jersey Street, in the City of Elizabeth, N. J.,
widow of Edward B. Babcock, mindful of the
uncertainties of human life and being of sound
and disposing mind, memory and understand-
ing, do make, publish and declare this my last
will and testament, and I hereby revoke any and
all former wills by me made. 20

First: I order all my just debts and funeral
expenses to be paid as soon as conveniently can
be done after my decease and I include perpetual
care of my burial plot if such care has not been
arranged during my life time.

Secondly: Should my sister Annie C. Wall
survive me, then I direct my Executor and Trus-
tee to accumulate my estate and pay the income,
or so much as is necessary for the comfort, main-
tenance and support of my sister and she shall
have the use of my home and contents so long as
she shall live. 30

If, however, it becomes best or advisable to
discontinue such residence, my executor, who
shall also act as Guardian for Annie C. Wall
shall exercise his judgment as to the ultimate dis-
position of my home, leaving him to see that she,
who is an invalid, receives proper care and treat-
ment and made comfortable. 40

Bill of Complaint—Schedule B.

Third: My sister Amanda Pratt Wall having predeceased me, I make no provision for her children or grandchildren and it is unnecessary that I should.

10 Fourth: After the termination of the life estate, unless my Trustee deems it wise to sooner distribute the fund for specific legacies, I give and bequeath unto my friend and Pastor, the Reverend Lyttleton E. Hubbard D.D., Rector of St. John's Church, Elizabeth, New Jersey, the sum of Five Thousand Dollars.

20 Unto Mr. Job W. Angus of Elizabeth, N. J., a close friend of Mr. E. B. Babcock, I give and bequeath the sum of Five Thousand Dollars; and unto Catharine A. Brady, my faithful maid, I give and bequeath the sum of Five Thousand Dollars.

Codicil

Codicil II

30 Fifth: I give and bequeath the use and income of Five Thousand Dollars, payable upon like condition as set forth in the preceding paragraph unto my friend Alice Babcock Pries for whom I was chosen a Godparent and the principal sum of money shall be paid to said child when she becomes of age J. P. B.

Unto my sister-in-law, Mrs. Lena B. Bowen of Easton Pennsylvania, I give and bequeath the sum of One Hundred Dollars.

Sixth: I give and bequeath unto Otto Wagner, M.D. of Elizabeth, N. J., the sum of Five Thousand Dollars as a remembrance and in appreciation of his devoted care and kind treat-

Bill of Complaint—Schedule B.

ment to my husband and the sympathy shown during his illness.

Seventh: I wish to allow and the residuary legatees will permit my executor, trustee and guardian under this Will, whom I request to accept full compensation for his services as at-
J. P. B. 10

torney and counsel. He shall also be permitted to receive his commissions to the utmost 5% allowed by law and the amounts fixed and stated in his accountings shall be permitted upon the final settlement of my estate.

Eighth: All the rest, residue and remainder of my estate wheresoever situated, I give, bequeath and devise in equal parts unto the Elizabeth Orphan Asylum of Elizabeth, N. J., and Madam Alphonsa Lathrop Rosary Hill Home, situated at Hawthorne, N. Y., for treatment and care and comfort of patients suffering incurable cancerous disease. 20

Lastly: I hereby appoint my friend and attorney Clarence D. Meyer of Elizabeth, Executor and Trustee, also Guardian for Annie C. Wall, under this my Will, I also request that J. P. B.

he arrange with the Evergreen Cemetery Association to have suitable flowers placed annually upon the graves in our plot, which is known as the lot of Susan T. Wall, by beloved Mother. 30

My Executor and Trustee shall not be required to give Bonds.

In Witness Whereof, I have hereunto set my hand and seal this first day of October, Nineteen Hundred and Twenty-three.

Julia P. Babcock (Seal) 40

Bill of Complaint—Schedule B.

Signed, sealed, published and declared by the said Julia Pratt Babcock to be her last will and testament in the presence of us, who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of said Testatrix in her presence.

10

Stephen T. Quinn, Elizabeth, N. J.
Mary J. Cameron, Elizabeth, N. J.
Clarence D. Meyer, Eliz. N. J.

A CODICIL

I, Julia Pratt Babcock, add this codicil to my will which bears date October 1, 1923 and I alter and amend my will as follows,

20

In the fourth item I have given several bequests to various people and I now change and cancel the legacy to Mr. Job N. Angus, because I have given him various articles. In place and instead of such legacy to Mr. Angus, I give and bequeath unto my friend Mr. Harry C. Sheehy in the employ of my bankers, Wilcox and Company, New York City, the sum of Five Thousand Dollars.

30

In all other respects I reaffirm my said Will.

All family portraits I give unto my executor for the purpose of destruction in compliance with my expressed wishes, with the exception of the portraits of my mother and my sister Mary B. Hoy which he shall give unto my faithful maid Catharine Brady.

I give my executor power to sell real estate.

40

In Witness Whereof, I have hereunto set my hand and seal this eleventh day of February

Bill of Complaint—Schedule B.

in the year of our Lord One Thousand nine hundred and twenty-four.

Julia P. Babcock (Seal)

Signed, sealed, published and declared by the said Julia Pratt Babcock to be a codicil to her Will and her Last Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of the said Testatrix in her presence.

10

Walter H. Wetton, 113 Madison Ave.

John F. Newcomb, 68 Broad St., Elizabeth.

I, Julia Pratt Babcock hereby add a second codicil to my Will and cancel the bequest to Catharine A. Brady therein set forth. I give and bequeath unto Nora Farrell the five shares of stock in the Elizabethport Mutual Building and Loan Ass'n., provided she the said Nora Farrell is in my employ at the time of my death.

20

I reaffirm all other matters in my Will and first Codicil contained not in conflict herewith.

Signed and sealed June 2, 1924.

Julia P. Babcock (Seal)

30

Published and declared by the said Julia Pratt Babcock to be a second codicil to her Will and her Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of said Testatrix in her presence.

Lena Isakson, 96 Rahway Ave., Eliz. N. J.

Clarence P. Meyer, Eliz.

40

Bill of Complaint—Schedule B.

~~I, Julia Pratt Babcock hereby cancel and re-
voke the bequest of Five Thousand Dollars to Mr.
Harry C. Sheehy in the first codicil to my Will
for the reason that I have paid him that sum
J. P. B.
of money in cash April 15, 1925 to enable him to
10 become interested in the firm of Wilcox and
Company—(J. P. B.)~~

I, Julia Pratt Babcock hereby make, publish
and declare a Third Codicil to my last Will and
Testament in manner following: In my original
Will, bearing date of October 1, 1923 I have
made provision for my beloved sister, Annie
Campbell Wall, who has since departed this life.
As there is no necessity for conserving my estate
for her use or benefit, I therefore direct my
20 Executor and Trustee to pay all Inheritance
Taxes upon the legacy of any beneficiary in the
Will or any Codicil made by me, out of the
corpus or residue of my estate so the persons
mentioned shall receive the amount stated and
given them without tax or deduction whatsoever.

Item 2—

I hereby cancel and revoke the request of
Five Thousand Dollars given to my friend Mr.
30 Harry C. Sheehy in the first codicil to my Will
for the reason I have already paid him that sum
of money in cash April 15, 1925 to enable him
to become interested in the firm of Wilcox and
Co., Bankers of New York City in which firm my
husband was formally connected.

Item 3—

I have given Catharine A. Brady a legacy in
the fourth item of my Will and afterwards can-
celled and revoked it by a provision in the sec-
40 ond codicil of my Will. It is my wish and I

Bill of Complaint—Schedule B.

hereby give and bequeath unto my faithful maid Catharine A. Brady the sum of Five Thousand Dollars as a small token in remembrance of her kindness and attention to me and faithfulness extending over a long period of years.

Item 4—

In all other respects I reaffirm my Will and Codicils thereto and my Executor and Trustee shall be given ample time in which to sell or dispose of my estate real, personal or mixed including the stocks and bonds for the best interest of the state to enable him to comply with my wishes the same as if I were acting therein.

10

In Witness Whereof, I have hereunto set my hand and seal this fifth day of November in the year of our Lord One Thousand Nine hundred and twenty-six.

20

Julia P. Babcock (Seal)

Signed, sealed, published and declared by the said Julia Pratt Babcock to be a third codicil and her last Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and in the presence of the said Testatrix at her request.

30

Dorothy Henriques
535 Elizabeth Ave.
Elizabeth, N. J.

Clarence D. Meyer
85 Broad St.
Eliz. N. J.

Bill of Complaint—Schedule B.

I, Julia Pratt Babcock, hereby make, publish and declare this my fourth codicil to my last Will and Testament and added to make certain my friend Clarence D. Meyer shall receive whatever household furniture, including the Duncan-Phyfe chairs, and other chattels he wishes to
 10 select in remembrance of me.

In all other respects my Will and codicils are affirmed.

In Witness Whereof, I have hereunto set my hand and seal this seventeenth day of January in the year of our Lord One Thousand Nine hundred and twenty-seven.

Julia P. Babcock (Seal)

20

Signed, sealed, published and declared by the said Julia P. Babcock to be her last Will and Testament and a codicil thereto in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of the said Testatrix in her presence.

	Dorothy Henriques	Charles J. Meyer
	535 Eliz. Ave.	625 Westminister Ave.
30	Eliz. N. J.	Eliz. N. J.

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ANSWER OF EXECUTOR.*Filed - Dec. 21, 1928*

The answer of Clarence D. Meyer, individually and as executor under the last will and testament of Julia Pratt Babcock, deceased, to the bill of complaint of Eleanor C. Smith and Carolyn B. Rice, complainants.

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This defendant answering says:

1. This defendant has no knowledge or information as to the relation of the complainants to Edward B. Babcock sufficient to form a belief and leaves the complainants to their proof. He denies the death of Edward B. Babcock as of August 6, 1923, and says Edward B. Babcock died September 6, 1923, and with these exceptions paragraph one is admitted.

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2. He denies the allegations of paragraph two. He denies that after the said Edward B. Babcock had made a will wherein and whereby the complainants, as they allege or claim were bequeathed and devised substantial shares in his estate, that the said Julia Pratt Babcock exercised undue influence upon the said Edward B. Babcock, with the result that at the solicitation of the said Julia Pratt Babcock and through the exercise of her influence, he changed the alleged will wherein and whereby the complainants were given legacies and devises, and instead executed his last will and testament which was duly probated on September 17, 1923, in the office of the Surrogate of Union County. He specifically denies that the said last will and testament of the said Edward B. Babcock was procured and executed through the undue influence of the said Julia Pratt Babcock.

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Answer of Executor.

3. He denies the allegations of paragraph three. He denies that immediately after the death of the said Edward B. Babcock, the complainants undertook to contest the said will and to have it set aside, on the ground of its having been procured and executed through said undue influence. He denies that in or about January, 1924, and at prior and subsequent times, the said Julia Pratt Babcock agreed with and promised to the complainants, that if they, the complainants would refrain from contesting the said will of Edward B. Babcock and would refrain from undertaking proceedings to have the said will set aside, she, the said Julia Pratt Babcock, would agree to make a last will and testament, wherein and whereby she, the said Julia Pratt Babcock, would bequeath and devise one-half of her estate to the complainants.

4. He denies the allegations of paragraph four. He denies that at the time and times referred to in paragraph three of the bill of complaint, the said Julia Pratt Babcock agreed with the complainants that in consideration of the complainants refraining from contesting the said will of Edward B. Babcock and refraining from undertaking proceedings to have said will set aside, that she, the said Julia Pratt Babcock, would, in her last will and testament, devise and bequeath one-half of her estate to the complainants, and further denies that the complainants thereupon agreed to refrain from contesting the said will and agreed to refrain from undertaking proceedings, to have the said will set aside, on the ground of undue influence. He denies that the complainants did, in fact, at the request of the said Julia Pratt Babcock and for the consideration aforesaid, refrain from contesting

Answer of Executor.

said will and refrained from undertaking proceedings to have said will set aside.

5. He denies the allegations of paragraph five. He denies that at the time and times referred to in paragraph three of the bill of complaint, the said Julia Pratt Babcock agreed to bequeath and devise one-half of her estate to the complainants for the consideration mentioned in the bill of complaint and for the further consideration that the said Edward B. Babcock had intended to make a large and substantial bequest and devise to the complainants, but had been persuaded from and changed in the said intention by the influence of the said Julia Pratt Babcock. 10

6. He denies the allegations of paragraph six. He denies that there was any agreement to make a will by the said Julia Pratt Babcock with complainants. He further denies that the complainants fully and in all respects performed said agreement, or any agreement. This defendant represented and was proctor in the estate of Edward B. Babcock and knows that there was no contest or move to set aside the will of the said Edward B. Babcock. He further says that no caveat had been filed and no contest instituted or any effort or suggestion made of an appeal from the probate of the said will of said Edward B. Babcock and the said complainants had no right to contest said will. That this defendant managed and undertook the settlement of the estate of Edward B. Babcock, which required proceedings in New Jersey, transfer tax proceedings in several states and with the government, and covered a long period of time, and during all that time the complainants never 20 30 40

Answer of Executor.

complained about the will of Edward B. Babcock, intimated their dissatisfaction or desire to contest the same.

10 He denies that the said Julia Pratt Babcock in violation and in fraud of any agreement with the complainants failed, neglected and refused to carry out any such alleged agreement and further that there was no valid consideration for any such alleged agreement. He admits that the said Julia Pratt Babcock did not devise and bequeath one-half of her estate to the complainants, and further admits that the said Julia Pratt Babcock died without making such provisions or any provision for the complainants in her last will and testament, and further admits that the said Julia Pratt Babcock died
 20 leaving a last will and testament and codicils thereto wherein and whereby her estate was bequeathed and devised to persons other than complainants and wherein and whereby the complainants were not given, bequeathed or devised any share. He further says that under said last will and testament of Julia Pratt Babcock, deceased, that he was appointed executor, and that said last will and testament was duly probated and that he qualified as such executor,
 30 and is duly performing his trusts thereunder.

7. He admits the allegations of paragraph seven, but begs leave to refer to the original records of the said will and codicils for certainty as to their contents.

8. Regarding the allegations of paragraph eight, this defendant begs leave to refer to the records of said last will and testament and said codicils for certainty as to their contents and
 40 says: that by the terms of the will of Julia

Answer of Executor.

Pratt Babcock, the life estate was given to her sister, Annie C. Wall, who died testate about March 6, 1926. That Rev. Lyttleton Hubbard, D.D., rector of St. John's Church, Elizabeth, New Jersey, was given the sum of \$5,000, and by the will duly probated Alice Babcock Pries is given the use and income of \$5,000 during her minority, the principal to be paid on her becoming of age. Mrs. Lena B. Bowen, a sister of Edward B. Babcock, was given the sum of \$100, and Dr. Otto Wagner of Elizabeth is given the sum of \$5,000. 10

Nora Farrell was not in the employ of the decedent at the time of her death and has no interest in the estate as can be seen by the terms of the will. Catharine A. Brady was given the sum of \$5,000; Clarence D. Meyer given certain articles of personal property, and all the rest, residue, and remainder of the estate to be divided between the Elizabeth Orphan Asylum and Madam Alphonsa Lathrop Rosary Hill Home. 20

9. He admits the allegations of paragraph nine, but begs leave to refer to the record for certainty as to the inventory of the personal estate of the said Julia Pratt Babcock. Insofar as the real estate is concerned this defendant says that the decedent died seized of certain real estate in the City of Elizabeth located at 124 West Jersey street, being the homestead which is valued between \$18,000 and \$25,000 and that the decedent also had a one-half interest in about eight acres of upland and meadow situated along the right-of-way of the Pennsylvania Railroad in Hamilton Township near the City of Trenton, the valuation of which is unknown. The homestead obtained by purchase 30 40

Answer of Executor.

was given her by her husband; the acreage obtained by descent from her grandfather, Garrett Dorsett Wall, the other one-half interest therein being owned by Gertrude Vroom (now Mrs. Brooks), a daughter of former Judge Garrett D. W. Vroom of Trenton, New Jersey.

- 10 10. He denies the allegations of paragraph ten. He denies that the said last will and testament of Julia Pratt Babcock is in violation of any agreement of decedent made in her lifetime, for a good and valuable consideration with the complainants; and further denies that there was any good and valuable consideration for any such alleged agreement. He further denies that said last will and testament of Julia Pratt Babcock is in defraud of any rights
- 20 of the complainants in said estate. He further denies that the complainants are entitled to a one-half interest in all the personal property and real estate constituting the assets of the estate of the said Julia Pratt Babcock at the time of her decease and further denies that any alleged rights of the complainants therein and thereto are prior and paramount to the rights, if any, of any of the legatees or devisees named in said will. He further says that the
- 30 last will and testament of Julia Pratt Babcock and the codicils thereto are the creation of her sound mind and judgment and the product of her own free will.

Soon after the death of Edward B. Babcock, Julia Pratt Bagecock made her will in which she provided for her sister, Annie C. Wall, who was then alive and made her home with Julia Pratt Babcock. Some few changes were made by codicils and at no time were the com-

Answer of Executor.

plainants mentioned. The estate was conserved for the benefit of her sister, Annie C. Wall, to be enjoyed during her lifetime. After her death provision was made for the payment of legacies and for the transfer inheritance taxes to be paid out of the estate.

11. As to the allegations of paragraph eleven this defendant says that it was not until November 5, 1928, that any purported demand was made upon him by the complainants. He further denies that one-half of the personal property of the estate of the said Julia Pratt Babcock, now in the hands of this defendant, or wherever the said estate may be, is the true and lawful property of the complainants. And this defendant says that the complainants are not entitled to share in this estate and they have no interest therein. 10
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12. As to the allegations of paragraph twelve he admits that he is administering the estate of the said Julia Pratt Babcock as executor of her said last will and testament, but he denies that such administration and such assumption of said property and control or administration thereof by this defendant, as executor, is in derogation and violation of the rights of the complainants therein and thereto. 30

13. This defendant further answering says that the said last will and testament of Edward B. Babcock was executed on October 28, 1922, and that at that time and up until the time of his death, the said Edward B. Babcock was in full control of all of his faculties, and at all times personally conscious even up to the time of his death.

Answer of Executor.

14. This defendant further answering says that the said complainants had no grounds upon which to contest the said last will and testament of the said Edward B. Babcock.

10 15. This defendant further answering says that the said estate of the said Julia Pratt Babcock consisted partly of real estate, and this defendant says that by the 5th Section of the Statute of Frauds and Perjuries, Revision Volume 2 Compiled Statutes of New Jersey, page 2612 it is provided:

20 5. That no action shall be brought (1) to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or (2) to charge the defendant upon any special promise, to answer for the debt, default or miscarriage of another person; or (4) upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them;—unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized. And this defendant says that the said alleged agreement is
30 not in writing and is therefore void under the statute of frauds which this defendant specially pleads in this answer.

16. This defendant further answering says that the said bill of complaint contained no allegations as against this defendant individually, and that he is not a proper party defendant in his individual capacity and that upon the final hearing of this cause, he will move to strike out

Answer of Catharine A. Brady.

the bill of complaint so far as the same applies to him in his individual capacity.

17. This defendant therefore prays that the said bill of complaint may be dismissed with costs.

CAREY & LANE, 10
Solicitors for Clarence D. Meyer.

CLARENCE D. MEYER and
CAREY & LANE,
Solicitors and of Counsel with the
Executor under the Last Will and
Testament of Julia Pratt Babcock,
deceased.

ANSWER OF CATHARINE A. BRADY. 20

Filed - Dec. 21, 1928

The answer of Catharine A. Brady, a defendant named in the bill of complaint, to the bill of complaint of Eleanor C. Smith and Carolyn B. Rice, complainants.

This defendant answering says:

1. She admits that in and by the provisions of the third codicil under the last will and testament of Julia Pratt Babcock, deceased, this defendant was given the sum of \$5,000. 30

2. This defendant submits to such decree as the Court deems proper to make in said cause and prays to be hence dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained.

CLARENCE D. MEYER,
Solicitor for and of Counsel
with Defendant, Catharine A. Brady. 40

**ANSWER OF
LYTTLETON E. HUBARD, D. D.**

Filed - Dec. 21, 1928

The answer of Lyttleton E. Hubard, D.D., a defendant named in the bill of complaint, to the bill of complaint of Eleanor C. Smith and
10 Carolyn B. Rice, complainants.

This defendant answering says:

1. That he has no knowledge or information regarding the statements set forth in the bill of complaint sufficient to form a belief and leaves the complainants to their proof.

2. This defendant admits that under the fourth item of the will of Julia Pratt Babcock, deceased, he was given the sum of \$5,000.

20 3. This defendant submits to such decree as the Court deems proper to make in said cause and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CLARENCE D. MEYER,
Solicitor for and of Counsel with
Defendant, Lyttleton E. Hubard, D.D.

**ANSWER OF MADAM ALPHONSA LATHROP
ROSARY HILL HOME.**

Filed - Dec. 21, 1928

The answer of Madam Alphonsa Lathrop Rosary Hill Home, a defendant named in the bill of complaint, to the bill of complaint of Eleanor C. Smith and Carolyn B. Rice, complainants. 10

This defendant answering says:

1. This defendant has no knowledge or information regarding the statements set forth in the bill of complaint sufficient to form a belief and leaves the complainants to their proof.

2. This defendant admits that by the eighth clause of the will of Julia Pratt Babcock, bearing date October 1, 1923, all the rest residue and remainder of the estate was given, bequeathed and devised in equal parts unto the Elizabeth Orphan Asylum of Elizabeth, New Jersey, and Madam Alphonsa Lathrop Rosary Hill Home, situated at Hawthorne, New York, for treatment and care and comfort of patients suffering incurable cancerous disease. 20

3. This defendant submits to such decree as the Court deems proper to make in said cause and prays to be hence dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained. 30

CLARENCE D. MEYER,
Solicitor for and of Counsel with
Defendant, Madam Alphonsa Lathrop
Rosary Hill Home.

**ANSWER OF ALICE BABCOCK PRIES,
AN INFANT.**

Filed - Dec. 21, 1928

10 The answer of Alice Babcock Pries, an infant over the age of fourteen years, by Clarence D. Meyer, her guardian *ad litem* to the bill of complaint of Eleanor C. Smith and Carolyn B. Rice, complainants.

This defendant answering by her said guardian says:

20 1. The said Alice Babcock Pries will not attain majority until August, 1929; that she is not related either by blood or marriage to Julia Pratt Babcock, although she was named for her when Julia Pratt Babcock was selected as one of her sponsors in baptism.

30 2. This defendant denies the allegation in paragraph 8 of the bill of complaint to the effect that Alice B. Pries was given the use and income of \$5,000 and says that in and by paragraph 5 of the will of Julia Pratt Babcock, bearing date October 1, 1923, the said infant was given the use and income of \$5,000 payable upon the termination of the life estate created in favor of Annie C. Wall, the principal to be paid said infant when she became of age.

3. This defendant still being an infant submits herself to the judgment of this Honorable Court and prays that her interest may be protected and that she may be hence dismissed with her reasonable costs and charges in this behalf wrongfully sustained.

CLARENCE D. MEYER,
Solicitor and Guardian *ad litem* for
Alice Babcock Pries, Defendant.

ANSWER OF MRS. LENA B. BOWEN.*Filed - Dec. 21, 1928*

The answer of Mrs. Lena B. Bowen, a defendant named in the bill of complaint, to the bill of complaint of Eleanor C. Smith and Carolyn B. Rice, complainants.

This defendant answering says:

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1. She admits that under the fifth item of the will of Julia Pratt Babcock, deceased, this defendant was given the sum of \$100.

2. This defendant submits to such decree as the Court deems proper to make in said cause and prays to be hence dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained.

CLARENCE D. MEYER,
Solicitor for and of Counsel with
Defendant, Mrs. Lena B. Bowen.

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ANSWER OF OTTO WAGNER, M. D.*Filed - Dec. 24, 1928*

The answer of Otto Wagner, M. D., a defendant named in the bill of complaint, to the bill of complaint of Eleanor C. Smith and Carolyn B. Rice, complainants.

10 This defendant answering says:

1. That he has no knowledge or information regarding the statements set forth in the bill of complaint sufficient to form a belief and leaves the complainants to their proof.

2. This defendant admits that under the sixth clause of the will of Julia Pratt Babcock, deceased, he was given the sum of \$5,000.

20 3. This defendant submits to such decree as the Court deems proper to make in said cause and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CLARENCE D. MEYER,
Solicitor for and of Counsel with
Defendant, Otto Wagner, M. D.

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**ANSWER OF ELIZABETH ORPHAN
ASYLUM ASSOCIATION OF
ELIZABETH, N. J.**

Filed - Dec. 21, 1928

The defendant, Elizabeth Orphan Asylum Association of Elizabeth, N. J., answering the complainants' bill of complaint, says that: 10

1. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 1.

2. Paragraphs 2, 3, 4 and 5 are denied.

3. It denies that the agreement referred to in paragraph 6 ever existed and denies all other matters contained in said paragraph.

4. Paragraphs 7 and 8 of the bill of complaint are admitted. 20

5. As to paragraph 9, this defendant believes that the executor named in the will of Julia P. Babcock has assumed his duties as such executor and taken upon himself the administration of said estate. This defendant, however, has no particular knowledge as to the other matters contained in paragraph 9.

6. It denies that the alleged agreement referred to in paragraph 10 ever existed and denies all other matters contained in said paragraph. 30

7. As to paragraph 11, this defendant has no knowledge of any application which the complainants may have made to Clarence D. Meyer for any interest which they claim in the said estate, and denies all the other matters contained in the said paragraph. 40

Answer of Elizabeth Orphan Asylum Assn.

8. As to paragraph 12 of the bill of complaint, this defendant believes that Clarence D. Meyer is administering the said estate, but denies that his administration of said estate is in violation of the rights of the complainants.

10 FIRST SEPARATE DEFENSE.

This defendant denies that the complainants are entitled to any claim or interest whatsoever in the estate of the decedent, Julia P. Babcock.

 SECOND SEPARATE DEFENSE.

20 This defendant alleges that no agreement whatsoever was made by the complainants with the decedent, Julia P. Babcock, in which the decedent agreed to leave any portion of her estate to the complainants, and if such an agreement was ever discussed by the complainants and the decedent, it was never completed and no definite terms were ever agreed upon, nor was any definite amount agreed upon.

 THIRD SEPARATE DEFENSE.

No consideration passed from the complainants to the decedent, Julia P. Babcock, for the alleged agreement.

30 FOURTH SEPARATE DEFENSE.

The complainants' rights, if any, are purely legal and no equitable relief is asked for in the bill which would justify the Court of Chancery in taking jurisdiction of the subject matter, and the bill of complaint should therefore be dismissed.

 WHITTEMORE & McLEAN,
 Solicitors of the Defendant,
 Elizabeth Orphan Asylum Association
 of Elizabeth, N. J.

REPLICATIONS.*Filed - Oct. 10, 1929.*

The complainants join issue on the answer of the defendants, Lena B. Bowen, Catherine A. Brady, Otto Wagner, M. D., and Alice Babcock Pries, Lyttleton E. Hubbard, D. D., Madam Alphonsa Lathrop Rosary Hill Home.

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Dated May 8, 1929.

ABE J. DAVID,
Solicitor for and of Counsel
with the Complainants.

REPLICATION.*Filed - Oct. 10, 1929*

The complainants join issue on the answer and on the first, second, third and fourth separate defenses of the defendant, Elizabeth Orphan Asylum Association of Elizabeth, N. J.

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Dated May 8, 1929.

ABE J. DAVID,
Solicitor for and of Counsel
with the Complainants.

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REPLICATION.*Filed - Oct. 10, 1929*

1. The complainants admit the death in September, 1923.

10 2. The complainants join issue on the 2nd, 3rd, 4th, 5th, 6th, 8th, 10th, 11th, 12th, 13th, 14th, 15th and 16th paragraphs of the answer of the defendant, Clarence D. Meyer, individually and as executor under the last will and testament of Julia P. Babcock, deceased.

3. As to paragraph No. 9, complainants have no knowledge of the real estate of which Julia P. Babcock died seized, and repeat the prayer for an accounting set forth in the bill of complaint.

20 Dated May 8, 1929.

ABE J. DAVID,
Solicitor for and of Counsel
with the Complainants.

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MEMORANDUM OF VICE-CHANCELLOR.

Filed - July 18, 1930.

IN CHANCERY OF NEW JERSEY.

*Between*ELEANOR C. SMITH, *et als.*,
Complainants,*and*CLARENCE D. MEYER, *etc.*,
et als.,

Defendants.

Memo-
randum.

10

*(Not to be re-
ported at
all.)*

ON FINAL HEARING.

BUCHANAN, V.-C.

Complainants' bill is in the nature of a bill for specific performance of a contract which they allege to have been made with them by Julia Babcock, now deceased, by the terms of which contract they claim Mrs. Babcock agreed, for valid consideration, to leave to them by her will, at her death, one-half of her estate.

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The issue is one of fact—as to whether the alleged contract was made or not.

Much testimony was taken, which it would serve no useful purpose to recite. My conclusion at the close of the hearing, after hearing the testimony and observing the witnesses, was that complainants had by no means sustained the burden of proof of establishing the making of the contract; which led of course to decree of dismissal.

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FINAL DECREE.*Filed - Feb. 19, 1930*

10 This cause coming on to be heard at a regular term of the Court of Chancery, held at the Chancery Chambers in the State House at Trenton, in the presence of Honorable Abe J. David, solicitor and of counsel with the complainants; Clarence D. Meyer *per se*; Clarence D. Meyer and Robert Carey of the firm of Carey & Lane, of counsel with Clarence D. Meyer, executor under the last will and testament of Julia Pratt Babcock, deceased, Rev. Lyttleton E. Hubbard, D. D., Doctor Otto Wagner, Alice B. Pries, Catharine A. Brady, Madam Alphonsa Lathrop Rosary Hill Home, Lena B. Bowen; and Messrs. Whittimore and McLean counsel for the Elizabeth Orphan Asylum; and the pleadings and proofs having been read and the arguments of the respective counsel having been heard; and the Court having duly considered the said pleadings, proofs and arguments and it appearing to the said Court that the complainants are not entitled to the relief sought and prayed by them in their said bill of complaint;

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30 It is on this eighteenth day of February, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, that the complainants' bill be and it is hereby dismissed.

And it is further ORDERED that the complainants pay the costs of this suit to be taxed.

E. R. WALKER,

C.

Respectfully advised,

MALCOLM G. BUCHANAN,

V.-C.

SUBSTITUTION OF SOLICITOR.*Filed - May 13, 1930*

The undersigned hereby consent to the substitution of Israel B. Greene of 60 Park Place, Newark, New Jersey, as solicitor for the complainants in the above-entitled cause.

Dated, April 23, 1930.

10

ABE J. DAVID,
Present Solicitor of Complainants.

CAROLYN B. RICE,
ELEANOR C. SMITH,
Complainants.

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Testimony.

IN CHANCERY OF NEW JERSEY.

70-434

	<p><i>Between</i></p> <p>ELEANOR C. SMITH, <i>et al.</i>,</p> <p style="text-align: right;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>CLARENCE D. MEYER, indivi-</p> <p style="text-align: center;">dually and as executor, etc.,</p> <p><i>et al.</i>,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p style="font-size: 3em;">}</p> <p><i>On Bill, &c.</i></p> <p><i>Testimony.</i></p>
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FIRST DAY.

20 Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, the 23rd day of January, 1930, at 11:00 o'clock A. M.

Before Hon. Malcolm G. Buchanan, Vice-Chancellor.

Appearances:

30 Abe J. David, Esquire (Isador Bragoff, Esquire, of the New York Bar, of Counsel) for complainants.

Messrs. Whittemore and McLean, by Mr. Sigurd A. Emerson, for defendant Elizabeth Orphan Asylum Association of Elizabeth, N. J.

Messrs. Carey and Lane, by Mr. Carey, and Clarence D. Meyer, Esquire, for all other defendants.

Elliott C. Smith, direct.

ELLIOTT C. SMITH, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct examination by Mr. David.

Q Elliott C. Smith is your name? A Elliott C. Smith. 10

Q Where do you live, Mr. Smith? A At present in Pasadena, California.

Q What is your business? A I have no active business at the present time.

Q What was your business before you retired? A Well, I hope I haven't retired permanently; but I was an official of a public utility company.

Q How long have you been living in Pasadena? A Since last September. 20

Q Prior to that time, where did you live? A I lived in New York City.

Q How long did you live in New York City? A For about twenty years.

Q Did you know Edward B. Babcock in his lifetime? A I did.

Q How long did you know him? A I knew him from the late 1880's until the time of his death.

Q And when was that? A In 1923. 30

Q Was there any relationship between you and him? A He was my brother-in-law; I married his sister.

Q Is your wife living? A Not that wife; I am married again. My wife who was the sister of Edward Babcock is dead.

Q And how long is she dead? A She is dead about 33 or 4 years.

Q Did you sometime prior to Mr. Babcock's death in 1923, have any conversation with him 40

Elliott C. Smith, direct.

concerning some moneys that you had advanced his father? A I did.

Q And how often did you have any conversation with him with reference to that matter?

A Probably three or four times.

10 Q During what period of time? A Between 1918 and 1922.

Q Had you advanced any money to Mr. Babcock's father?

20 Mr. Carey: That is objected to on the ground that it is entirely incompetent, irrelevant and immaterial in these proceedings. Here is a bill filed for specific purposes. It alleges that one Mr. Babcock made a will, and that subsequently his wife influenced him to change that will; that in that first will, whatever it was, which I can find no record of anywhere, some provision of some sort was made for the daughters of this man. In the subsequent will, which was the will of Mr. Babcock, no provision was made for these daughters. It says that thereafter the daughters called on Mrs. Babcock and stated to her that they were going to contest that will, not by virtue of any indebtedness or anything that happened between this witness and Mr. Babcock, but they were going to contest this will, and that in consideration of their agreeing not to contest the will, Mrs. Babcock made a sort of a promise, which is set forth in the bill of complaint, saying what she would do in her will.

30 Now, there are two propositions presented on the face of the papers: In the first place, if any such promise was made it would be

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Elliott C. Smith, direct.

nudum pactum, because these two daughters could have no interest whatever in a contest of the will of Mr. Babcock. He left nothing but personal property, no children. His estate would vest, if there were no will, absolutely in his widow. These two persons would have no status to contest a will; prohibited by the statute. And furthermore, if there had been transactions such as outlined by counsel between this witness and Mr. Babcock, Sr., who died in 1923, of the character that has been described by counsel, they would not be pertinent or relevant in this proceeding because they could not possibly be the basis for any attack upon a will or any provisions in a will. 10

The Court: I think you are going far afield. You are arguing as though on a motion to strike out the bill. I am not going to decide the question now. As long as you are all here I am going to hear the testimony. 20

Mr. Carey: We simply want to get it on the record so that it can't be said that we stood idly by and—

The Court: Your objection is on the record. I will overrule the objection. 30

Q (Stenographer repeats the question.) A I have advanced moneys to Mr. Babcock's father.

Q What was Mr. Babcock's father's name?

A Frederick Babcock.

Q Subsequently did Mr. Frederick Babcock execute and deliver to you a bond and mortgage? A He did.

Q What did you do with those papers? A I kept the bond and mortgage in my desk. 40

Elliott C. Smith, direct.

Mr. Carey: We consider it as having our objection in to all this testimony?

The Court: If it is on the same ground.

Q Did you place the mortgage on record, Mr. Smith? A I did not.

10 Q How long did you keep it off the record?

A Probably two or three years, I always kept it off the record. I never recorded it, but I made no attempt or did anything about it for two or three years after receiving it.

Q Did you subsequently learn that a mortgage had been put on record? A I have been told that, yes.

Q In whose favor was that mortgage?

20 Mr. Carey: I object to that. It is something he has been told.

The Court: The objection is overruled.

A I was told it was in favor of Edward Babcock.

Q When you learned that, did you have any conversation with Mr. Edward Babcock with reference to this matter? A I did.

30 Q When was your first conversation with him with reference to it? A Shortly after I learned that another mortgage had been made in his favor to the full value, as I considered, the full value of the property, therefore, making my mortgage worthless.

Q When was the first conversation you had with him? A Within a month after I learned that.

Q Can you give me the year? A No, I can't. It was around 1896 or '7.

40 Q After that, what were your relations with Mr. Edward Babcock? A They were not par-

Elliott C. Smith, direct.

ticularly friendly. I never saw him from that time on, to my knowledge, until 1918.

Q And where did you have occasion to see him at that time? A For several years, from 1918 on I had a cottage at Avon, New Jersey, and went down there with my family in the summer and came up to business every day and took the ferry from Jersey City to Liberty street, to my office, 115 Broadway at that time, and Mr. Babcock came in from his residence in Elizabeth, to his office which was on Broadway somewhere, and it frequently happened that on the ferry boat both coming to New York and going from New York, returning to Avon, that Mr. Babcock was on the same ferry. He came to his office to be there about the same time that I did and he returned in the afternoon about the same time that I did and I met him very frequently over a period of four years.

Q In that way? A Yes.

Q And during that time, did you have any conversations with him with reference to the mortgage and the fact that you had advanced moneys to his father? A After meeting him that way for a couple of years and speaking on general matters, asking about the different members of his family, his nieces, etc., he approached me one day on the boat and spoke about the possible hard feelings or resentment which I had about having a mortgage placed ahead of mine and said that he considered that there was a moral obligation on his part to make some kind of repayment for the money I had advanced and the things I had done for his family some twenty-five years or more before. I supported the family, that is, his mother and his crippled brother for about three years.

Elliott C. Smith, direct.

By the Court.

Q Where is this bond and mortgage that were given to you? A I destroyed it shortly after.

10 Q Shortly after that? A Shortly after I had found out that Mr. Ned Babcock had obtained another mortgage which apparently wiped mine out.

Q How much was the bond and mortgage for? A The mortgage was for \$6,000 and I presume the bond was for twelve.

20 Q What further did he say? A He said he felt he had a moral obligation in regard to it, that he was very fond of his sister, the mother of my two daughters, and that he believed that I was not immediately in need of any money but that he proposed to make a will and when he died to leave a very substantial amount of money to my daughters, both in consideration of the moral obligation that he had for \$6,000 and for the affection that he had for his sister and his sister's children.

By the Court.

Q Did he name the amount? A No, he never named any amount.

30 Q At any time? A No.

Q Who were your daughters? A My daughters were Carolyn B. Smith and Eleanor C. Smith.

Q Carolyn has since married? A Yes.

Q And her name is? A Carolyn Biddle Rice.

Q Your other daughter is Eleanor C. Smith? A Eleanor C. Smith.

40 Q They are complainants in this suit? A They are complainants in this suit.

Elliott C. Smith, direct.

Q Did you have any conversation along the same lines any other time with him? A Several times under the same circumstances, on the boat.

Q Do you recall the first time after Mr. Babcock's death, Mr. Edward B. Babcock's death, learning or ascertaining the contents of his will? A Yes. I didn't know of his death until some time afterwards and I was told of it, I think by one of my daughters, and also told that he had left all his property to his wife and, of course, upon that knowledge coming to me I began to think of the fact that he had made other promises to me. 10

Q On learning of that fact, did you have any conversation with your daughters, Mrs. Rice now, and Miss Smith? A I did.

Q What was that conversation? 20

Mr. Carey: I object to that, if the Court please, I cannot see the relevancy or competency of it. You can't bind any of the defendants in this proceeding with any conversation this man might have had with his daughters.

The Court: It may be answered.

A I requested my daughters to come down to my office, which they did, and I told them of having learned of Edward Babcock's death, their uncle's death, and I had learned that he had left nothing to them and then I told them of the promises which he had made to me two or three years before, several times on the boat, as I have heretofore related it to you and I further told them that I thought that they should possibly begin to contest the will of Edward Babcock but I had also known that both of my daughters 30
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Elliott C. Smith, direct.

had been on friendly terms with Edward Babcock's widow, Julia Babcock. They had seen her frequently and had correspondence with her and had talked with her over the telephone and I thought it would be better before beginning any contest or inaugurating anything of that sort
10 that one or both of them should go out to Elizabeth and see their Aunt Julia and tell Aunt Julia of the promises that Ned Babcock had made to me and find out if she knew anything about the promises, whether Ned had ever told her about it and to see whether she was inclined herself in any measure to make good the promises which I told them Ned Babcock had made to me. We discussed that matter and the possibility of getting a lawyer. I didn't think it was well to start the
20 matter with suit. I thought the best thing was to take it up in a friendly manner and ascertain the attitude of Julia Babcock.

Q Do you know whether subsequent to that, your daughters or either of them did go out to see Mrs. Babcock? A Subsequent to that one daughter did go to see Julia Babcock.

Mr. Carey: That is objected to, that is hearsay and I move to strike it out.

The Court: The motion is denied, he says
30 he knows she did.

Q Can you tell me when that was? A When which was, that we had the conference or talk in my office?

Q Yes. A The talk in my office was early in October, 1923.

Q And do you know when your daughter went out to see Mrs. Babcock? A Around the middle of January.

Q What year? A 1924.
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Elliott C. Smith, cross.

Cross examination by Mr. Emerson.

Q Mr. Smith, who drew the mortgage of \$6,000 that was executed in 1896? A I don't know.

Q Don't know by whom? A No.

Q Did a lawyer draw it? A I don't recollect, I didn't draw it. 10

Q Where was it drawn? A I presume in Elizabeth, but I don't know.

Q Who had the mortgage drawn? A I think Mr. Frederick Babcock, Senior.

Q Were you present when the mortgage was drawn? A I was not.

Q Did you examine the mortgage after you received it? A I did.

Q What property did it cover? A It covered the property, the house that Mr. and Mrs. Babcock lived in on West Jersey street. 20

Q Elizabeth? A Yes.

Q And did they own that house in 1896? A They did, or before that, a little time before that.

Q Did you ever show that mortgage to anyone? A No.

Q When did Mr. Babcock die? A Babcock, Senior? 30

Q No, Edward B.? A 1923.

Q What date? A I think it was the sixth of August.

Q Are you sure of that? A Not absolutely sure, but I think that was the date.

Q And when did you first learn of his death? A Probably six weeks afterwards.

Q About the middle of September you learned of his death? A The middle or the latter part of September. 40

Elliott C. Smith, cross.

Q When did the conversation with the girls take place? A Early in October, 1923.

Q But your daughter didn't go to see Mrs. Babcock until January, 1924? A No, she didn't.

10 Q When you were examining the mortgage, did you notice what office prepared the mortgage? A I may have noticed it then but I don't remember it now.

Q You don't recall that? A No.

Q Where did you keep that mortgage, in your safe deposit box? A No, not at that time, I kept it in my desk.

Q Was there a bond accompanying the mortgage? A Yes, there was.

Q What was that made up for? A I think for \$12,000, but I'm not sure.

20 Q The bond required him to pay \$12,000? A It was the ordinary bond and mortgage, so far as I know. I didn't take this mortgage with the idea of getting immediate money from the Babcock family. It was taken with the idea in case I needed money myself, after having done something for the Babcock family I would have some collateral that I might possibly use to raise needed money.

Q And did you advance \$6,000 to the Babcock family? A No, I didn't in money.

30 Q What was the consideration for that mortgage? A The consideration was the support—some money that I advanced and the support of the Babcock family, Mrs. Babcock and her crippled son for about three years.

Q That was Edward B. Babcock's mother? A That was Edward B. Babcock's mother—his father for a portion of the time and his crippled son for more than that time.

40 Q And did they live with you in your home? A They did for part of the time, yes.

Elliott C. Smith, cross.

Q How long did they live with you? A For a year and a half in my home and I paid the expenses in their home for another year and a half.

Q How much did you pay for expenses in their home? A I don't know, I paid all the expenses. 10

Q But you don't remember how much that was? A No.

Q How much board did you charge these folks when they were living with you? A Nothing.

Q But you took a mortgage? A I took a mortgage with the idea that that probably represented the amount of money and living expenses that I had been put to for their benefit over the period of time covered. 20

Q Three years? A Yes.

Q That is about \$2,000 a year? A About that.

Further cross examination by Mr. Meyer.

Q How many mortgages were there, Mr. Smith, that you had on that property? A One.

Q Only one? A That's all.

Q Are you sure of that? A Yes. 30

Q By whom was that made? A I don't know.

Q Maybe I can refresh your memory? A I can't refresh my memory on that subject.

Q Did that cover the West Jersey street property? A That covered the West Jersey street property.

Q And that property at that time was owned by Carolyn M. Babcock and Frederick A. Babcock? A I think so, yes, sir. 40

Elliott C. Smith, cross.

Q And that property was afterwards acquired by Mr. Edward B. Babcock, was it not?

A I understand that, yes.

Q Well now, your name is Elliott C. Smith?

A Elliott C. Smith, yes.

10 Q And do you recall the time when that mortgage was made? A It was around 1893 or '4, I think.

Q Well now, wasn't it around June 11, 1895?

A It might have been.

Q I call your attention to a mortgage made by Carolyn M. Babcock and Frederick C. Babcock, her husband, to Elliott C. Smith, dated June 11, 1895, acknowledged June 14, 1895, and recorded December 11, 1895, in Book 130, page 496? A Yes.

20 Q Is that the mortgage you refer to? A Possibly it is.

Q The consideration is \$2,800. That was cancelled of record July 13, 1904. Did you receive that money? A No.

Q Are you positive of it? A Positive.

Q Did you have any other mortgages? A I had this \$6,000 mortgage which was not recorded.

30 Q You said there was not two? A No, I don't think there was. I don't remember the \$2,800 mortgage at all.

Q Carolyn M. Babcock was the mother of Edward Babcock and the mother of your first wife? A Yes.

Q Frederick A. Babcock was the father? A Yes.

Q Mr. Babcock supported that family, did he not? A Which one?

40 Q Edward B.? A Never to my knowledge.

Elliott C. Smith, cross.

Q Do you know how long he was engaged to Mrs. Babcock? A A great many years.

Q And wasn't that long engagement due to his need to support the family? A It might have been for part of the time, yes.

Q This crippled son that you speak of was Frederick A., Jr., wasn't it? A I think he was Frederick A., Jr., whether the middle initial was the same I don't recollect; it was Frederick, though. 10

Q He lived in Norristown, Pennsylvania? A He did, afterwards.

Q And his estate was settled in that place? A I believe it was.

Q And your daughters inherited in that estate? A Yes, they got a portion of it.

Q Do you recall signing any releases to Mr. Edward B. Babcock? A No. 20

Q He had a dispute with you about some of these things, didn't he? A I would hardly call it a dispute.

Q You were not on good terms? A Not on friendly terms, no.

Mr. Emerson: At a later time, we would like to produce the original mortgage or a certified copy of it. This is rather a surprise as nothing in the bill alleges this transaction. 30

The Court: You mean the \$2,800 mortgage?

Mr. Emerson: Yes, sir.

The Court: You may have that leave.

Mary Asquith, direct.

MARY ASQUITH, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct examination by Mr. David.

10 Q Where do you live, Miss Asquith? A At present in Eltingville, Staten Island.

Q How long have you lived in Staten Island? A 1927, April 6th.

A 1896, April 6th.

Q Prior to that, where did you live? A In New York City for two years.

Q And before that? A Prior to that in Westport, Connecticut, and prior to that in Croton Falls and prior to that in New York, and—

20 Q With whom did you live at Westport, Connecticut? A With Mr. and Mrs. Frank H. Rice.

Q During what time was that? A That was from September 31, 1923, and I left there in August of 1924. Mrs. Rice left later.

30 Q Do you recall the condition of Mrs. Rice's health during the late fall and part of the winter of 1923? A Mrs. Rice was in very bad health from—she had been in bad health the year before. She had really been in bad health since her son had been born.

Q Did you know Mrs. Julia P. Babcock in her lifetime? A I met Mrs. Babcock once in her own home.

Q Where was that? A On West Jersey street in Elizabeth.

Q When was that? A In January, 1924; between possibly the 14th or 15th and the 25th.

40 Q What was the occasion of your being at Mrs. Babcock's home? A I had gone over to pick up Mrs. Rice.

Mary Asquith, direct.

Q Gone over from where? A From New York City, I had gone into New York with Mrs. Rice—Mrs. Rice was going over to visit her aunt, to have lunch with her, she was feeling very badly and I tried my best to keep her from going. I offered to take her back to Westport and I offered to go with her. Mrs. Rice said she was going over on a family business matter and she didn't want me to go with her and I tried even then. Mrs. Rice was looking very badly, she had been having many fainting fits and I was troubled over Mrs. Rice, thinking she might faint on the train and I wanted to take her over there, I said I will go even to the station with you— 10

By the Court.

Q Well, you did arrange to go over there with her? A I did. 20

Q And you did go to Elizabeth, to Mrs. Babcock's home? A That afternoon, later.

Q Can you tell me what time you got to Mrs. Babcock's home? A It must have been very nearly half-past three, because Mrs. Rice had said she would wait until half-past three and I was afraid I might be late. 30

Q Will you tell us what happened, what was said while you were at Mrs. Babcock's home? A I had walked up West Jersey street because at different times—

By the Court.

Q No, just state what you said at Mrs. Babcock's home? A I met Mrs. Babcock in the hall. Mrs. Rice had been waiting for me and as I turned into the place one of them opened the 40

Mary Asquith, direct.

door and Mrs. Rice introduced me to Mrs. Babcock, just inside the door. Mrs. Rice said that she was just going to get her wraps and Mrs. Babcock said, "They are upstairs, come up." I really didn't want to climb the stairs but Mrs. Babcock went ahead of us and led us into a

10 large room in the front, upstairs. It was a room Mrs. Rice had told me little things that had happened in her childhood. Mrs. Rice said, "Mary, this is the room that used to be the big front bedroom when I was a child," and Mrs. Babcock said, "Yes, after your uncle's death I had the bed taken out." Mrs. Rice went to the bathroom and Mrs. Babcock either pointed it out and went a few steps up, I know she came back to the room and sat down quite a distance across from

20 me. We had nothing in common. Mrs. Babcock asked me—she said, "You make your home with my niece?" I said, "Yes." She said, "I think you are in business with her husband." I said, "Yes." She said, "I don't believe I ever understood just what that business is." I said, "We are author's agents," and I saw that that didn't seem to mean anything to her and I told her in as few words that I could how we submitted a play or story and if we got anyone interested in it we got a commission for our services. She

30 said, "That is something like the real estate business." I told her, "It is a broker business and a broker is the same in any business." She said, "I suppose Mr. Rice draws the contracts?" I said, "No, we both do, our knowledge is equal as to contracts." She said, "My niece is very fond of you." I said, "Yes, a very loyal friend" and Mrs. Babcock said, "She is just like her dear mother. Her mother was my favorite in-law and Carolyn is just like her." I don't honestly know

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Mary Asquith, direct.

all the little things she said because she was telling me about Mrs. Rice's mother and I wasn't really paying much attention. I knew we had to make a train to make our connection and I was simply wishing Mrs. Rice would hurry and come back. Mrs. Babcock said something about always going to Easter services with Nell— that was the first Mrs. Smith—and how much they had always been together and her voice was very, very low and going on in monotone and I suddenly became conscious that the woman had stopped and I didn't know what she said last and I thought she was talking about one sister-in-law so I told her I had met her other sister-in-law. I said, "She is such a gracious, charming old fashioned gentlewoman," and her voice simply snapped and she said, "Lena Bowen isn't gracious, she was a grasping, selfish old woman, she made trouble for everyone of the family and now she is trying to cheat the daughters, Nell's daughters, out of theirs and she is trying to break the uncle's will and you know she is." I said, "I haven't seen her since the death." She said. "You do know it—Carolyn told me." She said, "All Lena Bowen wants is to get Ned's money for herself. She has tried to get my nieces to contest the will." I told her that I didn't think Mrs. Bowen had anything to do with it. She said, "Yes, she has, I know her," and she said, "She got my husband to pay money into the estate so she could get her money," and she said, "One day I came home to find that woman here and sick as Ned was she was trying to make him change his will and leave her more money. But I put a stop to that,"-she said, "I got rid of that woman and I got Ned Babcock not to make another will and he told me if I would carry out

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Mary Asquith, direct.

his wishes he would never change it and I promised him. I know what Ned wanted, half of everything for Nellie's children, and I am to have money to take care of my sister as long as she lives and to provide for Katie, but not for Lena Bowen. She can't have anything." Now, at
10 some time while Mrs. Babcock was speaking, Mrs. Rice had come back into the room and without any pause or any change she turned right to her, the instant Mrs. Babcock saw her and she said, "You mustn't help her." She said, Lena Bowen is at the bottom of all this and I wouldn't want any litigation with Lena Bowen. I don't want to see her again and she said if you and Eleanor don't contest your uncle's will I will leave in my will one-half of my estate to you and Eleanor."
20 Mrs. Rice said, "Aunt, I talked that over with you. I told you all that father had said." And she said, "If you really mean that I will tell father and Eleanor and I feel sure they will be satisfied." She said, "You can't blame us the way we felt. Uncle Ned had always promised to take care of us and when he didn't we didn't see anything else to do but to contest." Mrs. Babcock said, "I don't want any litigation, you tell your father and Eleanor that I know Ned meant to take care of you and if you just leave me in
30 peace and let me have the rest of my life without law troubles I will see that you and Eleanor get half of the estate." And Mrs. Rice said, "Well, aunt, if that is a definite promise, I'm sure that will be satisfactory and we will just let matters drop." And Mrs. Babcock said, "That's a bargain, then, but you can't convince me that Lena Bowen didn't stir this up." Mrs. Rice told her that Mrs. Bowen had never told them until a few years before that Uncle Ned meant to leave

Mary Asquith, direct.

them anything but that her father had told her that he did in payment of past obligations and Mrs. Babcock said that the girls were going to get it and that it would not be just the few thousand that Lena Bowen kept them out of in the grandmother's estate. She said, "You and Eleanor will never have to work again after I go." Mrs. Rice, I could see she was very much annoyed at my hearing any of this and she was trying to quiet Mrs. Babcock. I told her that everything was all right and I interrupted them and told her we were missing our train that we had to get back to Westport because we had a strange woman with the children, so we started downstairs and Mrs. Rice reminded her aunt that Mrs. Babcock had not shown her a picture of which she had spoken and I think Mrs. Babcock said she had given it to her and Mrs. Rice said, "No, that's not the one. There is a picture of mother that you said no one else had" and Mrs. Babcock said, "It will only take a minute, it is right here in this room." We went into the front room downstairs, at least Mrs. Babcock and Mrs. Rice went in and I stood just inside the door and Mrs. Babcock got the picture from some place at the end of the room—she got the pictures. I don't know what she took them out of—

Q Is there anything more at the interview that pertains to this question of the will? A When we left she asked Mrs. Rice to return and wanted to see the children and the last thing she said was, "Remember now, no contest and I will see that you and Eleanor get half."

Q Is that the only time you saw Mrs. Babcock? A That is the only time.

Mary Asquith, cross.

Cross examination by Mr. Carey.

Q Where do you live now? A Eltingville, Staten Island.

Q Are you in business now? A Yes.

10 Q What? A A play-broker and professional—

Q You are a professional, do you sell plays or write them? A Sell them.

Q Write them, too, sometimes? A I have read too much to write very well.

Q You can't write very well? A No.

Q No? But you have done quite some of that? A No, not in late years.

Q And you write little parodies and short sketches? A No.

20 Q And fairy tales? A No, I don't; the only writing I do now is a play that is under consideration and needs a little work done on it.

Q You are working on plays now? A Not just now.

Q And you have written fiction for a long time, haven't you? A No, I haven't the fiction touch.

Q You don't have that touch? A No.

30 Q But you deal with plays and you deal with fiction and try to place plays? A Plays, not fiction.

Q Well, all plays are fiction, aren't they? A Not all, no.

Q A little idea is worked out into a pretty picture, is that it? A Yes.

Q You do a lot of dictating, don't you? A No.

Q You don't dictate? A No.

40 Q Why did you keep your eye on the stenographer and hesitate every few words, to see he

Mary Asquith, cross.

kept up to you? A I looked that way and I saw one time that he was looking at me, so I didn't know whether I was speaking faster than he could write.

Q That is why you broke your sentences right along, isn't it? A No, I had to think of a few things. I had to get the sequence of events. 10

Q You had to get the sequence of events in your mind, is that right? A Certainly. If you are reviewing a conversation—if it was a conversation that took place five or six years ago—

Q Yes, it would be so especially a conversation that took place five or six years ago, is that right? A It is rather a well known fact that I have a photographic brain and almost a phonographic memory.

Q You have a photographic memory and a what brain? A A photographic brain. 20

Q You are recognized for that in your business? A Yes. I think I am.

Q That is why you had to think to get a picture? A No, I don't think so.

Q To get a picture out in the jerky sentences that you did? A No.

Q Why do you talk in that jerky fashion? A I believe I am known for speaking slowly.

Q You think pretty fast, as a rule? A No. 30

Q Did you ever write a statement of all this you have told here for anybody? A Yes, sir.

Q Have you that statement here? A No.

Q Where is it? A I imagine the lawyers have it.

Q Which ones? A Mrs. Rice's lawyer.

Q You know who he is, don't you, or who he was? A I don't know whether Mr. Bragoff has it or whether Mr. Rubien has it or Judge David. 40

Mary Asquith, cross.

Q When did you write out this statement?

A After Mrs. Babcock's death.

Q How long after Mrs. Babcock's death did you write out this statement? A I wrote it out after I had discussed the matter about Mrs. Babcock breaking her word and I told Mrs. Rice.

By the Court.

Q The question is, how long after? A I am just trying to think of that, it may have been two weeks, it may have been a month.

Q Use your photographic brain now, and tell us? A That I am not sure of because there was quite a bit of talk and when Mrs. Rice and myself, when we found out that Mrs. Babcock had not kept her word—

Q When did you find out that Mrs. Babcock had not left anything to Mrs. Rice? A When the bequests were published in the newspaper.

Q Do you remember what that was? A Not the exact date.

Q Can you remember the month? A I am not very good on dates.

Q Your photographic memory don't go that far? A I am poor on dates.

Q Well, you were very good on a date in January, between January 14th and 16th, 1924? A Because I have very definite reasons for remembering.

Q Ah, you have a definite reason for remembering that? A Yes.

Q You wanted to remember that? A I had a definite reason.

Q Did you make a note of that? A No.

Q Didn't you, from that date of that visit in January, until Mrs. Babcock's death, discuss

Mary Asquith, cross.

this matter with Mrs. Rice? A Absolutely not one word.

Q Not a word? A No.

Q Never mentioned it to Mrs. Rice again? A No.

Q Never? A Not to anyone.

10

Q The day you left Elizabeth, when you made this alleged visit at Mrs. Babcock's until you heard of her death, you never said one word to her about it? A Not of that interview.

Q Not a single word? A Not a word.

Q You never referred to it? A No, I told you here.

Q Did you tell it to anyone else? A No, sir.

Q Not to a living soul? A No.

Q You were pledged to secrecy? A I was.

20

Q You were, were you? A Yes.

Q Who was it that pledged you to secrecy? A Mrs. Rice.

Q When? A When we left Mrs. Babcock's house.

Q She said, "You must never tell"? A Not then, Mrs. Rice was very very angry that I had heard anything of the family matters. I had made mention of Mrs. Bowen, I liked her and Mrs. Rice was very angry and she accused me of trying to pry into her business and asking Mrs. Babcock questions.

30

Q And you said you would never mention it again? A No, I didn't.

Q What did you say? A I told her I had not asked any questions. She said, "You must have said something." She said I had, that I was downstairs and I had asked her and then she said, "You asked her questions and started her off again after I had quieted her down." I told her I had not asked Mrs. Babcock any questions

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Mary Asquith, cross.

and she said, "You must have told her something," and I said, "I didn't," I only said, I had met Mrs. Bowen. She said, "Why did you say that?" I said, I didn't know they were not on good terms.

10 Q When did you tell her you would not mention it? A When we left the train.

Q What was said? A She said, "Don't mention it even to her or to anyone else."

Q And you never did? A I never did.

Q You never said a word to anybody? A No.

Q Who was the first person you mentioned it to after that? A Mrs. Rice.

Q Where? A In her home in Great Kills.

20 Q When A When we saw the newspaper account of the bequests.

Q You were living with her then? A I still am.

Q You are in business with her husband? A Not any more.

Q You were at that time? A Yes, sir.

Q Up to what time? A Not since 1924.

Q Well, this was in 1924? A When I went to Elizabeth, yes.

30 Q Well, after you went to her about this will, did she ask you to make a statement then? A No.

Q Who did? A I told Mrs. Rice at the time—

Q Who asked you? A I was never asked to make a statement. I volunteered to make a statement.

Q Oh, you volunteered this? Who to, her or her lawyer? A Mrs. Rice, first.

40 Q Then to whom? A Mrs. Rice or her lawyer.

Mary Asquith, cross.

Q Who was the lawyer you volunteered to make it to? A Mr. Rubien.

Q You know him? A Yes, sir.

Q When did you first meet him? A I first met him when I was handling the play department for the Century Play Company, he was counsel.

10

Q And he was counsel for Mrs. Rice, wasn't he? A Not that I know of.

Q Did you go to his office? A I went to his office after he said to have me come in and see him.

Q How often did you go to his office? A Not more than twice, at that time.

Q When was the first time you went? A I imagine it must have been in July.

20

Q July of what year? A This past year, 1929.

Q 1929? A Yes, oh, no, 1928.

Q 1928 in July you went there? A Yes.

Q What did you do in July, 1928? A Let me get this straight.

Q Yes, let's get it straight. Use your panoramic mind. A When we went to Great Kills I was taken down with a nervous breakdown, I was near dead for quite a while. I am trying to get these definitely and distinctly—

30

Q What time in 1928 did you go? A 1929.

Q What time in 1929? A July or June.

Q 1929? A Yes.

Q You don't remember what year you went to Rubien's office, do you? A Why, it was this past year. I am very confident, it must have been.

Q Well, when was it, last year or the year before? A It was this past year.

40

Mary Asquith, cross.

By the Court.

Q Six months ago? A Wait, just a moment, please. Yes, it was this last year.

Q Last year, are you now satisfied of that? A Yes, wait a moment.

10 Q Are you going to change your photographic mind again? A No, I am trying to tell the truth about it.

Q Well, you have had a minute and a half, can't you answer that question?

By the Court.

20 Q Don't you know whether it was six months ago or a year and a half ago? A No, I am under the impression that it must have been earlier than that when I first came to Mr. Rubien's.

Q When you went to Mr. Rubien's office, who went with you when you went? A I went alone that time.

Q Who asked you to go? A I told Mrs. Rice that I would go and tell Mr. Rubien what I knew.

Q Did he write what you said then? A No, not then.

30 Q Did he ask you to write it down? A I think he did, yes.

Q Did he? A Yes.

Q And did you write it down? A Yes, sir.

Q Did you have it typewritten? A Yes, it was typewritten.

Q Who typewrote it out? A I did.

Q Were you a stenographer, too? A I am not an expert stenographer.

40 Q But you are a typewriter? A I can type—I can't dictate.

Mary Asquith, cross.

Q You can't dictate but you can type? A I can sit down at the machine.

Q What machine did you write this statement on? A I can work on an Underwood, Remington and an L. C. Smith.

Q What did you write this on? A An Underwood. 10

Q Where? A At home.

Q At Mrs. Rice's? A Yes.

Q Was Mrs. Rice there at the time? A No.

Q Where was Mrs. Rice while you were writing this statement? A Mrs. Rice had gone into town.

Q Just for the day? A No, Mrs. Rice is in town almost every day.

Q Did you write this in the daytime or night? 20
A The daytime.

Q How many days did it take you? A I would say possibly—I think I put in one morning thinking over the things and getting in all the things I thought was relevant.

Q How long did it take you to do it? A I did it in one morning. I couldn't say. I stayed straight at the machine, there were interruptions.

Q You just did it at odd times? A I was alone in the house that morning, and I did just as much as I could each time. 30

Q How long did it take you? A I told you it was finished in the morning, before noon.

Q You finished it on one morning? A Yes.

Q How many pages were there? A Only one.

Q Only one page? A Yes. You mean the entire statement? No, my own statement goes further than that—my own story was a page and three-quarters of single space. 40

Mary Asquith, cross.

Q You remember that very distinctly? A Yes.

Q Did you take that to the lawyer's office? A Yes, I did.

Q Why didn't you give it to Mrs. Rice? A I didn't.

10 Q Why didn't you? A Mr. Rubien had asked me to bring it into him.

Q And you took to his office? A I turned it into him.

Q Did you make a carbon copy of it? A No, I didn't.

Q Never did? A I keep carbons in a great many things.

Q Don't you in most everything? A No, I don't.

20 Q And you didn't in this? A No.

Q Did you sign it? A I didn't sign that statement because my typing has to be retyped.

Q And you didn't sign that? A No. I signed a statement.

Q Did he prepare another statement? A He had mine retyped—anything I do must be retyped because my typing is very bad.

Q This statement was simply to be used for the lawyer, wasn't it? A I don't know.

30 Q Not for court? A I don't know.

Q Did you see the statement that he retyped? A Oh, yes.

Q How many pages was that? A That was on legal cap. I am under the impression that there was—it ran over on the second page but I couldn't tell you how much.

Q Did you sign that? A Yes.

Q Did you swear to it? A That I don't remember.

40 Q You don't remember that? A No.

Mary Asquith, cross.

Q And that is only six months ago? A It is a custom in a lawyer's office to swear to a statement, isn't it?

Q Did you swear to it? A I don't know whether I did or not.

Q You don't swear to statements very often in lawyer's offices, do you? A Yes. 10

Q Have you? A Yes, I have.

Q When was the last time you swore to a statement in a lawyer's office? A I think it was a law suit with the Century Playing Company that was arbitrated by the Dramatists' Guild.

Q When was that, three years ago? A No, the conversation had been over three years previously.

Q When was it? A That was last spring. 20

Q How many times did you go to Mr. Rubien's office, do you know, before you signed the paper, whatever it was? A I didn't go to Mr. Rubien's office, I went there just once more. He told me he would have my statement retyped so it could be read.

Q Who was with you that time? A I was alone.

Q Did you tell Mrs. Rice you were going? A I went in for that purpose. 30

Q Did you tell Mrs. Rice you were going? A Certainly she knew I was going.

Q Did you ever see Mr. Rubien after that? A Yes.

Q Where? A In his office.

Q How many times have you been to his office? A I have been there on Century business, I couldn't tell you.

Q On this business? A On this business possibly three or four times since then. 40

Mary Asquith, cross.

Q What for? A Well, I have stopped in when Mrs. Rice has been going in. I haven't always talked with Mr. Rubien but I have been in his office.

10 Q About this case? A I said I had been in three or four times but not always talked with him.

Q When did you see this statement that you signed last? A When I signed it, I haven't seen it since.

Q You haven't seen that since you signed it? A No.

Mr. Carey: I would like you to produce that statement.

20 Mr. David: I don't think I have that statement but I will look.

Q Now, was the second statement changed any from your first statement? A Only that Mr. Rubien had left some of the little things where I said Mrs. Rice was having so many fainting spells and like that. My own statement was recalling some of the events that led up to it to my own mind.

30 Q Was your statement different from the statement you finally signed? A Yes, Mr. Rubien didn't state why I had gone into town. He didn't state why I remember very distinctly the particular ten days.

Q Now, let us go back a little. This day you went out to Mrs. Babcock's house, did you drive out in a car or did you go by train? A I went by train from New York.

40 Q What time did you leave New York? A I imagine it must have been after two because I had a luncheon engagement and I had a business

Mary Asquith, cross.

appointment at half-past one. I know it was very close to half-past three when I got to Elizabeth and I hurried up the street.

Q Well now, I show you a paper which was handed to me by counsel and ask you if that is the statement that you prepared for Lawyer Rubien? A Yes.

10

Q Is that the one you prepared? A Yes.

Q That is the original you prepared? A Yes.

Mr. Carey, I ask that this be marked for identification.

Said document, consisting of two sheets of single spaced typewriting, headed "Statement of Mary Asquith," is marked Exhibit D. 1 for identification.

20

Mr. Carey: I ask you now to produce the statement she says she signed.

Mr. David: This is the only other statement I have.

Mr. Carey: I ask for the corrected statement that was prepared when she went in and swore to it.

Mr. David: I have no other statement than the one I have shown you and a copy of the affidavit.

30

Mr. Carey: I want the one and three-quarters pages that she spoke of.

A I said it went out on the second page. I never signed but one statement there.

Mr. Carey: I want the one that the witness stated was a correction of the statement which she filed and which she has just identified.

40

Mary Asquith, cross.

Mr. David: I am answering you that I have produced the only statement I have.

Mr. Carey: Is that the only statement Mr. Rubien has?

Mr. David: That I can't answer. That is the only one I have.

10

Q How many days, if you remember, elapsed between the time you left this statement with Mr. Rubien and you signed the corrected statements. A That I don't remember.

Q Was it a week? A I couldn't tell you the period of time.

Q Was it a month? A I don't recall.

Q Was it three months? A I don't recall.

Q Was it four months? A I told you that I have no recollection of the time when I was asked to come in and sign.

20

Q You said you went there in July, about six months ago? A It was right after Mrs. Babcock's death and she has been dead over—

Q When was it you took this statement to Mr. Rubien's office Was it about six months ago? Didn't you say that? A I had to take it in.

30

Q But wasn't your second visit to sign the corrected statement only a day or two after the time you left the statement? A It wasn't a day or two, no.

Q How long a time elapsed, if you can remember? A No, I don't remember. I came into town very little because I am not able any longer to stand the trip in anyway, and I go in as little as I can, only by appointment and only when I would be sent for. I do my work at home.

40

Q Is there any record you have anywhere that will enable you to tell us what date it was

Mary Asquith, cross.

that you prepared that statement? A No, it was the summer preceding this, in a house in Great Kills, I remember where I wrote it.

Q You remember that? A Yes.

Q You made no memorandum of that at all?

A No, I didn't.

Q Did you date the statement or don't you remember? A I don't think I did.

10

Q Do you remember whether you did or not?

A No, I don't remember I did.

Q Were you in his office again in October of this last year? A Yes, sir.

Q That time you made the affidavit that was used in this case, you remember that distinctly, don't you? A Yes.

Q That was not the same affidavit? A No.

Q The other affidavit was a different one?

20

A It wasn't an affidavit. It was just putting into clean type. I know I asked Mr. Rubien at the time if he always had to do that. My own statement could be read, although it was badly typed.

Q But this paper you first swore to, that was not the paper you signed in October? A No.

Q That is an entirely different paper? A Yes.

Q Now, the day you went to Elizabeth, when you went to the door, who let you in the house?

30

A Mrs. Rice and Mrs. Babcock were in the hall and one of them opened the door.

Q Were they there ahead of you? A Mrs. Rice had been there for lunch.

Q She had been there for lunch? A Yes.

Q Mrs. Rice? A Yes, sir.

Q Did you see a maid there? A I didn't see anyone there.

Q You saw no one else in that house? A No.

40

Mary Asquith, cross.

Q You didn't see any evidence of any maid at all? A No.

Q You went to that front room to be entertained by her? A I expected to leave in five minutes.

Q Did Mrs. Babcock have a hat on? A No.

10 Q Did Mrs. Rice? A No, she went up to get it.

Q Did Mrs. Babcock wear glasses at the time?

A I didn't happen to see any glasses.

Q Did you notice? A No, I didn't notice.

Q Your photographic mind didn't see that?

A The reason is, I am very near sighted and even over here I cannot distinguish your face.

Q You just see a glare where I am, I suppose. A I couldn't distinguish the features.

20 I could distinguish them when you came here.

Q Well, if you couldn't distinguish me, how do you know it is me? A I could tell by your voice.

Q So, on account of your near-sightedness you were not able to observe whether she wore glasses or not? A I didn't notice any glasses. If the light would have caught them I would have.

Q How was her hair? A It seemed to have been combed back and coiled back here.

30 Q It wasn't short hair? A No, it wasn't.

Q You could see that? A Well, I had a very clear view of Mrs. Babcock as she went up the stairs ahead of me.

Q How far ahead of you? A Two or three steps, because I walked very slowly at that time, I had been injured, my spine had been injured and for seven years I couldn't get around.

Q You walked slowly? A Yes.

40 Q You didn't move very fast? A For two years I couldn't walk at all.

Mary Asquith, cross.

Q What was the color of her eyes? A I don't know the color of her eyes, I don't believe, I didn't get close enough to see the color of her eyes.

Q You never got close enough to see the color of her eyes? A No, only down stairs in the hall. 10

Q You shook hands with her? A Yes, sir.

Q You shook hands with her, goodbye? A No, I didn't shake hands with her when I left.

Q You didn't shake hands with her then? A No.

Q Did she kiss Mrs. Rice when she left? A Yes.

Q You saw that? A Yes.

Q You did see that? A Yes, I did.

Q You got close enough for that? A Right 20 opposite her.

Q How many times did she kiss her? A I couldn't say.

Q You didn't notice? A No.

Q But you did notice she kissed her? A Oh, yes.

Q There's no question about that? A Yes, she kissed her upstairs.

Q Upstairs or in the hall? A Upstairs too, when she was trying to quiet her down. 30

Q But not at the door? A She kissed her at the time.

Q She kissed her again at the door? A Yes.

Q You saw that? A Yes.

Q What did she say to you as you went out of the door? A I am under the impression she said, "I hope to see you again," or "Come again."

Q But you don't remember? A I paid no attention, I wanted to get away. 40

Mary Asquith, cross.

Q You were in a hurry to get away? A It was rather a very unpleasant scene.

Q Did she say anything about the size of her estate? A Not to my knowledge.

Q You were there all the time? A I don't remember any sum of money mentioned.

10 Q No sum of money of any sort was mentioned? A I don't remember it.

Q She told you how much estate Mr. Babcock had left? A No.

Q She didn't tell you that either? A No.

Q She didn't talk about that at all? A No.

Q Did Mrs. Rice at any time while she was there say— A What?

Q I intend to contest your husband's will? A Oh, yes.

20 Q Mrs. Rice said that? A She said to Mrs. Babcock, "You can't blame us for feeling as we do. There didn't seem to be anything else to do but contest the will."

Q To Mrs. Babcock? A Yes, sir.

Q Did Mrs. Babcock get mad? A She was already very angry.

Q Did she get mad then? A No, she couldn't have got any angrier than she was.

30 Q She couldn't have got any angrier than she was then? A She was very angry.

Q Couldn't have gotten any worse? A No.

Q The entire time you were there, was she mad? A Not the entire time.

Q Not all the time? A She wasn't angry until I mentioned Mrs. Bowen; not the entire time.

Q Was she angry when you left? A No, she was very pleasant.

40 Q Very quiet and peaceful and sweet, eh? A She said she was satisfied.

Mary Asquith, cross.

Q And she wasn't mad then? A No.

Q Did she strike you as being a very strong-minded woman? A Well, when I first went in she didn't; I didn't pay particular attention to the woman till she snapped out about Mrs. Bowen, and the change in her voice snapping, it was like throwing so much cold water on my face; because I know I sat up with a jerk, and I watched her very closely after that, because I thought she was going to try to trick me into something. 10

Q What did you say, you thought she was going to try to trick you into something? A I thought she was trying to make me say I knew something of the will contest, or some of the plans. I had heard the thing mentioned in the house, and knew there was some little talk of contesting it; I didn't know the plans; I didn't know very much, and I didn't want Mrs. Babcock to ask me or try to make me make any statement. 20

Q You had heard talk about it in the home? A I knew what Mrs. Rice was going over for.

Q She was going over to see what she could do with Mrs. Babcock, wasn't she? A To see if Aunt Julia had any knowledge of past conditions. Mrs. Rice didn't want a contest. 30

Q Then you were not much surprised that Mrs. Babcock began to talk excitedly about her affairs, were you? A I don't know whether she knew I had any idea—

Q You were trying to deceive her? A No.

Q Were you there as a witness? A A witness?

Q Yes. A No, I went there to get Mrs. Rice.

Q Simply to get Mrs. Rice? A Yes. 40

Mary Asquith, cross.

Q You knew what she was going for? A Yes, sir.

Q You knew all the time what it was for? A Yes.

Q You knew she was going there to make some deal of some sort with Mrs. Babcock? A Yes.

Q You knew that beforehand? A I knew that beforehand.

Q And you knew why you were going over there with her? A No, I didn't have any intention of going until Mrs. Rice got through the gate and got half-way down the stairs.

Q It was just an accident? A No, I talked with Mrs. Rice at the Pennsylvania Railroad Station, and I tried to get her to go home. I offered to cancel my appointment and go home with her. She said, "No," it had been put off so long, and "I got this far and I'm going."

Q And you were going, too? A No.

Q Didn't you know you were going there with her? A No; I had no idea of going to Elizabeth.

Q Then why did you go? A Because, after Mrs. Rice got through the gate, as she went down the stairs, she looked as if she was dizzy, and she stood at the railing, and she said, "You better come and get me; I'll wait till half-past three." I called down to her and I said, "I'll come for you."

Q Had you talked over the possibility of a contest with her? A To Mrs. Rice? No.

Q The night before? A Mrs. Rice never discussed that with me at all.

Q She hadn't discussed it at any time? A No.

Q It hadn't been discussed? A No.

Mary Asquith, cross.

Q Had she said anything to you about anything? A She had told me about the conference with her father, and that they might contest her uncle's will.

Q She told you that herself? A Yes, she told me that herself.

Q When? A Up in Westport. 10

Q How long did you live with her after that? A I lived with Mrs. Rice since about the fall of 1919, I think.

Q Until when? A I am still living with her.

Q Until this very hour? A There was an interval of from 1924, in August—

Q Do you pay board there? A I stand my share of the expenses; I stand a percentage of all the expenses.

Q You stand a percentage of all expenses in that establishment? A Yes, sir. 20

Q And the establishment is run by Mr. Rice, is it? A Mr. and Mrs. Rice.

Q But you eat with them every night? A Oh, yes.

Q And every morning? A Well, I won't say about mornings, because Mr. Rice goes away before I do, and very often Mrs. Rice will be leaving the house when I get up.

Q From the time you made this affidavit in Mr. Rubien's office up until the time you made this affidavit to be used in the case, did you discuss the case with Mrs. Rice? A After I had made my first statement, yes, after I had written out the statement. 30

Q Did you discuss it with her then? A Yes, sir.

Q Regularly? A Not regularly.

Q How often? A Very little. They knew I had told all I knew, and there was no use talking it over with me. 40

Mary Asquith, cross.

Q You did tell all you knew? A Yes.

Q Now, don't you know it had been a constant subject of conversation between you two?

A No.

10 Q Preliminary to this case? A I beg your pardon. I haven't time to sit and go over a lot of gossip; I read two or three plays a day, and have motion picture work, two books a day.

Q You read the scenarios? A No, I read the books; find out whether they have—

Q By the way, were you ever an actress yourself? A For 26 years I was on—

Q You were on the stage in— A Active service.

Q Vaudeville? A No, not vaudeville.

Q Oh, regular stuff? A Legitimate.

20 Q Oh, you were on the legitimate stage, a regular actress? A Yes, I was an actress.

Q What was the last play you were in? A "A Man's World," New York City.

Q You were in a stock company? A Yes.

Q And you developed your memory wonderfully in that experience? A Yes.

30 Q For instance, you had to commit to memory several plays in a month, didn't you? A I played stock work, and we have played two plays a week and two performances a day.

Q You would have to commit them to memory, wouldn't you? A Studying never meant anything to me, even in school.

Q And that helped to give you your photographic brain. Did you make any memorandum of the date in January, 1924, when you went to Mrs. Babcock's? A I made no memorandum, no; I can place it within ten days.

40 Q Tell us exactly how you can place it there, on or about the 15th day of January, the date

Mary Asquith, cross.

you swore to? A In January, 1924, I was arranging an amateur performance for the church in Westport, a performance to be given on Washington's birthday.

Q The 22nd of February? A The 22nd of February. Early in December we had talked of having the Junior League of the Sunday School give the performance, and immediately after New Year's, I had gone into New York City, the first trip I had made alone in three years. This whole thing was an effort to see if I would be strong enough to stand daily work. On the 8th of January, the church decided that on account of the children's school, they couldn't have the children in a play; and it was decided we should give the performance with adults. From then until the 12th I had gone every place; I had talked to people who were available for the plays; I had found out the material I had to work with. Then, right after that, I began going into town. Now, between the 12th and the 25th, I made four or five trips into New York City from Westport. I went in and got plays; I looked at scenery—well, a lot of things that you have to do if you are putting on an amateur performance.

Q That was one of the trips that brought you to Elizabeth? A Yes, I was going in for a specific purpose; I was going to see a producer about using a one-act play; and Mrs. Rice had made arrangements for luncheon with her aunt. We were to go to New York City together. I had a luncheon engagement myself.

Q Oh, you had one, too? A Yes.

Q Where? A In New York City.

Q With whom? A I can't recall.

Q You can't remember? A No.

Mary Asquith, cross.

Q Why? A I can't recall.

Q You can't remember that? A It was my custom to go into my office; I had my own office at that time, and Mr. Rice was running it during my illness.

10 Q Whom did you have your lunch with? A I don't recall; it was some client that came to talk to me personally.

Q Where was the luncheon? A I don't know; I think that we went to the Beaux Arts Grill.

Q But you don't know. Do you know? A I always went down there; it was my custom to go down there with a client, whom either I took to lunch, or he took me to lunch.

20 Q Whom did you have the luncheon date with that day? A I don't recall.

Q Will you say you had luncheon at that place that day? A I don't recall.

Q You don't recall that? A I don't recall; it couldn't have been any of the old clients, or I would remember.

Q You remember absolutely, don't you, a conversation that ran along for about an hour in Mrs. Babcock's; you apparently remember that?

30 A Because it was the only quarrel I ever had with Mrs. Rice, over my having heard that.

Q You remember that conversation practically word for word, but you can't remember who you went to lunch with that day? A No, because I go to lunch with a great many people, some of them strangers.

Q Going to lunch all the time with people? A Yes.

Q What time did you get into town that day?

40 A We left Westport on the train that goes

Mary Asquith, cross.

around nine o'clock, I don't know just what time.

Q What time did you leave to go back? A Between 5 and 5:10.

Q What time did you get to Westport? A We missed the five o'clock train; we got into Westport about half-past seven. I know we were an hour late, for the woman who stayed with the children, and she was quite fussed up about it. 10

Q I direct your attention to one thing in "D 1 for identification," it is the word "meaning" there, underscored. A Yes.

Q Did you underscore that? A Yes.

Q Did you say on the way home, after you left Mrs. Rice, speaking about Aunt Julia, "I'll say she dislikes her—" A That was— 20

Q Wait a minute. "I remember telling her," quoting your own words, "I don't know what the dear old lady has, except temper, but whether it is five cents or five million, it's a safe gamble that you and Eleanor are going to have half of it wished on you." Did you make that statement to her? A I made that statement as we were going down to the train in Elizabeth.

Q Well, you made it? A Yes.

Q So that, after you had the quarrel about hearing things, she was very angry, wasn't she? A That quarrel kept up all the way to Westport, because Mrs. Rice said, "Don't joke about it, Mary." 30

Q Is the name "Asquith" your theatrical name, or your real name? A Mary Virginia Asquith Brown was the name under which I was born. It is a part of that.

Q Where were you born? A I was born in Cincinnati, Ohio. 40

Mary Asquith, cross.

Q Were you ever married? A Yes.

Q Where? A I was married in a small town up in Wisconsin near La Crosse.

Q When? A About '95.

Q What month and what date? A November of '95.

10 Q What day? A The 22nd.

Q Date? A The 22nd of November.

Q And what is your name? A I have never used my husband's name.

Q May we have it? A My name today is Mary Asquith.

Q That is your husband's name? A No, I divorced him.

20 Q What was the name of your first husband?
A Richardson.

Q What is his first name? A Albert.

Q Where did you live with him? A All over the country.

Q Were you divorced from him? A I divorced him, yes.

Q When? A In '91.

Q What year? A I mean 1901.

Q What month; do you remember? A No, I don't.

30 Q Don't you even remember that? A No.

Q Your photographic brain isn't working, is it? A I don't remember.

Q Then, did you marry again? A I married again.

Q And what was the name of the next husband? A Jacobs.

Q Where did you marry him? A Let's see—it was in Connecticut, I think; it was in a town up in Connecticut, I think.

40 Q What town? A I don't know.

Mary Asquith, cross.

Q Don't you know the name of the town?

A No, we were on one night stands, and I don't recall it.

Q Who married you? A A Justice of the Peace.

Q Do you remember what month that was?

A That was in February. 10

Q What year? A It must have been 1902.

Q Was it? A It must have been.

Q Well, was it? A Absolutely; it had to be; I couldn't have been married before that.

Q The first name was what? A Joseph.

Q Is he living yet? A No.

Q When did he die? A I don't know; we separated.

Q When did you separate from him? A 20
1910.

Q Did you get a divorce from him? A No, I didn't.

Q Did he get a divorce from you? A No.

Q Did you get married again after that? A
No.

Q He separated from you when? A In 1910.

Q You don't know where he is now? A I was told here recently he was dead.

Q You don't mean that—you hadn't learned 30
that until recently? A No.

Q You don't know? A I haven't any idea.

Q Do you know where he lived when you last heard his whereabouts? A The last time I heard from him was at Chicago.

Q What was his full name? A Joseph.

Q And his last name? A Jacobs.

Q You have never used that name? A No.

Q You never used either of your husband's names? A None but my own. 40

Mary Asquith, direct.

Q You never used your own name in full?

A I always used Mary Asquith.

Q You never used your name "Brown"?

A No.

Q That was your father's and mother's name?

A I never used my father's name after I was 15.

10

Q Where did your father and mother live; New York? A No, they lived in Chicago for a great many years; my father was a theatrical manager.

Q Your family have all been theatrical? A Three generations of them.

Q Your whole life was spent on theatrical things? A Always.

Q Drama, plays, fairy tales, and things like that? A I won't say fairy tales.

20

Further cross examination by Mr. Emerson.

Q What was the type of the house occupied by Mrs. Babcock in Elizabeth? A It's a drab-brown two and a half story house, with a mansard roof, and a porch all the way across the front, there's a tree as you go off from the street, and you turn in to go up the path, there's a tree at the right.

30

Q What is the house constructed of? A It's a frame.

Q And is there a gate or fence around the house? A There is no fence; there is no railing on the porch; it is one step up, and it's a house with long French windows; there are two windows on the porch; the door is over at the extreme side.

Q What did you mean when you formerly testified, that after going through the gate— A I didn't say a gate; I couldn't have said "gate."

40

Mary Asquith, cross.

There is no gate at that house; I couldn't have said it.

Q Was Mrs. Babcock a tall woman? A No; she wasn't as tall as I am; I would say she was possibly 5 foot 3 or 3½; I don't think she was over that.

Q Was she heavy? A Heavy? 10

Q Stout? A No. Her body was very spare, the spareness of age.

Q Would you say that one of those three women is Mrs. Babcock? (Showing witness photograph.) A Well, it is quite possible that the one in the middle might be Mrs. Babcock; it is a little different to what she looked when I saw her.

Q You believe the woman in the middle is Mrs. Babcock? A No, I don't. Just a minute. No, that face is too soft for Mrs. Babcock. Mrs. Babcock is more likely to be the woman here (indicating). 20

Q Do you refer to the left? A To the right; the woman on the left is not Mrs. Babcock. No, that face in the middle is too soft for Mrs. Babcock; Mrs. Babcock didn't look as stout as that when I saw her.

Q Which one of those? A This one here is the closest, to my recollection (indicating). 30

Q Would you say that is Mrs. Babcock? A No, because I know how many stunts a camera can do.

By the Court.

Q The one on the right is the nearest, to your recollection? A Yes. Wait a minute. Yes, it is; it is stouter than Mrs. Babcock appeared; a dark dress would make her look thinner. 40

Mary Asquith, cross.

Mr. Emerson: I offer that in evidence.

Said snapshot is marked "Exhibit D. 2."

Q On the day of the visit to Mrs. Babcock at her home in Elizabeth, was there anyone else in the home other than Mrs. Rice and Mrs. Babcock, anyone else there? A I don't know who else was in the home; I haven't any idea.

Q You don't know? A No.

Q Did you see anyone else? A I didn't see anyone except Mrs. Babcock and Mrs. Rice. I was very disappointed, too.

Q Did you notice anything about the furniture or layout of the interior of the house? A There is a room to the right as you go in, which afterwards—we stopped in for a moment.

Q Is there anything else? A There's a room to the right as you go in from the street door, a room we went into afterwards; that is the room that opens on the porch with the French windows—

Q Was that a dining room or a living room? A No, it was a sort of a reception room. The room didn't give the impression of being lived in; it was a sort of stuffy; it was the sort of room that people don't live in every day and all day.

Q What is the room to the left? A There isn't any room to the left; the stairs went up on the left.

Q The entrance of the house was on the side of the house? A No; the entrance was at the extreme side.

By the Court.

Q The extreme left-hand side? A The left-hand side as you go up from the street facing the house.

Mary Asquith, cross.

Q Could you see from where you were downstairs, any of the other rooms or the layout of the third floor? A No, I couldn't.

Q Weren't there sufficiently large openings for you to see the other rooms? A No; my recollection is, that there was a solid wall in that front room; there may have been a door at the end of that sort of square hall, or slightly oblong. 10

Further cross examination by Mr. Carey.

Q You fixed that date of your visit today very definitely as about the 14th or 16th of January? A No, from the 14th to the 25th.

Q Of January? A Yes. Mrs. Rice didn't go in with me the first few trips I made. 20

Q In the statement you made sometime or other, this statement you prepared a number of months ago for Mr. Rubien, it starts off reading this way: "During the early part of 1924, sometime between January 11th and Washington's Birthday—" A I couldn't say.

Q "which is the nearest I can come to a date." A I couldn't say.

Q "Carolyn Biddle Rice and I came into town from Westport, Connecticut. Mrs. Rice was on her way to Elizabeth to lunch with her aunt, Julia Babcock." A I couldn't say. 30

Q How can you fix that date now from the 14th to the 18th or 20th or 25th of January, when you couldn't come any nearer than the 22nd of February when you made this statement for Lawyer Rubien?

Mr. David: I object to that as not a statement of the facts. Counsel has asked his question so that it would seem that she 40

Offer of Depositions.

couldn't get any nearer than the 22nd of February.

The Court: Objection sustained.

Said statement is marked "Exhibit C. 1."

Recess until 2 o'clock.

10

 AFTER RECESS

Mr. Carey: One witness was produced by the other side whose testimony was taken *de bene esse*. He was about to leave for South America; but he didn't go to South America, and they have brought him down here. His examination was taken before Mr. WolfsKeil. It embraces about 70 pages of typewriting. I imagine his examination to be repeated before the Court would be practically a repetition of what took place in Mr. WolfsKeil's office, and it would take about an hour and a half to two hours. We want the testimony taken *de bene esse* to go in.

20

(There is no objection by counsel.)

Mr. David: I offer in evidence the deposition *de bene esse* now on file of the witness Glenn M. Pike.

30

Said depositions are marked "Exhibit C. 2."

Mr. David: I offer in evidence this statement.

Mr. Carey: It ought to be attached.

The Court: This is a carbon copy and is not signed. If you want to offer it in evidence you may do so.

40

Carolyn B. Rice, direct.

Mr. Carey: Yes, I will want that to go in evidence, also.

Mr. David: I offer it in evidence.

Said statement, being that of Glenn M. Pike, is marked "Exhibit C. 3."

CAROLYN B. RICE, one of the complainants in this cause, being duly sworn on behalf of the complainants, testifies as follows: 10

Direct examination by Mr. David.

Q Mrs. Rice, you are one of the complainants in this cause? A Yes.

Q Where do you live? A Eltonville, Staten Island.

Q How long have you lived there? A I 20
have lived there four months—

Q Where did you live prior to that time?
A In Great Hills, Staten Island.

Q How long have you lived there? A Three
years.

Q Prior to that time, where did you live?
A In New York.

Q And prior to that time where did you live?
A In Westport, Connecticut. 30

Q You were living in Westport, Connecticut, during the latter part of 1923 and the early part of 1924? A Yes, I was.

Q Who comprised your household while you were living in Westport? A My husband, myself, two children and Miss Asquith.

Q You refer to Miss Mary Asquith, the last witness? A Yes.

Q How long did Miss Asquith live with you at Westport? A One year. 40

Carolyn B. Rice, direct.

Q Has she lived with you ever since? A With the exception of about a year.

Q Early in the year 1924, were you at the home of Julia B. Babcock at the City of Elizabeth?

10 Mr. Carey: I object to that. This witness is incompetent in this suit to testify to any relations in connection with the deceased under Section 4.

The Court: The objection is overruled.

Q (Stenographer repeats the question.) A Yes.

Q And who was Julia B. Babcock? A My aunt.

20 Q And where was that home in the City of Elizabeth? A On West Jersey street.

Q Will you fix the time as nearly as you can early in the year 1924 that you were at her home? A Yes, it was the latter part of January.

Q Do you recall what time of the day you got there? A Yes.

Q What time was it? A It was between half-past twelve and a quarter of one.

30 Q How long did you stay there?

Mr. Carey: That is objected to on the same grounds. By indirection they can't prove that under Section 4 of the Evidence Act.

The Court: Objection overruled.

A I stayed there until a little after four o'clock, possibly four.

Q While you were there was anyone else there? A Miss Asquith came to get me.

40

Carolyn B. Rice, direct.

Q What time in the day did she arrive? A It was very close to half-past three.

Q And how long was she there? A I should say from a half hour to, perhaps, forty minutes; it might not have been quite so long; it might have been a few minutes more.

Q Where did you first see her after she got to the home that day—Miss Asquith? A I saw her from one of the long French windows looking out towards the front. 10

Q And when she came in the house, where were you? A I was standing by one of those windows or near it.

Q Standing by the window? A Yes.

Q After she came in where did she go? A She went upstairs with Mrs. Babcock and myself. 20

Q Was there any conversation had between you, Miss Asquith and Mrs. Babcock while Miss Asquith was there?

Mr. Carey: I object to that, even if it is preliminary.

The Court: Objection sustained.

Q I show you a picture, marked "D. 2 for identification," and ask you if Mrs. Babcock is on that picture? A Yes, I should say that that was Aunt Julie in white. 30

Q With reference to the position of the three persons on that picture, will you tell us which one is Mrs. Babcock? A It is the one on the right-hand side.

Mr. David: I offer that in evidence.

Said snapshot is marked "Exhibit C. 4." 40

Carolyn B. Rice, direct.

Q Prior to your visit to Mrs. Babcock in January, 1924, had you any conversation with your father with reference to a contest of the will of your uncle, Mr. Babcock? A Yes.

10 Mr. Carey: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Q (Stenographer repeats the question.) A Yes, I had had conversations with my father.

Q When and where did you have the first conversation with your father with reference to the contest concerning the will of your uncle, Mr. Edward B. Babcock? A In his office.

20 Q In whose office? A My father's office.

Q In your father's office? A Yes.

Q When was that? A That was the early part of October, 1923.

Q Why, Mrs. Rice, did you not see Mrs. Babcock between October, 1923, and January, 1924?

Mr. Emerson: I object to why she didn't see any person between certain times. It has no bearing on the issue.

30 The Court: The objection is overruled.

Q Why didn't you? A I had a sick child and all my own housework I was attending to myself, and I hadn't been well most all that fall; in fact, it had been a couple of years since I had been very well.

40 Q Prior to your visit in January, 1924, to Mrs. Babcock's house, did you have any conversation with your sister, Miss Eleanor Smith, with reference to the Babcock will?

Carolyn B. Rice, direct.

Mr. Emerson: I object to any testimony between Mrs. Rice and Miss Smith.

The Court: It hasn't been offered yet; the objection is overruled.

A Yes, I did.

Q A conversation with your sister? A Yes, 10
sir.

Q Did you have any conversation with her with reference to your visiting your Aunt Julia Babcock for the purpose of talking over a contest or settlement of the contest against the will of your uncle, Mr. Babcock?

Mr. Emerson: I object to any answer to this question, because it will indirectly tend to prove what she has no license to prove 20
under the Evidence Act. She is testifying to a transaction with the decedent.

The Court: The objection is overruled.

A Yes, sir, I did.

Q What was the conversation?

Mr. Carey: That is objected to as incompetent, irrelevant and immaterial, and cannot bind any of the parties in interest in 30
this case.

Also, it cannot involve any of the property in this case, and it is contrary to the statute.

The Court: I don't know of any statute to which it is contrary.

Mr. Carey: The 4th section of the Evidence Act.

The Court: How is the answer to that question to import into this case any testi- 40

Carolyn B. Rice, direct.

mony as to any transaction with the decedent?

Mr. Carey: I thought it included, also, a reference to a conversation with the decedent.

10 The Court: No, it includes a conversation between this witness and her sister.

Mr. Carey: Then it doesn't come within the scope of the provision, but it does come within the scope of my other objections.

The Court: How is it competent?

Mr. David: I think it is incumbent upon us, and proper for us, to prove that this witness was authorized to negotiate and make the arrangement that was made with reference to a settlement and no contest of the will.

20

The Court: I will overrule the objection.

Q What was the conversation you had with your sister in that regard? A My sister asked me if I wouldn't go out to see Aunt Julia, as she was busy more or less of the time, and any arrangement that I might have with her would be satisfactory to her, any arrangement I could have with Aunt Julia; any satisfactory arrangement would be satisfactory to my sister.

30

Q After your visit in January to your Aunt Julia, did you report to your sister the conversation you had with your Aunt Julia? A Yes, I told her.

Q You told her? A Yes.

Q What did she say with reference to it?

Mr. Carey: That is objected to on the ground that that is simply an effort to circumscribe the statute; an effort to get from

40

Carolyn B. Rice, direct.

this witness before this Court by indirection, the relation of alleged transactions with the deceaed, which are prohibited by the statute; and the fact that she recited them to somebody else is simply an indefinite, vague way of impressing them, whatever they might be, and we submit it is entirely improper. 10

The Court: I suppose, strictly, in the form the question was asked, it is objectionable. You may ask her if she reported to her sister that she did have a conversation with Mrs. Babcock.

Q Did you, after your visit to your Aunt Julia in January, 1924, report to your sister Eleanor that you had a conversation with Mrs. Babcock? A I told her that. 20

Q You told your sister? A Yes.

Q And did she, or did she not, agree to the arrangement that you had made?

Mr. Carey: I object to that.

The Court: The objection is sustained. You may ask her if she agreed to the arrangement which this witness told her she had made. 30

Q Did she, or not, agree to the arrangement which you said you and your Aunt Julia had made?

Mr. Carey: I object to it.

The Court: Objection overruled.

Q Did she? A Yes, sir, she did. 40

Carolyn B. Rice, direct.

The Court: The question is as to what she told her sister she had arranged.

Q What did you tell your sister you had arranged with your Aunt Julia? A I told my sister, that after talking with Aunt Julia and stating what had been said in my father's office, that Aunt Julia had agreed that if we wouldn't contest her husband's will and make no trouble for her in her old age, which she wanted to be peaceful, she would, in turn, leave us half of her estate.

Mr. Carey: I ask that that be struck out.

The Court: The motion is denied. It is in nowise evidential that that conversation took place between this witness and Mrs. Babcock.

Q Did you, following your talk with your Aunt Julia, did you institute any suit to set aside your Uncle Edward Babcock's will? A No.

Q And did you rely upon the arrangement you made with your Aunt Julia with reference to that contest?

Mr. Carey: That is objected to.

The Court: Objection sustained.

Mr. David: I have refrained, both in my opening and in the presentation of this case, from attempting to offer any evidence or any testimony which I understand and believe to be contrary to the statute with reference to this matter.

The Court: There is no reason why you should not make the offer.

Carolyn B. Rice, cross.

Q Mrs. Rice, what did you say to your Aunt Julia, in the presence of Miss Asquith, on the occasion of that visit to Elizabeth?

Mr. Emerson: Objected to on the ground that the question would be clearly—

The Court: The objection is sustained. 10

Q What was the entire conversation in the presence of Miss Asquith, between you, your Aunt Julia and Miss Asquith, on the occasion of your visit to your Aunt Julia early in January, 1924?

Mr. Emerson: Objected to.

The Court: Objection sustained.

Cross examination by Mr. Carey. 20

Q Prior to the date you say you visited a house on West Jersey street in Elizabeth, at noon or thereabouts of the day you have specified, when was the last time prior to that that you were ever at that house? A That I couldn't say; I was so young.

Q Had you seen that house in twenty years? A Well, I might have seen it.

Q Do you know whether you did or not? A I might have. 30

Q Had you been in that house in twenty years prior to that alleged visit in January, 1924? A No, I hadn't been in it.

Mr. Carey: Will you two ladies stand up, please?

(Two ladies in the rear of the room stand up.) 40

Carolyn B. Rice, cross.

Q Do you know those two ladies? A Well, I know Katie.

Q How long have you known Katie, since what date? A I first Katie, to my recollection, in the early part of October, 1924.

Q 1924? A Yes, sir.

10 Q And that was in October? A Yes.

Q As a matter of fact, you have only seen Katie once in your life? A No, I have seen Katie several times in my life since.

Q Since 1924? A Yes.

By the Court.

Q Did you mean the early part of October, 1924, or 1923? A No, I mean the early part of October, 1924.

20 Q Did you see Katie in October, 1924, or thereabouts, in the City of Elizabeth? A Yes.

Q And didn't you at that time ask her to let you see a woman in Elizabeth, and didn't she tell you that the woman in Elizabeth in question would not see you under any circumstances? A That was not Katie.

Q But somebody else did tell you? A Yes.

Q Who? A I believe her name was Margaret.

30 Q Margaret is her name? A Yes.

Q Is she in court here? A I wouldn't be sure that that was Margaret.

Q What date was that that whoever told you in Elizabeth that you couldn't see the person whom you wanted to see, and that the person whom you wanted to see refused to see you? A I don't know.

Q About when? A That was in March.

40 Q It was in March? A The latter part of March or the early part of April, 1928.

Carolyn B. Rice, cross.

Q In the year 1928? A Yes.

Q Now, how many times have you been in the building that you speak of on Jersey street, since January 1, 1924? A I wasn't in the building at all from January 1st; it was at the end of January that we went there.

Q Between January 1st of 1924 to this date, how many times have you been in that building? 10

A About four times.

Q How many? A Four to five times.

Q Since January, 1924? A Yes, sir.

Q When was the last time? A For Aunt Julia's funeral.

Q When was the time prior to that? A Before that?

Q Yes. A When I went, I couldn't see her.

Q And when was the time prior to that? A 20
The early part of October, 1924.

Q That was the time in October? A Yes.

Q And when was the time prior to that?

A Sometime in the spring of 1924.

Q When? A I don't just know.

Q You don't know when that was? A It might have been the early part of April, and it might have been the latter part of March.

Q The latter part of March or early April?

A Yes, sir. 30

Q When before that? A In January, between the 15th and toward the end.

Q By the way, you have been sending some presents to Katie, have you not? A Yes, sir.

Q When did you send your last present to Katie? A This last Christmas.

Q Christmas time? A Yes, sir.

Q And when before that? A I took her an Easter present.

Q Cash, wasn't it? A Not at Easter. 40

Carolyn B. Rice, re-direct.

Q Oh, Christmas was cash? A Christmas was a check.

Q Did you give any other presents, Christmas presents, by check, last Christmas? A Yes.

Q To whom? A My grocery boy, my
10 butcher boy, and also the bellman at the gate crossing.

Q As much as Katie got? A No, not quite as much as Katie got.

Q Didn't you give Katie a check at Christmas time, or offer her a check, and say "This is for you; I want you to stand by us in things that are happening"? A No, I don't believe I said any such thing.

Q You don't believe you did? A No.

Q Do you know? A I don't believe I did.
20

The Court: Didn't you leave a gap there? You asked her a question about having asked Katie or Margaret whether she could see someone and you didn't ask who that someone was. Don't you want to identify the person?

Q Was the person that I referred to Mrs. Babcock? A It was Aunt Julia.

Q Aunt Julia? A Yes, sir.
30

Q That is the same person we have been talking about all day, isn't it? A Yes, sir.

Re-direct examination by Mr. David.

Q How much was that check you sent Katie? A Ten dollars.

Q Did Margaret tell you why you couldn't see Aunt Julia at that time? A Yes, sir, she said she was too sick and too nervous.
40

Offer of Documentary Evidence.

Q I show you a letter, and ask you if you know in whose handwriting it is? A Well, I know, because I know the letter; if you showed me a separate letter, I might not recognize it.

Q Do you know in whose handwriting that letter is? A Yes, sir.

Q In whose handwriting? A Aunt Julia's. 10

Q Did you receive that letter? A Yes.

Mr. Carey: I object to any evidence of this character, either over the telephone, by mail or in any way, from this witness, under the fourth section of the statute.

The Court: I don't see that it is objectionable for her to testify that she received this letter.

Mr. David: I offer the letter in evidence. 20
It is a letter identified by the witness, under date of October 29, 1923, and the envelope accompanying it.

Said letter from Aunt Julia to "My dear Carolyn," and said envelope, are marked "Exhibit C. 5."

Mr. Meyer: I offer in evidence the death certificate of Edward B. Babcock.

(No objection.) 30

Said certificate of the record of death of Edward B. Babcock, dated January 20, 1930, made by the City Clerk of the City of Elizabeth, is marked "Exhibit D. 3."

Mr. Meyer: The application of Julia P. Babcock in the Surrogate's Office for the probate of the last will and testament of Edward B. Babcock, of Elizabeth, filed September 17, 1923, in Book Q of Applications, on page 527, and the will accompanying the 40

Offer of Documentary Evidence.

same on that same date, and the certificate of the Surrogate as to its being the last will and testament, and the certificate that no caveat was taken and no appeal taken in this matter and the order admitting it to probate.

Said document is marked "Exhibit D. 4."

10 Mr. Meyer: Then a Surrogate's order on the application for the rule to limit creditors.

Said Surrogate's order to limit creditors in the Estate of Julia P. Babcock, deceased, dated July 20, 1928, is marked "Exhibit D. 5."

Mr. Meyer: A copy of the Federal return of the Estate of Edward B. Babcock.

20 Said return for Federal State tax, is marked "Exhibit D. 6."

Mr. Meyer: And the return signed by Mrs. Babcock, the affidavit taken by me in the Estate of Edward B. Babcock, with the State of New Jersey.

Said return or report of proceedings in the matter of the appraisal of the Estate of Edward B. Babcock, is marked "Exhibit D. 7."

30 Mr. Meyer: The record of the death of Susan Wall Babcock, the child of these people, Edward B. Babcock and Julia P. Babcock.

Said certificate of the City Clerk of the City of Elizabeth, dated January 20, 1930, certifying the records of the death of Susan Wall Babcock, is marked "Exhibit D. 8."

40 Mr. Meyer: A deed from Ira P. Sutton and Eva Sutton, his wife, to Julia P. Babcock, dated March 22, 1907, and recorded in

Offer of Documentary Evidence.

Hunterdon County March 25, 1907, in Book 283 of Deeds on page 22.

Said deed is marked "Exhibit D. 9."

Mr. David: I object to its offer on the ground that it is incompetent and irrelevant.

The Court: It is not incompetent; it is recorded. 10

Mr. Meyer: Likewise a deed of John H. Cregar and Louisa J., his wife, to Julia P. Babcock, dated October 2, 1915, and recorded in Hunterdon County October 5, 1915, in Book 315 of Deeds for said County, page 527.

Said deed is marked "Exhibit D. 10."

Mr. Meyer: A deed from Frederic J. Faulks, unmarried, to Julia P. Babcock, bearing date October 7, 1904, and recorded in Union County October 8, 1904, in Book 439 of Deeds, page 195. 20

Said deed is marked "Exhibit D. 11."

Mr. Meyer: A deed from Julia P. Babcock, widow, to Jennie E. Shoe, made December 19, 1923, conveying the farm at Lebanon, and recorded in Hunterdon County in Book 352 of Deeds, page 246. It comprises the Lebanon farm. 30

Said deed is marked "Exhibit D. 12."

Mr. Meyer: I have the probated copy of the will of Julia P. Babcock.

Said document, being the letters testamentary issued to Clarence D Meyer, Executor of the Estate of Julia P. Babcock, dated July 10, 1928, is marked "Exhibit D. 13."

Mr. David: May I reserve the right to offer in evidence proof as to just what this estate consists of? 40

Offer of Documentary Evidence.

Mr. Meyer: I will do it now. I have a copy of the inventory; I have a copy of the return I made to the State of New Jersey. This is in Mr. Babcock's estate.

10 Mr. David: I make this offer simply for the purpose of making proof as to what the estate consists of, but not the value of the various stocks and bonds and the various securities that make up part of the estate.

The Court: Why?

Mr. David: I don't want to be bound by their valuation. I want to offer in evidence the list of the securities and properties of which this estate consists.

20 The Court: You may offer the inventory. That will not bind you as to the value if you have other evidence to show the values were otherwise. Has the Comptroller concluded the transfer tax proceedings?

Mr. Meyer: I filed my report and subsequently there was a contest, and it was set aside. The Government told me there was no tax.

30 Mr. Hanoach: The assessment has not been accomplished because of a construction as to what the residuary clause is.

The Court: Has the Comptroller made any appraisal?

Mr. Hanoach: No.

Mr. David: I offer this report.

Said document, being a report of proceedings to the Comptroller, filed September 26, 1928, in the Estate of Julia Pratt Babcock, is marked "Exhibit C. 6."

40 Mr. Hanoach: There has been an appraisal. It should appear on the record fol-

Offer of Documentary Evidence.

lowing out the probate of the will of Mrs. Babcock. The fact that an appeal was taken from the probate by the Surrogate, and the appeal was dismissed, and the appeal is now pending in the Prerogative Court still undetermined.

Mr. Carey: I would like a further admission, to save time, the fact that Mrs. Babcock left no issue her surviving, the only child she had having died in infancy; she left no child or grandchildren.

10

Mr. David: We make that admission.

Mr. Carey: We have a family tree.

Mr. David: May I reserve the right to make proof as to the value of this estate?

The Court: Yes. I think you might well adopt the values as appraised by the Comptroller.

20

Mr. David: I would accept such proof; I have not seen that.

Mr. Carey: I have here the family tree of the Estate of Julia Wall Babcock; it was used in the Orphans' Court and will be used, of course, in the Prerogative Court, which shows very plainly the family relationships of both Mr. and Mrs. Babcock, and those who, by any force of law would be interested in either estate in the event that there was no will of either; and in lieu of getting the proof of this before the Court, which might take some time, I ask if you will consent to this going before the Court. By consent, I offer this family tree in evidence.

30

Said family tree is marked "Exhibit D. 14."

Catherine Brady, direct.

CATHERINE BRADY, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Carey.

10 Q You are Catherine A. Brady? A Yes, sir.

Q Where do you live? A I am now at home with my mother.

Q Where? A 458 Ridgeway avenue, Elizabeth, New Jersey.

Q Did you know Mrs. Babcock? A Yes, sir.

Q How long did you know her? A Well, I entered her mother's service the first day of March, 1883.

Q You went into her employ at that time?

20 A In her employ? Her mother's employ, not her employ.

Q Did you know her from that time continuously, on? A Yes, sir.

Q How long did you continue in her employ? A I lived there until Mrs. Wall's death; then I moved to the homestead with Mr. and Mrs. Babcock. I remained there until their death.

Q Until Mr. Babcock's death? A Yes.

30 Q How long a period of time was that? A About 23 or 24 years; about half and half with both of them.

Q Was that right up until the time of Mr. Babcock's death? A Well, Mr. Babcock died about five or six years before Mrs. Babcock's death, so I was with them all the time.

Q You were living at the house when he died? A Yes, sir.

Q Mr. Babcock? A Yes, sir.

40 Q Did you live there continuously after that? A Yes.

Catherine Brady, direct.

Q How long? A Until October.

Q What year? A 1928, I think.

Q 1928? A Yes.

Q Were you there all the time? A Yes, sir.

Q Every day? A Well, most all the time, only when I would go out. 10

Q Did you go out once in a while? A Yes, quite a little.

Q What did you do at the house? A Well, I was general housekeeper.

Q Housekeeper? A Yes.

Q Do you remember in January, 1924, or thereabouts, whether or not you were acting as a housekeeper? A Yes, sir, I was at that time.

Q Who attended to the door, if anybody rang the bell? A Well, there was a waitress there; her name was Margaret Knorr Farrell. 20

Q Did she attend to the doorbell? A Yes, sir.

Q Did you ever attend to it? A Once in a while when she was not home.

Q Did you used to see Mrs. Babcock every day? A Yes.

Q Who attended to the making of her beds and things like that? A The other girl did. 30

Q Now, up to the 1st of January, 1924, or, say, up to the time of Mr. Babcock's death, did you ever see at that house Miss Smith? A No, sir.

Q Did you see at that house up to that time Mrs. Rice? A No, sir.

Q Did you ever see either one of them there? A No, sir.

Q In all the twenty years or more that you were around that neighborhood? A No, sir. 40

Catherine Brady, direct.

Q Did you ever hear of their being there during that time? A No, sir, not that time.

Q Now, did you ever see either one of them after that? A Well, after Mr. Babcock's death I did.

10 Q Whom did you see after Mr. Babcock's death? A Well, Mrs. Rice called.

Q Did you ever see Miss Smith after that? A No.

Q Did Miss Smith, to your knowledge, ever call at that house? A Not that I ever knew.

Q Did you ever hear of her being there? A No.

Q Up to the present time? A No, sir.

20 Q Now, you say you saw Mrs. Rice there? A Yes, sir.

Q When did you see Mrs. Rice there that you remember? A I can't exactly tell you, but I think maybe it was in January; it was the year after Mr. Babcock died, and she called just at lunch time, so Mrs. Babcock didn't expect her, so she told me I could get some lunch, which I did; and she remained to lunch, and they seemed to have a very nice time. She left and everything went along very peacefully.

30 Q Was anybody else there with her that day? A No, sir.

Q Are you sure? A Yes.

Q Did anybody else come to the house that day? A Not that I know of.

Q Would you have seen them? A I suppose I would if I was there.

Q Were you there that day? A I can't tell you whether I was there the remainder of the day, but I was there at lunch time.

40 Q You were there at lunch? A Yes.

Catherine Brady, direct.

Q Did you ever see that lady in your life before today?

(Miss Asquith stands up.)

A No, sir.

Q Did you ever see her at that house? A 10
No, sir.

Q You didn't? A No.

Q Did you ever hear of her being there? A
No, Mrs. Babcock never mentioned it to me.

Q You and Mrs. Babcock used to talk over things right along? A Oh, yes, right along.

Q About her relatives and things like that? A Yes.

Q Did she ever mention of Miss Asquith ever being there? A No, sir, she never did. 20

Q Nothing at all? A No.

Q Now, how many times did Mrs. Rice call at the house there to your knowledge after Mr. Babcock's death? A The first time she called was when she remained to lunch; then she didn't call for quite some time, until the summer, I think; then she didn't call until Mrs. Babcock was very sick, too sick for her to see her; so she didn't see Mrs. Babcock after.

Q Did you and she have any talk about that? A Well, no, sir, we didn't, no conversation. 30

Q How many times during all that period, to your knowledge, did she see Mrs. Babcock after her husband's death? A I should judge about—well, I don't know really; I don't think she seen her hardly at all, only the first time she remained to lunch; then, of course, she called twice after when Mrs. Babcock was too ill to see her. I don't really think she saw her afterwards.

Q She saw her the first time at lunch? A Yes. 40

Catherine Brady, direct.

Q Was the next time the time she was sick?

A Yes.

Q And the next time was her funeral? A Mrs. Rice went twice before her funeral, but she was very ill.

Q And she couldn't see her? A No.

10 Q Did you tell her that? A The second girl answered over the telephone and told Mrs. Rice once she couldn't see her because she was too ill.

Q Now, you are the person that received the Christmas present? A Yes.

Q When did you receive that present? A I received a Christmas present from Mrs. Rice a year ago, and she gave me a very nice plant at Easter.

20 Q Did she tell you anything when she handed you the Christmas present? A No, she didn't.

Q When she gave you the last Christmas present, did she say anything? A No, she didn't.

Q Are you sure about that? A No, because she couldn't; it was merely a card the last Christmas present.

Q Didn't she ask you to do anything? A No.

30 Q Sure about that? A Yes.

Q She just gave you the present? A Yes. She did call at my house one time and I did tell her that I couldn't do anything for her, I couldn't truthfully do anything for her, and I didn't want to have anything to do with the case; that I did tell her, and she didn't bother me.

Q Did she ask you— A She didn't bother me. And we talked it over, and I told her I didn't want to have anything to do with the

40

Catherine Brady, direct.

case, because I really had nothing, and I wasn't going to be mixed up in it in any way.

Q What did she say to you that called for that remark from you? A Well, we were talking about different things, you know; and I said I was really very sorry for the relations, that they hadn't been getting anything, and like that, and so on and so forth. That's all I said. I said I was very sorry I couldn't do anything, but I would stand by Mrs. Babcock, that's sure. 10

Q What type of man was Mr. Babcock? A A very good man.

Q Strong-minded, or what? A Yes, very strong-minded.

Q He had a mind of his own? A Yes, sir.

Q What was his business? A A broker. 20

Q In New York? A Yes.

Q And he attended business right along up to the time of his death? A Yes, and he was a very good man.

Q Was he a healthy sort of a man? A Very healthy until his death.

Q What kind of a woman was Mrs. Babcock? A She was equally the same, a very good woman.

Q Did she talk in a strong manner, or determined, or what? A No; what she said she meant; she was like Mr. Babcock; they were both the same, whatever they said they meant. 30

Q She had a great deal of company, didn't she? A Yes, sir, and I wanted her to have more.

Q She had a great deal of company of the ladies of Elizabeth? A Yes.

Q They are one of the old Elizabeth families? A Yes, sir, they are. 40

Catherine Brady, cross.

Q Now, was it the custom in the house with Mrs. Babcock, even before and after the death of her husband, to always have one maid in the house with her? A Yes.

Q Always? A Always.

10 Q So, if you went out any time, the other maid would be there? A Yes.

Q And if the other maid went out you would be there? A Yes, sir.

Q Was Margaret McAvoy a maid while you were there? A Yes.

Q You know her very well? A Yes, sir.

Q She is here? A Right here.

20 Q She was a maid in 1924? A She had been with Mrs. Babcock two years prior to the last time, and then came back again; she was with Mr. and Mrs. Babcock four or five years, I think; a year or two years elapsed.

Q And somebody else was there then?

By the Court.

Q Was she in that family at the time of Mr. Babcock's death? A No, sir.

Q How long after that did she come back? A Shortly after. I think Mr. Babcock died in September and I think Margaret came in January.

30

Cross examination by Mr. David.

Q You recall distinctly, Mrs. Rice, going to the Babcock house in January, 1924? A Yes, sir.

Q Can you fix the date? A Not exactly, no; I don't remember dates.

40 Q Can you tell me whether it was early in the month or the middle of the month or the latter part of the month? A That I can't tell you.

Catherine Brady, cross.

Q You haven't any recollection of what time in the month it was? A No, I haven't.

Q Can you tell me what day of the week it was? A Well, I think it was either on Monday or Tuesday.

Q And did you see her when she came in? A No, I didn't see her, only I asked Mrs. Babcock and Mrs. Babcock told me she had been here. She said, "do you know who was here?" I said "No" and she told me. 10

Q You didn't see Mrs. Rice there at all that day? A Yes, I could see her through a glass, but I couldn't see her to speak to her.

Q I suppose Mrs. Babcock thought you knew who was there? A I don't suppose she did.

Q That was after she went? A Yes, sir.

Q She asked if you knew who was there? A Yes, and I told her I did not, and then she told me. 20

Q And you did see Mrs. Rice there then? A Yes, I did.

Q Where was she when you saw her? A I could see her from the dining room, in the dining room at lunch.

Q That was at lunch time? A Yes, sir.

Q While she was having her lunch? A Yes.

Q You didn't see her after that in any other room? A No. 30

Q You don't know what time she left? A Well, it wasn't any more than an hour after that she left.

Q Did you see her leave? A Yes, Mrs. Babcock came out then after she went.

Q And told you she had left? A Yes, sir.

Q When Mrs. Rice came to see you you say that you told her you didn't want to get mixed up in this matter at all? A Yes. 40

Catherine Brady, cross.

Q Did she tell you what she came out to see you about? A Not exactly, but I trusted that is what she was up to then.

Q What? A That she was really going to bring suit or something like that.

10 Q Did she say anything about that? A No, she didn't enter into conversation about it because she didn't stay long enough to do it.

Q Didn't she ask you whether you had heard Mrs. Babcock at various times mention the arrangement? A Well she might have asked me that but, of course, I never heard her.

Q You told her you didn't hear anything of that? A Yes.

Q And you didn't want to get mixed up with the case? A Yes, sir.

20 Q Mrs. Babcock left you something under her will? A Yes.

Q How much? A \$5,000.00.

Q And Mr. Babcock left you something under his will? A Yes.

Q What? A \$5,000.00.

30 Q When Mrs. Rice came to see you and asked you about the arrangements that she had with Mrs. Babcock, didn't you tell her that Mr. Meyer told you that if you were a witness in the case you would lose the money left you under the will? A No, sir.

Q That is not so? A No.

Q Did you say anything like that at all? A No, I couldn't, because Mr. Meyer never said such a thing.

By the Court.

40 Q Did anybody ever tell you that? A No, sir.

Catherine Brady, cross.

Cross examination by Mr. Emerson.

Q Miss Brady, on the occasion of the visit of Mrs. Rice in January of 1924, what time was it that Mrs. Rice left? A Well she remained to lunch and then I think it was about an hour after; an hour or an hour and a half after. 10

Q What time would you think that was? A I should judge it would be about three o'clock.

Q Did Mrs. Rice go upstairs that day, do you know? A I don't remember.

Q You don't remember that? A No.

Q Were you walking around the house that day? A No, she was entertaining Mrs. Rice.

Q Who opened the door? A I think it was Mrs. Farrell. I don't think Margaret was there at the time. 20

Q Do you know if she opened the door and let Mrs. Rice in? A I think she did.

Q Did you hear anyone else ringing the bell or coming in that day? A No.

Q Well you would have heard the bell, wouldn't you? A Oh! Yes, I don't think anybody came in, because, of course, I was there and I could hear it.

Q You would have heard it? A Yes. 30

Q And when Mrs. Rice left was she alone? A Well, that, of course, I couldn't say, because Mrs. Babcock went to the door and I couldn't tell.

Q Did you see Mrs. Rice leave? A No, but as soon as she went Mrs. Babcock came back and asked me if I knew who was there and I said yes.

Q Did she say anyone else was there? A No. 40

Margaret McAvoy, direct.

Q Did you hear any excitement in the house?

A No.

Q Did you hear any loud voices as though there was some excitement? A No, sir.

Q Didn't you? A No.

10 Q Where were you at the time Mrs. Rice was there? What part of the house were you? A I was at the back of the house to serve lunch and I was busy.

Q How far was the room that you were in from the room in which they were? A Not very far.

Q It is in the next room? A Yes.

Q Were the doors open? A All open.

20 Q So that you would have heard anything that might have occurred in that room? A Yes.

Q That is so? A Yes.

Further cross examination by Mr. David.

Q You were there on the first floor? A Yes.

Q You didn't go upstairs at all that afternoon? A No, I don't think Mrs. Rice went up.

Q Do you know whether she did or not? A That I couldn't say for sure.

30

MARGARET McAVOY, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Carey.

Q Miss McAvoy, is it? A Yes.

40 Q Where do you live, Miss McAvoy? A 604 Westminister avenue, Elizabeth.

Margaret McAvoy, direct.

Q How long have you lived in Elizabeth? A All my life. I was born and raised there.

Q Were you employed for a time in Mrs. Babcock's home? A Yes.

Q Was Mr. Babcock alive at the time? A Yes, when I first went there.

Q When did you first become employed by the Babcocks? A Well it's four or five years ago; five years; about five years ago when I first went there.

10

Q When you first went there to be employed? A Yes.

Q Was Mr. Babcock alive? A Yes, sir.

Q Were you living with them when he died? A No, sir.

Q What happened to you then? A I went away to the shore. I always went away. They went on the farm and I didn't care to go to the farm. I went to the hotel at the shore for the summer months.

20

Q Did you come back to them in the fall? A That next fall, I did, yes.

Q What time in the fall? A When they came back from the farm and then it was in October.

Q How long did you continue living with them that way until you finally ceased? A I stayed with them then until the next summer and went away again. I went to Washington, D. C., to the people who ran the hotel. They were opening up a place and I went there for seven months. Then we left and we came down to Ocean Grove and opened up a tea room and I arrived there, my niece and I, and we worked for the same people.

30

Q When did you come back to the Babcock's then? A I guess it was—this girl was there

40

Margaret McAvoy, direct.

three years, Norma Farrell, was there three years. The girl that took my place the last time, and when she left when the three years was up I was out of work and I came to see Mrs. Babcock and this girl had gave notice to leave and they asked me would I come back and I said
10 yes and I went back to Mrs. Babcock again.

Q You went back? A Yes.

Q When? A That was about one year and nine months before she died.

Q What month did she die? A She died in June, a year last June.

Q What year? A I guess it was 1929, or 28, I guess. She is dead a year.

Q 1928, June? A Yes.

Q So you have been back to her place since
20 the early part of 1927? A Yes, sir.

Q Did you live with her until she died? A Yes.

Q Continuously? A Yes.

Q What was your job? A To wait on her as a maid to her because there was one to wait on her and serve her and to be with her when Katie was out and to do her bed and to wait on her; that was all I personally did when Katie was out.

Q Did you open the door? A Yes, I would
30 go to the door for her.

Q Now, did you know Mrs. Rice? A Well, I didn't know her but she called to see Mrs. Babcock once.

Q She called to see her? A Yes.

Q When? A I guess it was about March, the March before she died. The door bell rang and I answered the bell and Mrs. Babcock was in bed. I came downstairs. It was about, I think about half-past one or two o'clock in the day—

Margaret McAvoy, direct.

after luncheon. I had been upstairs with her and I think Katie was out. She wanted to see her mother. I was up with her and she was quite ill and this lady said she was Mrs. Rice. I said "I am sorry Mrs. Babcock is very ill." She said yes, she heard it but she said she was a niece and she heard she was ill and I went up and told Mrs. Babcock and she said she wouldn't see her first. I told her. She said "I think she will see me. You go up again." I went up and Mrs. Babcock said "I won't see her, I am terribly sick and nervous and won't you please tell her that she must go." That is all Mrs. Babcock said, so I came down and delivered the message. 10

Q You told Mrs. Rice? A Yes.

Q Did she go? A Yes.

Q She went? A Yes, she went. 20

Q Did Mrs. Babcock say anything to you after that about her? A She did pass a little remark "Well," she says something about them wanting to get money, or something about Mrs. Rice's husband was in the moving pictures. I didn't talk very much. I wasn't very interested. She said something about her husband was opening up a moving picture place and she thought she wanted to get about \$500.00, but she said, "I am not going to give no money to no one." 30

Q Now did Mrs. Rice ever call there again? A No, sir.

Q Did you ever see her again? A Never saw her.

Q Did you ever see Mrs. Asquith there, this lady here? (Indicating.) A No, I didn't.

Q Never? A No.

Q Did you ever see her before in your life until today? A No, sir. 40

Jane Leigh Mahan, direct.

Q Did you ever see Miss Smith there (Miss Smith stands up)? A No, I didn't.

Q You never saw her at the house at all? A No, I didn't.

Q All the time were you there? A No, sir.

10 Mr. David: No questions.

JANE LEIGH MAHAN, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Carey.

20 Q Miss Mahan, where do you reside? A Elizabeth, New Jersey.

Q Where in Elizabeth? A If you want the address it is 232 South Broad street.

Q How long have you lived in Elizabeth? A Nearly sixty years.

Q With your family? A Yes, sir, with my family.

30 Q Who has lived there with you? A First, my mother, my aunt, and after their death, I lived there alone.

Q You are not married? A No.

Q You are a sister of Admiral Mahan? A Yes.

Q And you live there in a quiet sort of a way? A Yes.

Q Did you know Mrs. Babcock? A Yes, very well indeed.

Q How well did you know her? A Well, I could say we were good intimate friends.

40

Jane Leigh Mahan, direct.

Q Did you call to see her very often? A Very often; at the last I went to see her almost every week.

Q Do you remember when her husband died? A Very well.

Q Do you remember after that period and between that time up to her death? A Yes, that is when I saw most of her. 10

Q Were you interested in the same kind of things? A Yes, I think we were.

Q Did she have any interest in any particular institutions? A Yes.

Q What? A The Orphans' Asylum, particularly because Mr. Babcock was interested in that and also in the cancer hospital, I think it is called Rosary Hill. 20

Q Is there any reason why she was interested in the cancer hospital? A Yes, her mother died of cancer and it is entirely a free home run by the Catholics for the absolute poor that couldn't afford to pay anything.

Q She was not a Roman Catholic? A No, but she was interested in helping those people who couldn't help themselves.

Q What did her husband die of? A Cancer.

Q So outside of these two institutions do you know anything she was interested in? A I don't. No. 30

Q She left something to a rector of some church? A Yes.

Q What church was that? A St. John's.

Q What denomination was that? A An Episcopal Church.

Q And she attended that church? A Yes.

Q Did she talk to you about these matters? A A great deal. 40

Jane Leigh Mahan, direct.

Q And did she say what she was going to do with her money? A Yes, she said she was going to divide what she left equally between these two institutions I have mentioned.

Q You talked these things over a lot, didn't you? A Yes, quite often.

10 Q Did she tell you who she was going to make her executor? A Yes.

Q Who? A Mr. Meyer.

Q Did you know him? A Yes, I think I met him at Mrs. Babcock's.

Q You met him at their house? A Yes.

Q Was her mind clear during that time? A As clear as a bell.

Q It was clear? A Yes.

20 Q People call her a lawyer, don't they? A I don't know exactly that but I never knew any person whose word I could more clearly depend upon. She would tell you what she thought and what she didn't think and she knew her own mind.

Q She had a mind of her own? A Yes.

Q Did she seem to be of the honorable type?

A I don't think her worst enemy could say that she didn't tell the truth.

Q Did you see Miss Smith during all these years? A No.

30 Q Did you see Mrs. Rice during those years? A No, never.

Q Did she talk to you about her relatives?

A She said she had no dear relatives at all except the Brewster boys, great nephews, and she said their father had as much from the mother as she had and she thought they should have provided for her.

40 Q Did she say anything about her husband's relatives? A No, except she had no interest in them.

Jane Leigh Mahan, cross.

Q Did she tell you that? A Yes, sir.

Q Did you know who she was referring to?

A Yes, I did.

Q Who? A The various—her sister-in-law and her great nieces, or rather Mr. Babcock's nieces.

Q Who were they? A I didn't know their names but I knew they were the daughters of Mrs. Smith. 10

Q You didn't know them at all. A I never saw them.

Q But she expressed herself to you? A Yes.

Q Freely? A Yes, sir.

Q You and she were on that intimate terms that you could talk to each other? A We had known each other over very many years.

Q You don't mind telling us your age, do you? A Not in the least. 20

Q How old are you? A Seventy-seven.

Q You are pretty lively now, aren't you?

A I am, I hope.

Cross examination by Mr. David.

Q Did she tell you that she wasn't going to remember the Smith girls in her will? A She did. 30

Q She told you she was not going to do anything for them in her will? A Yes.

Q How did she come to mention that to you?

A I suppose I was an old friend and an intimate friend and we—well, you might say we belong to the same sect of girls, if you know what that means, and we had grown up together.

Q Are those the only nieces of her husband's that she said she wasn't going to remember in her will? A I think so. I know she said some- 40

Jane Leigh Mahan, re-direct.

thing about Mrs. Bowen. She told me she had left Mrs. Bowen a small legacy.

Q She told you she left Mrs. Bowen a small legacy but she wasn't going to leave anything—

A To the next generation.

Q To the two children of Mrs. Smith? A
10 Yes, or if Mrs. Bowen had any children she wasn't going to leave them anything.

Re-direct examination by Mr. Carey.

Q Was anything said about any children in California? A No, nobody but the Brewsters.

Q Did she ever tell you that she had never even seen them? A I think she had seen one of them.

Q The father or the oldest child? A The
20 oldest child; I think she had seen the old child. Of course, she had seen the father.

Q But not in a great many years? A Not in a long, long time.

Q When did he leave Elizabeth? A I couldn't tell you that.

Q A good many years before? A A good many years before, I was only back and forwards in Elizabeth at that time.

Q Did she ever refer to those children in any
30 particular terms? A No, except she spoke of their father and thought that their father should have saved enough out of what he had received to have taken care of those children.

Mary Louise Clark Dix, direct.

MARY LOUISE CLARK DIX, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Carey.

Q Where do you reside? A 1046 East Jersey street, Elizabeth. 10

Q How long have you lived in Elizabeth?

A I was born there.

Q All your life? A All my life.

Q Are you married? A Yes, sir.

Q To whom? A Warren R. Dix, a lawyer.

Q Of Elizabeth? A Yes.

Q How long have you known Mrs. Babcock?

A As long as I can remember.

Q Have you known her forty years? A Oh! yes, more than that. 20

Q Did you call on her at all? A Yes.

Q You and she were very friendly? A Yes, sir.

Q Weren't you very friendly? A At one time, yes, very.

Q Very, at one time? A Yes, sir.

Q Do you remember when Mr. Babcock died?

A Yes; I was out of town but I remember it.

Q Were you at the funeral? A No, I was in Nova Scotia, in Chester. 30

Q After his death did you call on her? A Yes.

Q When? A When I came home at the end of the month.

Q After his death did you ever hear her talk about Miss Smith or Mrs. Rice? A Yes.

Q What did she say about either of them, if she said anything? What did she say, if anything? A She said she didn't intend to leave them anything. 40

Mary Louise Clark Dix, direct.

Q She told you that? A Yes.

Q Did she tell you about leaving anybody anything? A Yes.

Q What? A She told me she was going to leave it to two institutions, and later she told me she was going to leave some to our rector.

10 Q Whom do you mean? A Reverend Littleton E. Hubbard.

Q Did she leave anything to you? A No, nothing.

Q Nothing at all? A No.

Q You didn't expect anything, did you? A I did not.

Q Did you marry a relative of hers? A No.

20 Q Did one of your relatives marry into her family? A No, my brother's wife was a sister of her brother-in-law, Mr. Brewster, so there is no connection.

Q Otherwise you are not related? A Not at all.

Q Did you call there continuously until her death? A Off and on, yes.

Q And during any of the times you ever called upon her did you ever see Mrs. Rice there? A No.

Q Or Miss Smith there? A No.

30 Q Did she tell you whom she had made executor of her will? A Yes.

Q Who? A Mr. Meyer.

Q Did you know Mr. Meyer? A Yes.

Q Very well, didn't you? A I have known him for a good many years.

Q He has been living in Elizabeth all these years? A Yes, sir.

Q What type of character was Mrs. Babcock? A She was a very strong character and very honest and honorable.

40

Mary Louise Clark Dix, direct.

Q Did she seem to be able to understand what she was about? A She certainly did.

Q Was she able to get about? A Yes, until very shortly before her death.

Q Did you know any of her employees in the house, the maids? A Yes.

Q When you called at the house who let you in there? A Usually, Margaret, sometimes Katie would let me in. 10

Q Did Mrs. Babcock attend to the door herself? A No, not unless she was right there to see me coming.

Q Did you ever know of her coming to the door from a distance at any time to let you in? A No.

Q Mr. Babcock, what type of a man was he? A He was a very strong character. I didn't know him very well. 20

Q Not as well as you knew his wife? A No.

Q Do you know what his business was? A Broker.

Q In New York? A Yes, sir.

Q Do you know how long he kept going in his business just before he died? A No, I don't. I know it wasn't very long before.

Q Did you ever hear from any members of the family, or anybody that Mr. Babcock had made arrangements to leave a substantial amount of money or anything like that to the daughters of Mr. Smith? A No. 30

Mr. David: I object to that on the ground that it is incompetent and too broad. The question is did she ever hear from anybody at any time.

Q At any time? A No. 40

Mary Louise Clark Dix, direct.

Mr. David: I object to the question.

The Court: I don't see how it harms you. The mere fact that she didn't hear it doesn't have much weight. The objection will be overruled.

10 Q Did you ever hear from Mrs. Babcock or anybody else at any time that she had ever promised to make provision in her will for the Smith children? A No.

Q You never heard that? A No.

Q And did she ever tell you that she was going to give them half of her estate? A No, she did not.

20 Q Did she ever tell you that she had any such contemplation? A No.

Q And you were very intimate with her? A Yes, sir, a great deal.

Q And talked about her estate matters and things like that? A Yes, sir.

Q Did you ever hear her say she never intended to leave the Smith girls anything? A Yes, sir.

30 Mr. David: That is objected to as leading.

Q Did you ever hear her say anything about leaving anything to the Smith girls? A As to whether she was going to?

Q Yes?

By the Court.

Q As to whether she was or was not going to? A She said she was not going to.

40 Q She was not going to? A No.

Mary Louise Clark Dix, cross.

Cross examination by Mr. David.

Q How did she come to tell you that, Mrs. Dix, that she was not going to leave Mr. Smith's children anything? A She was talking one day and she said one of them had been there and she thought she should leave her something and she was not going to do it. She had no such intention. 10

Q She said one of the Smith girls had been there? A Yes.

Q And that she told one of the Smith girls that she would not leave her something? A She told me that.

Q She said that one of the Smith girls thought that she should leave her something? A That's what she told me. 20

Q Did she go into detail? A No.

Q Did she go into detail as to just what one of the Smith children had said about Mrs. Babcock leaving her something? A No.

Q Did she go into detail as to what Mrs. Babcock said to one of the Smith children? A No, she didn't repeat the conversation.

Q Did she say which one of the Smith children had been to see her? A Mrs. Rice. 30

Q Mrs. Rice had been to see her? A Yes.

Q When was it that Mrs. Babcock told you that Mrs. Rice had been to see her? A I think it is a few days Mrs. Rice had lunch there.

Q When was that? A It was in the winter sometime.

Q What year? A It was the year after her husband's death.

Mary Louise Clark Dix, cross.

By the Court.

Q The winter following her husband's death?
A Yes, the winter following her husband's death.

10 Q Mr. Babcock died in August, 1923, is that right? A In September.

Q September, 1923? A Yes.

Q This was the following winter, the following winter of 1924? A I should think so.

Q Can you fix the month? A I think it was the winter but I couldn't fix the month.

By the Court.

Q 1923 or 1924, in the winter? A Yes, sir.

20 Q Was it early in the year? A I think it was.

Q May it have been in the month of January?
A It might have been.

Q Mrs. Babcock told you that Mrs. Rice had been to see her? A Yes.

Q And that Mrs. Rice said something about Mrs. Babcock leaving her something in her will?
A In her will.

30 Q Did Mrs. Babcock tell you what she, Mrs. Babcock, said to Mrs. Rice? A No, she didn't.

Q But she did say to you that she didn't intend to leave these Smith girls anything in her will? A She did.

Q You are sure of that? A I am sure of that.

Q Did you ever hear her say anything about a contest that was expected or had been expected against her husband's will? A No.

40 Q She didn't mention anything about that to you at all? A No.

Mary Louise Clark Dix, cross.

Further cross examination by Mr. Emerson.

Q Did you ever see Mrs. Asquith? A Never.

Q Did you ever hear Mrs. Babcock speak of her? A No.

Q Did Mrs. Babcock say to you that day she told you of Mrs. Rice's visit, that Miss Asquith had been there that day? A No. 10

Further cross examination by Mr. David.

Q I show you Exhibit C. 4. Will you point out Mrs. Babcock? A Right there. (Indicating.)

Q Indicating the picture of the lady in the extreme right in white in the picture? A Yes, sir. 20

By the Court.

Q Were you familiar with Mrs. Babcock's handwriting? A Yes.

Q I show you Exhibit C. 5. Can you tell me whether that envelope and letter are in Mrs. Babcock's handwriting? A Yes, sir.

Mr. Carey: We want to get the records of the mortgages and we want to produce some more testimony and we would like the case continued for about two weeks if the Court will continue it. 30

The Court: What mortgages did you have in mind. I should think all that could be agreed upon.

Mr. Meyer: It is the mortgage which Mr. Smith testified to and some releases. I am quite positive I have releases. There are 40

Mary Louise Clark Dix, cross.

about eight or ten envelopes around the size of my brief case that contain all the papers.

Mr. Carey: And there is one other servant we desire to have here who is now in New York City.

10 The Court: From whom are these releases that you speak of?

Mr. Meyer: I think the releases were obtained by Mr. Faulks when we closed up the estate of Frederick Babcock. I just happened to bring the abstract papers with me. I'm quite positive that I have releases in that whole transaction.

The Court: I should think that those things you would be prepared for today.

20 Mr. Meyer: The bill is silent on that point, your Honor.

The Court: Yes, I recall that now.

Case continued to Monday, February 3, 1930, at 11 o'clock at the State House.

30

40

Mary Asquith, recalled, further cross.

SECOND DAY.

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Monday, the third day of February, 1930, at eleven-fifteen A. M.

Before Hon. Malcolm G. Buchanan, Vice-Chancellor.

10

Appearances:

Abe J. David, Esquire (Isador Bregoff, Esquire, of the New York Bar, of counsel) for complainants.

Messrs. Whittemore and McLean, by Mr. Clark McK. Whittemore and Mr. Sigurd A. Emerson, for defendant Elizabeth Orphan Asylum Association of Elizabeth, N. J.

20

Messrs. Carey and Lane, by Mr. Carey, and Mr. Clarence D. Meyer, for all other defendants.

MARY ASQUITH, being by leave of the Court recalled for further cross examination, testified as follows:

Further cross examination by Mr. Carey.

Q I understood you to say, Miss Asquith, that you had been quite sick just before you went out to Elizabeth. Did you? A I had been sick, yes.

30

Q How long had you been sick? A I had been ill for something like seven years. I had been unable to walk for two years. There were two years I couldn't walk without assistance, and the last part of those two years I was beginning to get around.

40

Mary Asquith, recalled, further cross.

Q So that in about January, 1924 or '25, you were not very strong, were you? A No, I was not.

Q And had great difficulty in getting around, didn't you? A I was slow in getting around.

10 Q And you only went to New York from Westport, Connecticut, when absolutely necessary. Is that right? A That was all.

Q You wouldn't have gone to New York on any of those days in January unless it was absolutely necessary to go, would you? A I told you that was the first effort I had made, to see if I was strong enough to go back to work. I was going in from the day after New Year's on business connected with the little playlet I was putting on for the church up—

20 Q So that if it wasn't for that new business that came to you at that time you would not have gone to New York at all, would you? A Probably not so frequently as I did.

30 Q When you came from Westport that day you say you had lunch at a place you can't exactly remember, with someone whom you said you couldn't remember. That is, the day you went to Elizabeth. Now, you were in the neighborhood of the Biltmore Hotel in New York, weren't you? Where were you? A Forty-second and Broadway.

Q That's about three blocks from the Biltmore Hotel. A I wasn't going to the Biltmore.

Q You weren't. A No.

Q Now you came from—that day you went to the railroad station, I think you said, with Mrs. Rice, before she went to Elizabeth. A Yes, sir.

40 Q What railroad station did you go to? A The Pennsylvania.

Mary Asquith, recalled, further cross.

Q And how did you go from Forty-second street to the Pennsylvania station that day?

A I am quite confident that we must have taken a bus.

Q Did you take a bus? A I didn't go in the subway on account of the crowds, so I did either take a bus or I went over and down Sixth avenue on the car. 10

Q Which did you do? A I am fairly confident that I took a bus.

Q You could have taken the Sixth avenue car. A I don't think so, it would have been a couple of blocks extra walking.

Q You had no business in the Pennsylvania Railroad there? A I went to take Mrs. Rice.

Q You had no business of any other kind? A No. 20

Q When you took her to the Pennsylvania station, you left her to go to your luncheon engagement? A After she left on the train.

Q How long after you left her did you have your luncheon engagement that day? A Possibly any place from half-past twelve to one, there was no definite time set.

Q How do you remember that there was no definite time set, if you do remember you had a luncheon engagement? A Because I stopped in the office and we were going whenever we got there. 30

Q Have you stretched your mind since last week to say who that luncheon was with? A I have a fair idea.

Q You're not sure? A No.

Q What train did she take on the Pennsylvania? A We had missed a train just when we got over there and Mrs. Rice got a train after eleven, I don't know the time, we waited for a few minutes. 40

Mary Asquith, recalled, further cross.

Q After twelve, was it? A No, after eleven

Q After eleven she got the train? A Yes.

Q Are you sure of that? A Yes.

Q Did you see her going to the train? A I certainly did.

10 Q Did you go to the steps with her? A I went as far as the gate of the steps and I couldn't go through, I had no ticket.

Q If you had had a ticket, would you have gone? A I would have taken her and put her on the train.

Q Did you ask anybody to? A No, she said she would be all right.

Q She told you she would be all right? A Yes.

Q Did she look to you as if she would be all right? A No—she—

20 Q Why didn't you go? A She said she didn't want me to go.

Q She didn't want you to go to Elizabeth at all? A No.

Q Didn't she ask you to go to Elizabeth? A She asked me after she went halfway down the stairs, and she turned around and said, "You had better come for me."

Q Is that when she told you where to come to? A No.

30 Q You knew that? A I had heard quite a great deal about the house after Mr. Babcock died. She told me a number of things that happened when she was a child there.

Q Did you know before she started down the steps where the Babcock house was? A Yes.

Q How did you know that? A I had the address.

40 Q When did you get the address of that house? A I made Mrs. Rice give me that the morning we were going on the train.

Mary Asquith, recalled, further cross.

Q When? A That morning going on the train.

Q Going where? A Going in on the train.

Q Going in from Westport? A Yes.

Q Why? A Because I wanted to telegraph or telephone Mrs. Babcock that niece was sick.

Q You thought she was so weak and sick that you wanted to get the telephone number so you could telephone? A I didn't have a telephone number. Mrs. Rice didn't know then whether her aunt had a phone or not.

Q Did you try to get the telephone number? A No.

Q Did you tell her to get the telephone number? A No.

Q Did you look it up? A No, I never looked it up.

Q Did she have a telephone? A I don't know, I think Mrs. Rice did phone her, yes, sir.

Q You think she did? A Well, at least—

Q After you got through luncheon you were tired too, weren't you? A No, as tired as—

Q After a hard day's work? A I hadn't had a hard day's work.

Q You were arranging for a program, for a festival. A All I had to do was to get a small play—all I did was get Samuel French and get his books, and I wanted to go to the American Theatre and see the man who owned the little play I wanted to use.

Q Were you tired? A Not so tired.

Q You were not feeling very strong? A I was not feeling very strong, no.

Q Then what did you do, go back to the Pennsylvania station from where you had luncheon? A Yes, sir.

Q Did you telephone to Mrs. Babcock's house to see whether she was there or not? A No,

Mary Asquith, recalled, further cross.

I didn't because I had told Mrs. Rice I would go for her.

Q Well, when she left you at the railroad station she was somewhat invalided, wasn't she, she wasn't well? A She wasn't invalided, she had bad fainting spells.

10 Q Did you attempt to telephone Mrs. Babcock's house to see if she was there? A No, I didn't.

Q Did you tell her before you went the time you would be there? A She said she would wait for me until half-past three.

Q What train did you take on the Pennsylvania? A After two o'clock.

Q You don't know what time it was? A No, I don't.

20 Q But it was after two? A Yes, sir.

Q Much after two? A I don't think it would have been very much after two.

Q Did you look up the time table? A At the time, yes.

Q In your possession, you had it? A Yes.

Q Where did you get it? A I got it in the Pennsylvania station, after I promised Mrs. Rice I would go for her.

30 Q How did you go over the second time to the Pennsylvania station after luncheon? A Oh, I know how I went, I know where I went to luncheon.

Q How did you get to the Pennsylvania station the next time? A I went in a taxi the next time.

Q Sure about that? A Yes.

Q Why did you hesitate? A Because you were asking that question and it made me wonder how I did go.

40

Mary Asquith, recalled, further cross.

Q My asking you that question made you wonder how you went? A Yes.

Q It just comes to your mind that you took a taxi? A I had no recollection before as to whom I had had lunch with. I couldn't tell where I had had lunch.

Q The second time you took a taxi? A Yes. 10

Q You went all the way to Elizabeth? Had you been to Elizabeth before that? A I didn't go to Elizabeth in a taxi.

Q You went in a train? A Yes.

Q Had you been to Elizabeth before that? A I had played Elizabeth a number of years ago. I had not been in Elizabeth since about 1903.

Q Hadn't been there in all that time? A No. 20

Q You hadn't been there in twenty years? A I had been through the town, that was all.

Q That's all? A Yes.

Q When you got out at the Elizabeth railroad station, how did you go to go to her house?

A I walked.

Q Walked? A Yes.

Q How many blocks did you walk? A It seemed quite a distance, because you were beginning to get tired. 30

Q You were getting weak? A Yes.

Q Did you walk all the way? A Yes, sir.

Q Why didn't you take a taxicab? A Because I discovered I didn't have quite enough money to take a taxi there and also take a taxi in New York after I got back, that's why I remember taking a taxi to the Pennsylvania.

Q You started out from New York to Elizabeth? A Yes, sir. 40

Mary Asquith, recalled, further cross.

Q To get to Elizabeth; but you didn't have enough money in your pocket even to pay 30 cents taxi fare? A It wouldn't have been thirty cents. My taxi over to the Pennsylvania was seventy cents, I got a driver that could get in every traffic jam coming.

10 Q From Forty-second street and Broadway to the Pennsylvania station, it cost you that much? A Yes, sir.

Q Do you mean that? A I mean it.

Q And you can remember that you paid seventy cents taxi fare? A I can remember because I know how I happened to take the taxi, which I didn't want.

20 Q And for nine blocks' ride in a taxi, you paid seventy cents in New York?

The Court: It can be done, Judge.

Q This was in 1925? A 1924.

Q And when you paid that fare you didn't have enough money— A I did.

Q To buy your railroad ticket? A Yes.

Q And your taxi fair again? A I did.

Q How much did you pay for the railroad ticket? A I don't recall.

30 Q But you do remember seeing you didn't have enough money to hire a taxicab? A That was after I paid my railroad fare.

Q If you didn't have enough money in your pocketbook to pay a taxi fare, why did you go all the way to Elizabeth, why didn't you just telephone to see if you were needed? A I didn't have any telephone number.

40 Q You didn't look for any? A I did not. I had said I would go for her, and when I promise to do anything, if I am alive, I'm there.

Mary Asquith, recalled, further cross.

Q When you reached the house, did you see anybody coming out of the house? A I don't recollect anybody coming out of the house at all.

Q Didn't you make a statement that when you got there, Mrs. Babcock and Mrs. Rice were down at the door where they had just seen a neighbor out? A I am under the impression, Mrs. Rice had been called by a neighbor, and that she had gone to the front room either with the neighbor, or to answer the neighbor, I don't know what it was. 10

Q Didn't you testify that they were both down at the door? A I made the statement that they had gone to that front room—

Q Was there any neighbor when you went there? A No.

Q Not a soul? A No. 20

Q Did you see Katy there? A No, I was very disappointed at not seeing Katy.

Q Did you see anybody there besides these two women? A I did not.

Q When you went to the door, who opened the door? A I don't know whether Mrs. Babcock or Mrs. Rice opened it; both women were standing there.

Q Didn't you say in your statement that Mrs. Babcock opened the door? A I imagine Mrs. Babcock would open the door. 30

Q You imagine she would? A Yes.

Q Well, didn't you in your statement say that Mrs. Babcock did open the door? A It is quite possible that I did say that Mrs. Babcock opened the door.

Q Did she, or didn't she? A I might say, that was an assumption, that she would open her own door. 40

Mary Asquith, recalled, further cross.

Q They were both at the door, when you went there? A Yes, sir.

Q Down stairs? A Down stairs.

Q Did anybody have their hat or coat on?

A No.

10 Q Don't you know what they were doing at the door? A No.

Q There was nothing to indicate what they were doing? A Not a thing.

Q Didn't Mrs. Rice, or anybody, when they opened the door say were just down here seeing a neighbor out? A No.

Q You went to go upstairs? A No, I didn't.

Q You didn't want to go up? A No, I didn't.

20 Q Why? A I wasn't particularly keen to waste any time, I wanted to get back, and the stairs were rather hard.

Q So that all you went out there for in your weakened condition, and everything, was just meet Mrs. Rice and take her back? A That's all.

Q Nothing else in the world? A No.

Q Did you know where the bathroom was in that house? A No.

30 Q Were you in it? A No.

Q You said Mrs. Rice went to the bathroom?

A Yes.

Q Did she say she was going to the bathroom?

A Yes.

Q What did she say? A She said she wanted to go down to the bathroom to freshen up for the trip.

Q How long before you left did she say that?

A Almost immediately when we went upstairs.

Q Immediately? A No, but very soon after.

40

Mary Asquith, recalled, further cross.

Q Before she went to the bathroom, did you sit down in the room? A I am quite confident that I sat down in the room.

Q Did Mrs. Rice sit down? A No.

Q Did Mrs. Babcock sit down? A Mrs. Babcock sat down later.

Q When you went in the room, before Mrs. Rice went in the bathroom, did Mrs. Babcock sit down? A No.

10

Q So, up to the time Mrs. Rice went to the bathroom the only person that sat down was you? A That is my recollection.

Q How long had you been seated when she went to the bathroom? A Possibly a minute or two minutes.

Q While you were there, before she went to the bathroom, while Mrs. Babcock and you were standing up, who spoke first? A Mrs. Rice spoke first.

20

Q That is while Mrs. Babcock and she was standing? A Yes.

Q What did she say? A She said, "This is the big front room that I told you about, it was a bedroom when I was a child."

Q What did Mrs. Babcock say? A She said, "Yes, I had the bed taken out after your uncle died."

30

Q That was the first thing that was said? A Yes.

Q Then what did you say? A Nothing.

Q Just sat there, is that right? A Just about.

Q Didn't you say anything? A I might have made some casual remark, I don't know.

Q But, that's about all? A Yes.

Q Then it was, she went to the bathroom?

A Yes, sir.

40

Mary Asquith, recalled, further cross.

Q Was there anything else said before she went to the bathroom? A I can't recall anything.

Q You can't recall anything at all? A No.

Q How long was she in the bathroom? A Well, it seemed to me an age, after Mrs. Babcock started talking.

Q How long was she in the bathroom? A Possibly ten or twelve minutes.

Q During that time you had this conversation you have alleged with Mrs. Babcock? A I had the conversation I did have with her.

Q Was Mrs. Babcock mad? A Not at first.

Q But she got mad? A She got very angry when I mentioned Bowen's name.

Q State exactly what she said when she got angry, and you mentioned Mrs. Bowen's name? A I had—

Q Tell me what she said? A Prior to when she got angry.

Q When she got angry? A Do you want me to tell you what she said before she got angry, or at the moment she got angry.

Q Tell me what she said when she got angry? A I told her I had met her other sister-in-law, Mrs. Bowen, and thought her such a gracious, charming, old-fashioned gentlewoman.

Q You used the word gracious? A Yes.

Q You remember that distinctly? A Yes, that has always been my term of description of Mrs. Bowen.

Q Always? A Yes.

Q Go ahead? A And Mrs. Babcock, instantly there was a snap in her voice, her voice wasn't loud, her voice was never loud.

Q It was never loud? A No, but there was a certain snap in it, and she said "Lena Bowen

Mary Asquith, recalled, further cross.

isn't gracious, she is a grasping, selfish old hag, she has cheated everyone in the family, she cheated the children out of their share of their grandmother's estate, and she is trying to cheat these out of their uncle's estate, she is trying to get them to break my husband's will, you know she is," and I told her that I had not seen Mrs. Bowen since Mr. Babcock's death, since Mr. Babcock died, she said "You know it, Carolyn told me," and I told her that I didn't think Mrs. Bowen had anything to do with it, and she said "Yes, she has, I know that woman, she made my husband pay money into their mother's estate so she could get her share right away, and once when my husband was so sick I had to go out for him and I came back and found that woman here, and sick as Ned was, she was coaxing—" 10
 I think she said, "persuading him to leave her money, but I put a stop to that, I got rid of that woman and I made Ned Babcock make another will and he promised me if I would carry out his wishes he would never change it. Lena Bowen is at the bottom of all this." Sometime during that time Mrs. Rice had come back into the room and without any distinction in addressing her, or anything else, Mrs. Babcock went on, "You mustn't help, Lena Bowen is the one who is at the bottom of all this, and I don't want any litigation with her, I never want to see that woman again, and if you and Eleanor don't contest your uncle's will I'll leave you in my will half of my estate." 20 30

Q Did she say, whom she would leave one-half of her estate to? A She said, "If you and Eleanor don't contest"—

Q Those are the words as near as you can remember? A I think they are practically her 40

Mary Asquith, recalled, further cross.

own words, because the thing had been rather a shock to me and I was watching closely.

Q Quite a shock? A Yes.

Q At what stage in the proceedings of that conversation did Mrs. Rice enter the room from the bathroom? A She came in sometime while
10 Mrs. Babcock was telling about telling about Mrs. Bowen trying to get Ned Babcock—

Q How do you remember that so distinctly, that she came from the bathroom at that moment? A I am not confident it was just that moment, but I know the first thing that Mrs. Babcock said to Mrs. Rice, "You mustn't help her."

Q That was the first thing she said? A Yes.

Q "You mustn't help her?" A Yes.

Q Sure of that? A Quite confident.

Q Had anybody said anything about helping
20 her before that? A Mrs. Babcock had just said that Mrs. Bowen was at the bottom of the whole thing, and she turned right around and said, "You mustn't help her."

Q Was Mrs. Rice in the room at any time prior to the words being used, "You mustn't help her," when you were discussing Mrs. Bowen?
A That I couldn't say, because that was the first time that I was conscious of Mrs. Rice.

Q You remember Mrs. Rice went to the bath-
30 room? A Yes.

Q Up to that time Mrs. Bowen's name hadn't been mentioned? A No.

Q The first that was mentioned in the presence of Mrs. Rice was when she came back from the bathroom and Mrs. Babcock turned to her and said, "You mustn't help that woman." A Yes.

Q Did she say what woman? A She said,
40 "You mustn't help her, Lena Bowen is at the bottom of all this."

Mary Asquith, recalled, further cross.

Q How long did you stay in the Babcock house after that conversation? A We were there possibly ten or fifteen minutes I should say.

Q About fifteen minutes longer? A I wouldn't think it was more.

Q Was it more than that? A I don't think 10 so.

Q Sure about that? A I'm not sure.

Q Did you go down to the door again? A Yes.

Q Who went with you? A Mrs. Babcock and Mrs. Rice.

Q During the latter part of the talk with her niece did she raise her tone? A I can't say she did, Mrs. Babcock's tone was quite low.

Q Quite low all the time? A Yes.

Q She was never mad? A She was mad, 20 extremely mad.

Q But her tone never raised above her tone of conversation? A Her voice as I recall was inclined to get a bit lower.

Q Was Mrs. Babcock sickly at that time? A I can't say so.

Q Did she look sickly? A She didn't look especially well.

Q Do you know how old she was? A I have 30 no idea.

Q Did she look like an old woman? A She didn't look like a young woman, she looked about sixty.

Q Did you ever ask her niece how old she was? A I never did.

Q You were not interested in her age? A I wasn't interested in Mrs. Babcock.

Q After she talked about this half of her estate, you were interested, weren't you? A I 40 was interested to this extent, Mrs. Babcock was

Mary Asquith, recalled, further cross.

afraid of something and I sat there and watched her and thought, "What is that woman afraid of? It is not just litigation, she has got something in the back of her mind that she is afraid of."

Q Oh, you thought she was afraid of something? A Yes, I did.

10 Q Did you tell anybody that? A I couldn't because Mrs. Rice wouldn't let me discuss that situation with her.

Q Did you ever tell a soul on earth until to-day that she was afraid of something? A I might say, I did, yes, I did, wait a minute, yes, I did. I think when we first got the news of the bequest in the paper—

Q What? A I think when we first heard news of the bequests I think I made the remark, "No wonder she was afraid."

20 Q To whom did you make that remark? A To whom?

Q Yes. A Well, it was a general remark, Mrs. Rice had shown me the papers. I don't think there was anybody in the room but her.

Q But if you ever told a single soul in the world about her being afraid of something, it was that occasion after her death when you spoke to Mrs. Rice? A I think that's all.

30 Q You are not sure of that, are you? A I don't recall saying that at all, I think I put that in the statement, didn't I, that she to be worried more than the litigation.

Q Did you ever make a statement to the effect that you thought she appeared to be afraid, to anybody other than Mrs. Rice? A I am trying to recall that.

Q Did you ever make such a statement to a lawyer? A I think it is quite possible I did.

40 Q Did you? A That I can't tell you.

Mary Asquith, recalled, further cross.

Q Can't tell? A No.

Q Did you talk about her on the way home from Elizabeth with Mrs. Rice? A No.

Q You went all the way back to Westport? A Yes.

Q And all the way going back on the train, going back from Elizabeth to Westport did you talk about her at all? A I thought you meant going back on the train the other day. No, going back from Elizabeth to Westport we talked about Mrs. Babcock, yes, she was very angry with me— 10

Q Just answer my question, on the way back from Elizabeth that day, did you say to Mrs. Rice at anytime that you thought her aunt was afraid of something? A No, I don't believe I did, because I don't believe she gave me a chance to say it. 20

Q And when you got home that night did you mention the fact? A That was never mentioned inside our house, all conversation about that incident ceased at the railroad station.

Q Closed forever? A Yes.

Q That is true? A Yes.

Q You do remember on the way to the railroad station, "Well I don't know how much money your aunt has got, but whatever it is, half of it is going to fall into your lap before we get through." A Those are not my words. 30

Q They are not? A No.

Q What were your words? A I said, "I don't know what the old lady has, except temper, but whether it is five cents or five million it's a pretty safe gamble that you and Eleanor are going to have half of it—"

Q Those are your words? A "Are going to have half of it wished on you." 40

Mary Asquith, recalled, further cross.

Q Did you use the million? A I am fairly confident that I said that.

Q Five cents or five million? A Yes, because that is quite a connecting phrase of mine referring to money.

10 Q Did you talk any more on the train going back or going to the train about Mrs. Bowen?
A I asked Mrs. Rice why she had not told me that Mrs. Babcock and Mrs. Bowen were not on good terms and she said that she didn't know it herself until that day.

Q Did you say anything about it? A I am very sure that I said, "That Mrs. Babcock undoubtedly disliked Mrs. Bowen."

Q Did you say anything to her about Mrs. Babcock disliking Mrs. Bowen? A Yes.

20 Q What did you say? A I believe, I said, "I'll say she dislikes her."

Q You used those very words? A Well, I wouldn't like to swear to that, but that was the meaning of the words.

Q And now you tell us that you have not read that statement over that you prepared for the lawyer since you prepared it, is that correct?
A I have not.

30 Q Didn't Mrs. Rice tell you about that time that shortly thereafter, or before that, that she was trying to borrow five hundred dollars from an aunt in Philadelphia? A No.

Q To publish a movie book? A Mr. Rice never had anything to do with motion pictures.

Q Didn't she tell you that? A He never—

Q Did she tell you her husband wanted to publish a movie book and she wanted \$500 to put it over? A She certainly did not.

Q Sure? A Yes.

Mary Asquith, recalled, further cross.

Q The family needed money at that time?

A Yes.

Q That is a fact? A In business you always need money.

Q You always need money in business? A Yes.

Q Did you know about her being in Philadelphia about a book? A Mrs. Rice was never interested in any movie book. 10

Q Did you know about her being in Philadelphia to raise money for a movie book? A No.

Q Did you know about Miss Smith being there? A No, I never knew anything like that connected with the Smith family.

Q You didn't? A No, I never knew anybody connected with the Smith family had any interest in motion pictures or motion picture books. 20

Q Mrs. Rice was in that business? A I beg your pardon, Mr. Rice sold rights to books.

Q He sold book rights? A For the author.

Q His business was dealing in motion picture books? A No, it was not. We dealt in plays and we placed the author's work—

Q Did Mrs. Babcock wear glasses the day you were there? A I said I have no recollection, I haven't any recollection of any light hitting her glasses. 30

Q You noticed her eyes were brilliant gray blue? A No, I didn't notice.

Q You didn't get close enough to notice? A No.

Q How close were you talking to her? A Close enough to shake hands down in the hall and upstairs.

Q Close enough to shake hands, but not to see the color of her eyes? A I didn't notice the color of her eyes, or her glasses. 40

Mary Asquith, recalled, further cross.

Q You did notice that she was about sixty years old? A That was after she came down stairs.

Q Did she have glasses on then? A I didn't notice any glasses.

10 Q How was her hair combed? A Quite simple, it was coiled quite simply.

Q Was it gray? A An even gray, I mean an iron gray.

Q You noticed that? A I noticed that going up stairs.

Q Did she have any marks on her face? A I didn't see any.

Q Did she have a mole on the side of her face? A I didn't notice.

Q Did you look to see? A No, I didn't.

20 Q Did she have any marks on her face? A I don't recall any marks.

Q What was the last thing she said to you as you went out? A I don't know that she said anything in particular to me, unless it was, "I hope I'll see you again," or "Come again," or something like that.

Q Was that the last thing she said? A No, the last thing she said was to her niece.

30 Q What did she say the last thing to her niece? A She told her to remember there must be no contest.

Q That was the last word she said, just going out of the door? A Yes, as we stepped out on the porch.

Q Did her niece ever say to her there was going to be a contest? A Yes.

Q When? A After Mrs. Babcock had said she would leave half of the estate to them.

40 Q Do you mean to say that after you got there, about three o'clock in the afternoon— A

Mary Asquith, recalled, further cross.

It wasn't three o'clock, it was fully half-past three if not twenty-five minutes of four.

Q Do you mean to say that at half-past three or twenty-five minutes to four after she had been in the house with her aunt apparently for three or four hours, that out of the sky, she said to her aunt that she was thinking about contesting her uncle's will, did she? A She couldn't have said it out of the sky, because when Mrs. Babcock said, "I'll leave you in my will half of my estate," Mrs. Rice said, "Aunt, we have talked that all over. I told you I was going to tell father and Eleanor what you said, if you really mean it and I think that will be satisfactory." 10

Q Did Mrs. Rice tell you that she had said to Mrs. Babcock after you left there at Elizabeth anything about a will contest? A Mrs. Rice said that she and her aunt had talked that over downstairs and Mrs. Rice couldn't see why I had pryed into the thing and got Mrs. Babcock all excited again over it because that was all settled downstairs before I came. 20

Q When did she tell you that? A On the way home.

Q On the way home? A Yes, sir.

Q On the train in Jersey or New York? A I couldn't tell you which one, because it was one steady thing about my hearing anything about the family history. 30

Q Was it in the train in New Jersey or in the train from New York to Westport? A I can't tell you which train. It was on a train. I don't know whether it was before we got into New York or after we got on the train at the Grand Central, because it was one steady ride.

Q Did you keep a diary? A I did not.

Q You didn't write it down that day? A I did not. 40

Mary Asquith, recalled, further cross.

Q The first time you ever wrote it down was when you made the statement for the lawyer?

A Yes, but I went over and over the thing after I got home and got to my room in Westport that night until two or three o'clock in the morning wondering what I could have said that
10 started Mrs. Babcock.

Q You stayed up until three o'clock in the morning? A I was in bed.

Q You were awake until three o'clock in the morning? A Yes.

Q A sort of provoked, at yourself? A I was very angry with myself because I couldn't see why Mrs. Rice thought I was prying into her affairs, I never did and I never did pry into anybody's affairs.

20 Q You were friendly with her when you got back to Westport? A We were always friendly.

Q You didn't see anything on the trip you made to Elizabeth to warrant any conviction on your part that there was anything to worry about, did you? A I didn't quite get that question. That I had any conviction of worrying?

30 Q You had a conviction in your mind that you had done something wrong that you should worry about, didn't you? A I can't say that I had done something wrong, but I knew that I had not attempted to ask any questions, I knew I hadn't attempted to find out anything and I was trying to see what I could have possibly have said that would lead Mrs. Babcock to tell me these things.

40 Q As a matter of fact when you were on the way to the railroad station in Elizabeth, if you were there, when you made the statement which you say you made, "That no matter whether she has got five dollars or five million half is in your

Mary Asquith, recalled, further cross.

lap," you thought a beautiful job had been completed? A No, I didn't.

Q You did not? A No.

Q Well, you remember what you said? A Yes.

Q "You are going to have a half million drop in your lap." A I didn't say a half million. 10

Q Well, whatever there was? A I had no idea that Mrs. Babcock had any such sum as half million.

Q Did you ask your companion what she thought Mrs. Babcock had? A Never.

Q Never did? A No.

Q Did you ask her whether she was rich or poor? A Never.

Q Weren't you interested? A I wasn't interested, no. 20

Q And haven't been interested since? A I have been interested since the death of Mrs. Babcock because I was quite indignant on the—

Q Why did you come down here today? A Because I had to come.

Q Just because you wanted to come? A No.

Q You had to come? A I imagine I would have to come.

Q Did someone tell you you had to come here today? A No, nobody told me I had to come today. 30

Q Did you come all the way from Westport?

A No, I came from Eltingville, Staten Island.

Q Whom did you come with? A Mrs. Rice and Mr. Bregoff and from Elizabeth with Mr. David.

Q You had been with them over the week-end? A No.

Q Where were you? A At Eltingville. 40

Mary Asquith, recalled, further cross.

Q At whose place? A Mrs. Rice's and my own.

Q Then you had been with them over the week-end? A I am always with the Rice's.

Further cross examination by Mr. Emerson.

10

Q Are all the statements contained in the statement prepared by you and marked Exhibit C. 1 true? A I don't know what Exhibit C. 1 is.

Q I show you Exhibit C. 1 and ask you if all the statements contained in that statement are true? You prepared that statement, didn't you? A Yes.

20 Q Don't you know whether the statements in that statement are true or not? A Anything I put in that statement is true to the best of my knowledge.

Q Is every statement in there a true statement of the facts that occurred on the day in question? A To the best of my knowledge, yes.

Q What does that mean? To the best of your memory when you prepared the statement? A To the best of my memory when I prepared the statement.

30 Q When was that statement prepared? A That statement was prepared in July.

Q Of what year? A 1928. It must have been prepared on a Saturday because I was working at the time and I didn't—

Q Did you make up that statement from a memorandum which you had made as to what transpired in July, 1924? A I never had any memorandum; that was my first statement.

40 Q And if there are any inconsistencies between this statement and the testimony you gave before this court last Thursday, which is true? A

Mary Asquith, recalled, further cross.

Well, since then I had a chance to think over the thing quite a bit. I know I have now down the time of going there to within ten days. That was done by checking back on things I knew had happened.

Q So that if there are any inconsistencies between this statement which was prepared in July, 1928, and the testimony which you gave in this court about a week ago, the statement is to prevail. Am I to understand that now? A No; I should prefer to have you ask me the question, because there are some of those things I have had a chance to think of. For example, I swore I couldn't tell where I had been to lunch. It came to me this morning and I— 10

Mr. Emerson: Your Honor, I ask that that question be answered as I have put it to the witness. 20

Q (Stenographer repeats the question.) A I said no; I should like to have the question asked me, because I—

The Court: Madam, when you have said "no," you have answered the question. Your answers are far too long and not necessary. 30

Q I read from your statement a portion of the first paragraph: "Mrs. Rice said they had just gone to the door with a neighbor and were about to go upstairs when she heard my step on the walk." I read from your testimony on page 23: "I met Mrs. Babcock in the hall. Mrs. Rice had been waiting for me and as I turned into the place one of them opened the door and Mrs. Rice introduced me to Mrs. Babcock, just inside 40

Mary Asquith, recalled, further cross.

the door. Mrs. Rice said that she was just going to get her wraps and Mrs. Babcock said, 'They are upstairs, come up.' 'You didn't mean what you said in the statement when you stated they had just seen a neighbor to the door? A My recollection of that is—

10 Q Did you or didn't you? A I meant it when I wrote it, yes.

Q But you have changed your mind since. Is that correct? Is it? A I can't say I have.

Q You haven't? A I can't say I have changed my mind, no.

Q Is the statement still correct or is your testimony correct? A My testimony is correct.

Q Your statement is incorrect? A To a certain extent it must be. I don't know who was
20 there or why they were in that front room.

Q I read another section of Exhibit C. 1 which is your statement, "She turned on me in a rage—Lena Bowen wasn't gracious; she was a grasping selfish hag, who had cheated everyone in the family, she had cheated Nellie's children out of their grandmother's estate, she had tried to make their brother cheat them, she was trying to break her (Mrs. Babcock's) husband's will, that's what Lena Bowen was trying to do, Carolyn had told
30 her and I knew she was doing it, didn't I?" Here on page 27 of the testimony: "Lena Bowen isn't gracious, she was a grasping selfish old woman, she made trouble for everyone of the family and now she is trying to cheat the daughters, Nell's daughters out of theirs and she is trying to break the uncle's will and you know she is. I said, 'I haven't seen her since the death.' She said, 'you do know it, Carolyn told me, she said all Lena Bowen wants is to get Ned's money for herself.'" Did Carolyn tell Mrs. Bowen that,
40

Mary Asquith, recalled, further cross.

or is that something that Mrs. Babcock told Mrs. Rice? A What do you mean?

Q The statement that was made— A That is what Mrs. Babcock said to me.

Q What did she say to you? A When I first mentioned Lena Bowen and said she was a gracious, charming, old-fashioned gentlewoman, she said, "Lena Bowen isn't gracious, she is a grasping, selfish old hag, or old woman." I don't know which words she used. "She has cheated every one in the family, she cheated Nellie's children out of their share of their grandmother's estate and now she is trying to cheat them out of their uncle's—she is trying to make them break their uncle's will, you know she is." 10

Q And she told you who told her that? A No. 20

Q She didn't? A No.

Q Didn't she say Carolyn said so? A That was when I said I hadn't seen Mrs. Bowen after Mr. Babcock's death and she said, "You do know, Carolyn told me that." Carolyn had told her that I did know—that was the way I got the meaning of it.

Q Didn't Mrs. Babcock say that Carolyn informed her that Lena Bowen was trying to attack her brother's will, that is Edward B. Babcock's will? A Not just those words. 30

Q The information came from Carolyn, it was something Mrs. Babcock knew because of the fact that Carolyn told her that? A That I don't know.

Q You don't know that? A No.

Q That is what you stated? A That refers to Mrs. Babcock saying I did know about the breaking of the will because Carolyn had told her, it didn't refer of how Mrs. Babcock knew of it, not as I understood it. 40

Mary Asquith, recalled, further cross.

Q I read from another section on page 2 of your statement, "At some point in her torrent of words she turned to Mrs. Rice and said, 'Don't you do anything Lena Bowen asks, she'll cheat you, she wants Ned's money and she won't let you have any, don't you join with her, you let
10 Uncle Ned's will alone, I'm going to leave you and Eleanor half the money.'" Now, I read from the testimony on page 28—

The Court: This is nothing more than argument, essentially is it, you may argue it.

Mr. Emerson: I think it is, I will withdraw the question.

20 Q Miss Asquith, did you ever see a photograph of Mrs. Babcock? A Never, until the one you showed me here last week.

Q When you were about to take the train on the day you came to Elizabeth, who purchased your ticket, did you purchase it, or did— A I purchased it.

Q Have you ever been a witness in any other case? A In various plagiarist cases.

30 Q When was the last time you were in court?
A In court?

Q Yes. A I think I was in court in 1923 or 1924, on the Booth Tarkington "Seventeen Case."

Q Who was counsel in that case? A I don't recollect.

Q Was Mr. Rubin counsel or interested in that case? A No, that was before I knew Mr. Rubin.

40 Q Have you testified in no cases since 1923, or '24? A Yes, but not in court, it was the arbitration of the Dramatists' Guild.

Otto Wagner, direct.

Q How many times have you been a witness in court during the last twenty years? A Possibly two or three times.

OTTO WAGNER, a witness produced on behalf of the defendants, being duly sworn, testifies as follows: 10

Direct examination by Mr. Carey.

Q Doctor, where do you live? A Elizabeth, N. J.

Q What is your profession? A Physician.

Q How long have you been practicing your profession? A For twenty-six years.

Q All that time at Elizabeth? A Yes, sir. 20

Q Did you know Mr. Babcock? A I did.

Q And Mrs. Babcock? A I did.

Q Who attended Mr. Babcock in his last illness? A I did.

Q And did you attend him before that? A No.

Q How long did you attend him in his last illness approximately? A (Looking at paper.) June 7, 1923.

Q Until when? A Until the day of his death on September 6, 1923. 30

Q What did he die of, cancer? A No, cirrhosis of the liver.

Q When you were attending him did you go quite frequently, did you make frequent calls? A Almost every day.

Q What room was the bed in? A In the middle room on the second floor.

Q You knew the layout of the house from going there? A I did. 40

Otto Wagner, direct.

Q The front that is spoken of, was there any bed in that? A Not that I know of.

Q You were in there? A Yes, sir.

Q Did you ever see a bed in there? A No, sir?

10 Q The bed he occupied was in the second room? A Yes.

Q That is where he died? A Yes, sir.

Q What was that front room? A That was a library and sitting room.

Q Not a bedroom at all? A No, sir.

Q Now, after the death of Mr. Babcock did you attend Mrs. Babcock? A I did.

Q When she had her physical trouble? A Yes.

20 Q Did you know her very well? A Yes, quite well.

Q What type of a woman was she? A A very alert precise lady and with a very acute keen mind, somewhat stubborn I should think, and a very efficient housekeeper, and she was really what you may call an old-fashioned lady, as you don't see many of them any more.

Q And did she keep a nice house, or how? A Very nice.

30 Q What was the condition of her house? A Very neat and clean.

Q Nothing untidy about it? A No, sir.

Q Did she have servants in the house? A Yes.

Q How many? A Two.

Q Did you know them? A Yes.

Q Who let you in when you went to the door each day? A Either Katy or Margaret.

Q Did Mrs. Babcock let you in? A No, she never let me in.

40 Q She never let you in? A No.

Otto Wagner, direct.

Q Now do you know whether or not Katy or Margaret were always there, one or the other, when you called? A Yes, sir.

Q Did you attend her at anytime in the month, say of January, 1924? A I did.

Q What dates, do you know? A On the 2nd, on the 9th, on the 15th, on the 23rd and 25th. 10

Q Those are the dates? A Yes.

Q At that time were you treating her for any illness? A She wasn't exactly ill, but she was simply upset due to the death of her husband, if I recollect right, it was around Christmas, I had been there Christmas, or the day after Christmas and she was quite upset and she told me she was terribly upset by the death of her husband and things of that kind. There was no acute illness. 20

Q Did she stay in the house? A Yes.

Q Do you remember later being at her house at anytime in 1924 and her telling you about the visit of anybody? A No, she didn't.

Q Did she tell you at anytime, or make any comment to you about any of her nieces? A No, she didn't at that time.

Q I mean at anytime? A At anytime, yes, yes, she told me that she didn't like her husband's relatives, and she also told me at that time that she had made a will and which she talked over with me and she asked me whether I thought it was right to leave money to the orphan asylum of Elizabeth and to the Madam Alphonsa Lathrop Rosary Hill Home. 30

Q That is the cancer hospital? A Yes, in Hawthorne, N. Y.

Q When was that she talked to you, if you remember? A That was the time she was first 40

Otto Wagner, direct.

taken ill herself, that was quite a few months after.

Q After your January visit? A Yes, sir.

Q Now, did she tell you during any period of that time about anyone calling at the house?

A During that period of time?

10 Q Yes? A During the first period of the time?

Q During the last period? A Well, she told me while she was ill, and was bedridden that there had a lady called from New York, a niece as I recall it, and she refused to see her, and she told me that she sent Margaret downstairs to tell her she couldn't see her, that she was too ill, and that this lady had sent Margaret back again and told her that she would like to see her, and that she sent word again that she wouldn't see her, and she seemed to be quite upset. I happened to go in the same day when the thing happened.

20

Q At that time was she capable of seeing any friends? A Yes.

Q Did she see her friends at that time? A Yes.

Q Did you see them at the house? A Yes, I saw the minister and several of her other friends.

30

Q Was there anything in her condition at that time to prevent her from seeing her friends?

A No, there wasn't.

Q And for sometime after that? A No.

Q On this day you speak of, she was very capable of meeting anybody socially, wasn't she, that she wanted to? A Yes.

Q Excepting she was in her bed? A Yes.

Q Did she tell you whether or not she saw this woman? A She did not.

40

Otto Wagner, direct.

Q What did she say about it? A She said she refused to see her, and would not see her.

Q And did she tell you she didn't see her? A She didn't see her that day.

Q You say you can describe Mrs. Babcock, was she a strong-minded sort of a woman? A Yes she was. 10

Q Very much so? A Very much so, very set in her ways and not so easily influenced.

Q Did she ever make any comment to you when she talked about, for instance, making a will and leaving her property to the charities about any arrangement she had made, or anything of that sort, to provide for any of her relatives? A No, the only thing she said was this, that she was going to leave it to the orphan asylum because her husband was very fond of children, her own child had died of diphtheria and her husband felt very badly about it and always asked her that she should remember children, and she was leaving that money to the cancer home because some relative had cancer and was taken to the home and she had heard so much about the Lathrop Home and the good work they are doing that she was going to leave some of her money to them, and she said she thought she was carrying out her husband's wishes. She was very fond of her husband and talked about him every day I came there. 20 30

Q She seemed to be very fond of her husband? A Yes.

Q And did he seem to be fond of her? A Yes.

Q They were a very happy couple, weren't they? A Yes, he often spoke about going to get a boat to take his wife out. 40

Otto Wagner, cross.

Q Just describe her appearance as near as you can to the Court? A She was small of stature, rather sharp cut features, very precise in her dress, she was a rather light haired woman with very few gray hairs and very lively, very light on her feet and especially during the time
10 before she was taken ill herself.

Q I show you a picture. A Yes.

Q Is that her? A Yes.

Q Is it a good picture of her? A Yes, a very good picture of her.

Q In late years? A Yes, in late years.

Mr. Carey: I offer that in evidence. Said photograph in a twin frame is marked Exhibit D. 15.

20 *Cross examination by Mr. Emerson.*

Q Doctor, was she the type of woman that would meet issues that were presented to her, if a situation arose—I'll take the present case—the children, the nieces, claim that they went to her and said that they wanted part of her estate and if she didn't give it to them they were going to commence an action against her, is she the type who would submit or is she the
30 type of woman who would take a challenge and fight?

Mr. David: That is objected to on the ground first that the question does not state the facts—

The Court: The objection is sustained.

Q Was she a belligerent type of person? A She was set in her ways, I don't think anybody

40

Otto Wagner, cross.

could have influenced her if she didn't want to do anything.

Further cross examination by Mr. David.

Q Can you point out Mrs. Babcock in that picture (Exhibit C. 4)? A This is her in the white dress. 10

By the Court.

Q Indicating the figure to the right? A Yes.

Q The extreme right? A The extreme right looking at the picture.

Q You had to study that picture quite a while to make sure, didn't you? A Yes.

Q Because there is quite a resemblance between the others on that picture? A I didn't know her when she was as young as that. 20

Q Doctor, will you place the time of your talk with Mrs. Babcock when she told you about the money that she was going to leave to the orphan asylum and the home? A There is no time I can place because she often mentioned that, it wasn't just one time she said it, she often spoke about it on visits to her house.

Q Will you give me as near as you can recall the time she first spoke to you about it? A Yes, sir, it was in 1926. 30

Q When in 1926? A Well, I don't think I could give you the month, because it was the time when she came back from Europe—after she had been to Europe and came back, and I saw her the same day when she came back, that is, as near as I can place it, it would be after the 31st of August, 1926.

Q And that is the first time Mrs. Babcock ever said anything to you about leaving her 40

Otto Wagner, cross.

estate or her money to the orphans' asylum and the cancer home? A As far as I can remember, yes.

Q Is there any way, doctor, that you can refresh your memory to make sure that is the first time? A Well, I am just telling you it was
10 after August 31, 1926.

Q That much you are sure about, that the first time that she ever spoke with reference to leaving her estate or money to the orphans' asylum or the cancer home, was in 1926? A Yes, sir. I don't know whether she had left it or not—

Q No, I mean the first time she spoke to you about it was in 1926? A Yes.

Q And did she, also at that time say anything to you about having refused to see her
20 niece? A No, that was long after.

Q Which was long after? A That she refused to see her niece.

Q I am not sure that I understand you, doctor. Which did she talk about first, the leaving of her money to the orphans' asylum and cancer home, or refusing to see her niece? A Leaving the money to the orphans' asylum and cancer
30 home.

Q And that was in 1926? A Yes.

Q How long after that did she say something to you about refusing to see her niece? A That must have been in 1928.

Q Can you fix about the time in 1928, doctor? A Well, it was about in March, or April, around there, because she was then in bed at that time, and she was in bed for about pretty
40 near three months that she was bedridden before she died.

Otto Wagner, cross.

Q Just what was it she said to you about refusing to see her niece? A I came in in the afternoon, or in the evening and she was very upset and nervous and I asked her, I said, "What makes you so nervous Mrs. Babcock?" Because she was very quiet as a rule, and she said, "Well, people will come in and want to see me when I don't want to see them." And she said, "There was a lady here today from New York, a niece who wanted to see me and she insisted on seeing me and she sent the maid back again the second time for her to see me and I didn't see her because I didn't want to see her." 10

Q She said that on that very day the lady had been out from New York and she didn't see her because she didn't want to see her? A Yes.

Q Did she identify who that person was? A She did not. 20

Q She said it was her niece? A Her niece, that is what she said.

Q She didn't say which niece? A No, not that I remember.

Q And that was in March? A Around there.

Q 1928? A It was in '28, yes.

Q You can't be mistaken about the year? A No, not very well. 30

Q It surely couldn't have been four years before that, could it, doctor? A No, no.

Q Now, when was it, doctor, that she said she was going to leave the money to the orphans' home and the cancer hospital, because she felt that in that way she was carrying out her husband's wishes? A Well, she said that a great many times. I can't tell you, I can't place it except, perhaps, in the year 1926, or after August 31, 1926. 40

Otto Wagner, cross.

Q How did she come to talk with you so often about the disposition she was going to make of her estate, doctor? A Well, because the first thing came about, I recollect very well, except the dates I don't know that, she said, "I remembered you in my will for your kindness to my husband." And that was the first time that she said that she left me \$5,000 in her will for kindness to her husband and she elaborated on it and spoke about I had been so kind and nice to him in his sickness and that he appreciated that, and I forget whether she said, "I have," or "I am going to leave the money to these institutions, and what do you think of it."

10

Q She was asking your advice? A She was asking my opinion.

20

Q Your opinion? A Yes.

Q As to whether she ought to leave the money to the orphan asylum or cancer hospital, or not? A Yes.

Q Did she seem to have something worrying her, or disturbing her as to just how she should leave the estate? A No, nothing was worrying her.

30

Q How often did she talk to you about this thing, doctor? A Up to her death, dozens of times, she often spoke about it.

Q About what she was going to do? A No, after awhile she said what she had done.

Q How often did she talk to you about what she was going to do with her estate? A Perhaps more than once.

Q More than twice? A Perhaps more than twice.

Q More than three times? A Maybe.

40

Q More than four? A I don't know.

Otto Wagner, cross.

Q Well, it was more than three? A Maybe it was more than three. I haven't correct recollection when she did it, or what she did, or that she was going to do it, but she spoke about it that that was in her mind.

Q You said she was a woman that was not easily influenced? A That was right. 10

Q Is that true? A Yes.

Q That has no bearing on what you have been asked, you understand that this is not a contest against the will on the ground of undue influence A I know that.

Q You were a witness in a contest where the contest was on that ground? A Yes.

Q She also told you, doctor, that she didn't like her husband's relatives? A Yes.

Q When was it she told you that, doctor? A That was during the time of the conversation about the disposition of the money. 20

Q During that time? A Yes.

Q Will you fix as near as you can, the time? A After August 31, 1926.

Q Now, you say that you treated Mr. Babcock for how long before he died? A From June 7, 1923 until September 6, 1923.

Q Doctor, don't you know that Mr. Babcock died on the 6th of August, 1923? A No, he died on the 6th of September, 1923. 30

Q Now, you only knew Mr. Babcock from June, 1923, until the time he died in September in 1923? A Right.

Q And Mrs. Babcock told you, or did he tell you that because of your kindnesses you were to get \$5,000. Who was it that told you that, Mr. or Mrs. Babcock? A Mrs. Babcock.

Q It was when? A It was long after he was dead. 40

Henrietta Chattworth Woodruff, direct.

Q She told you what, doctor? A She told me after he was dead, she didn't tell me anything while I was attending him that she was going to leave me \$5,000.

10 Q She told you that because of your kindnesses to Mr. Babcock during his lifetime that she was going to leave you \$5,000? A That was after she was sick, after she was sick herself, when she came back from Europe, that was the first time she told me she was going to leave me \$5,000 or had left me \$5,000 in her will.

Q Well, did she say she was going to, or that she had? A That I don't remember.

Q Don't remember? A No.

Q You say Mrs. Babcock was an acute and alert woman? A Yes.

20 Q And strong minded? A Yes, sir.

Q And a stubborn woman? A Yes.

Q Shrewd? A No.

HENRIETTA CHATTWORTH WOODRUFF,
a witness produced on behalf of the defendants,
being duly sworn, testifies as follows:

30 *Direct examination by Mr. Carey.*

Q Mrs. Woodruff, where do you live? A In Elizabeth.

Q In New Jersey? A Yes.

Q How long have you lived in Elizabeth, N. J.? A About 50 years.

Q Are you married? A I am.

Q You have a family? A Yes, sir.

40 Q Brought up in Elizabeth? A Yes, my family was.

Henrietta Chattworth Woodruff, direct.

Q You brought up your children there? A Yes, married, both.

Q Is your son practicing law? A Yes.

Q In Elizabeth? A Yes.

Q And has been for sometime? A Yes.

Q You are over 50? A Yes, I am in the neighborhood of 60. 10

Q You have known Mrs. Babcock for a long while? A I have known her very intimately.

Q How far did she live from you? A She lived at 124 and I lived at 125.

Q Did you go to her home very often? A Almost every day during the latter part of her life.

Q You remember when she died? A Yes.

Q And when her husband died? A Yes.

Q Were they happy or otherwise? A The most devoted couple you could imagine. 20

Q Before the husband died, do you remember ever seeing Miss Smith, or Mrs. Rice there? A Never.

Q Never saw them? A Never.

Q And after Mr. Babcock's death, did you ever see Mrs. Rice or Miss Smith there? A Never.

Q Did you ever see either of those women other than in this court room? A Yes. 30

Q Where? A I saw Mrs. Rice at Mrs. Babcock's funeral.

Q Was that the only time that you ever saw her in your life? A That is the only time.

Q When was that? A When?

Q Where? A 125 West Jersey street, Elizabeth, N. J.

Q Do you know whether this lady, Miss Asquith was at the funeral? A Never saw her in my life before. 40

Henrietta Chattworth Woodruff, direct.

Q Never saw her? A Never heard of her before.

Q When you saw Mrs. Babcock every day, did you talk about intimate things? A Most intimate.

10 Q You were what we call close friends? A Very.

Q Do you remember when she went to Europe? A Yes.

Q And when she came back? A Yes.

Q Do you remember when she was taken sick? And confined to her bed? A Yes.

Q You remember that? A Yes.

Q You know the rooms of the house? A Yes.

20 Q In what room did Mr. Babcock die? A Mr. Babcock died in the middle room.

Q The middle room? A Mr. Babcock died in the middle room and he never was in any other room.

Q Were you there when he was sick? A Very seldom to see him, but I went to see Mrs. Babcock every day when she was sick.

Q What was the front room for? A A living room.

30 Q Not a bedroom? A Not that I ever knew.

Q You never saw a bed in that room? A Never.

Q How often have you been going to the house? A The last 15 years.

Q And in the 15 years that you have been a neighbor there hasn't been a bed in the room? A No.

Q And no bed was taken out of that room after Mr. Babcock's death? A There was none in there.

40

Henrietta Chattworth Woodruff, direct.

Q Now, during the last year, we will say, of Mrs. Babcock's life—or let's go back to the year of 1924 after Mr. Babcock's death. Did you then keep up your relationships with Mrs. Babcock?

A Much more intimately.

Q More intimately than ever? A Yes.

Q Did Mrs. Babcock ever in the course of your intimacy with her right up to the time of her death, ever tell you of a visit of a Miss Asquith? A Never. 10

Q Did she ever mention any such woman?

A No.

Q By description or otherwise? A No.

Q Did she ever say anything to you about Mrs. Rice? A Yes.

Q What did she say to you about Mrs. Rice and when? A When? 20

Q What and when? A I was there the day after Mrs. Rice called. She said that she had come to ask her, to tell her about a book that her husband was going to publish. She had been to see Mr. Smith's aunt, and asked her if she would let her have \$500 and Mrs. Smith's aunt declined to give it to her because she was supporting herself, Mrs. Babcock said to me. She had spoken to Mrs. Rice and she said, "How could you go and ask your aunt to give you money when she has to support herself? I wouldn't give you \$500." 30

Q Now did she say anything at that time about Mrs. Rice or any one threatening to contest her husband's will? A No.

Q Not even a word? A No.

Q Did you ever hear of that? A No.

Q Did she tell you that she had agreed to give her one-half of the estate, Mrs. Rice? A On the contrary, she said, "She didn't intend to let them have any." 40

Henrietta Chattworth Woodruff, direct.

Q She said she didn't intend to let them have anything? A No.

Q She didn't speak very well of her relatives? A She was not very fond of them.

Q You never saw any relatives at her house? A I have seen Mrs. Bowen.

10 Q Is that the only one? A Yes.

Q Did she tell you what she was going to do with her estate? A Yes.

Q When did she tell you that? A When she got back from Europe she said she intended to leave half of the estate to the orphan asylum because Mr. Babcock was interested in that and the other half was going to the cancer hospital.

Q Did she say anything else? A Yes.

Q About anybody else? A Yes.

20 Q What did she say? A She said she had left Mr. Hubard \$5,000.

Q He is the rector of the Episcopal Church? A Yes.

Q Is that the church she attended? A Yes.

Q Did she ever say anything about promising the Smith's or the Rice's any money? A No.

Q Did you ever hear that she owed them money? A I don't think she ever did.

30 Q What type of woman was she? A She was a woman of a great deal of character, very decided in her prejudices; you couldn't influence her. I never tried to, because she would do her own way; she was perfectly decided and up to the last she had that decided manner about things.

Q Did she have moral strength? A Very, to the very last.

40 Q She was a good woman, wasn't she? A Very, very.

Henrietta Chattworth Woodruff, direct.

Q Do you know any reason why she didn't like her husband's relatives? A No, because she had very strong prejudices, you know, and possibly they may have antagonized her.

Q You don't know? A No.

Q You never met any of them? A I knew Mrs. Smith. 10

Q You did? A Yes.

Q How long? A Up to the time of her death.

Q When she was a girl? A After she was married, I saw Mrs. Smith.

Q You never knew of any intimacy between her and Mrs. Babcock? A No.

Q Or Mr. Babcock? A No.

Q No intimacy at all? A No. 20

Q Isn't it a fact that on the contrary there was no intimacy? A I don't think there was.

Q Do you remember when the house occupied by the Babcocks became vacated after Mrs. Babcock's death? A Mrs. Edward Babcock?

Q Yes, was the house kept open for awhile? A Yes.

Q How long? A I should think five or six months, maybe not quite as long as that. The two maids were there and they looked after things. 30

Q That was after her death? A Oh, yes.

Q After that, what happened to the house? A It was closed, they closed the house after that.

Q And nobody has been in it since? A No.

Q The house is vacant today? A Yes.

Q There is no caretaker or anything? A No.

Q Can you look in the house from the outside? A Oh, yes. 40

Henrietta Chattworth Woodruff, cross.

Q What kind of front doors are there? A Well, double doors with glass in them. Ordinarily in the winter they had storm doors up, but there hasn't been any up because Mrs. Babcock died the 27th of June.

10 Q Prior to that was the front glass so you could look in? A Yes.

Q Right through? A Yes.

Q You could look in the front room? A Oh, yes.

Q You could do that? A Yes, that is except when the shades were pulled up you could see right through.

Q Now you can see clean through? A Yes, sir.

Q You are still living across the street? A Yes.

20 Q Did she wear glasses? A I never saw her without them.

Q You never saw her without them? A Never, not even when she was ill in bed.

Cross examination by Mr. David.

30 Q Will you fix the time when Mrs. Babcock said to you that she didn't intend to leave the nieces anything? A Well, it was right after Mrs. Babcock was confined to the house that she was ill.

Q Well, will you fix the time? A That was in 1928, I should say, I should say it was in March, February or March or something along there.

Q With reference to—it was in March, 1928? A Somewhere in February or March.

40 Q Now, will you tell me when it was with reference to the day that Mrs. Babcock told you that Mrs. Rice had been out to see her? A

Henrietta Chattworth Woodruff, cross.

Well, I couldn't tell you the day, because I don't remember that. I used to see her every day and it was in the autumn or a little bit later.

Q No, what I am trying to get, what I am trying to fix, Mrs. Woodruff, did Mrs. Babcock tell you about Mrs. Rice going out to see her? 10
A Yes.

Q And she, Mrs. Babcock, not wanting to see her? A Yes, she gave orders after the first time.

Q Did she tell you that? A Yes.

Q That Mrs. Rice had come out to see her? A Yes.

Q And that she, Mrs. Babcock, would not see her? A Yes.

Q When was that? A I can't tell you about the dates because when you see a person every day— 20

Q What year was it? A In 1928.

Q What month? A I think in the autumn somewhere along there, if I remember.

Q Will you allow me to try to refresh your recollection? A Certainly.

Q There is testimony in the case that it was in March? A It might have been. 30

Q It may have been in March? A Yes.

Q With reference to that time, I mean the time Mrs. Babcock told you Mrs. Rice had come out and that she wouldn't see her, with reference to that time, when was it that Mrs. Babcock told you she didn't intend to leave these nieces anything? A She didn't say she didn't intend to leave them anything. She told me what she had done in her will, whom she had left her money to. 40

Flora Scrymser, direct.

Q Let me try to remind you, didn't you say a few moments ago that Mrs. Babcock told you that she didn't intend to leave these nieces anything? A Yes, but she intended to leave it to the orphan asylum and the other—

10 Q Did you not testify just a moment ago that Mrs. Babcock said to you— A Yes, sir.

Q That she, Mrs. Babcock, did not intend to leave anything to her nieces? A Yes, yes.

Q She did say that to you? A Yes.

Q When did she say that to you with reference to the time that she told you she wouldn't let Mrs. Rice go to see her? A Well, I can't tell. I can't be positive about that, Judge.

20 Q Can you give some idea, Mrs. Woodruff? A I don't think I can because she talked so intimately to me and every time I went to see her she would sometimes tell me the same thing over again.

Q Well, were they closely related as to time?

A I think possibly it might be, yes.

Q So it was about the same time she said she didn't want to see Mrs. Rice that she said to you that she didn't intend to leave these nieces anything? A Yes.

30

FLORA SCRYMSER, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Carey.

Q Where do you live? A Elizabeth.

Q How long have you lived in Elizabeth?

A Oh, 40 years.

40 Q You live with your family there? A Yes.

Flora Scrymser, direct.

Q Did you know Mrs. Babcock? A Yes, sir.

Q Very well? A Very intimately for the last six years of her life.

Q How did you come to know her? A I knew her always.

Q And very intimately the last years? A 10
During her illness.

Q Did you go to her house very often? A
Very often.

Q Were you there when her husband died?
A No, I didn't know her husband.

Q You were a neighbor? A Yes.

Q How far did you live from there? A
Four doors.

Q Four doors? A Yes.

Q Did you ever see Mrs. Rice? A Never. 20

Q Or Miss Smith at that house? A Never.

Q When you used to go there, during the last years of her life, did she have callers? A Yes, frequently.

Q Neighbors? A Neighbors.

Q That was the last year? A Yes.

Q Did they see her? A Yes.

Q You never had any trouble seeing her?
A Never.

Q None at all? A No. 30

Q You went to her room? A Often; during her illness, always.

Q What was that front room in her house used for? A She had a desk there, a little extension and it was a sitting room.

Q It wasn't a bedroom? A No.

Q Not at all? A No.

Q Did you talk to her frequently? A Very.

Q What did she talk about, her affairs or what? A Well, about everything. 40

Flora Scrymser, direct.

Q Did she ever intimate to you, or say to you at any time that she was going to leave any property to Mrs. Smith or Mrs. Rice? A Never.

Q Never said that? A No.

10 Q Did you ever hear about any such thing?
A Never.

Q Did she ever talk to you about that? A No, excepting she liked Mrs. Rice, but she didn't care for any of her son's family—her husband's family I should say.

Q Did she tell you that? A Yes. I didn't know the Babcock's side, I knew the Wall side.

Q She said particularly she didn't like the Babcock family? A Didn't like them.

20 Q You never saw any of them there, did you?
A Never.

Q What type of woman was she, strong minded or what? A Very strong minded, very decided.

Q Was she the type of woman to run away from trouble or to face trouble? A She would face anything.

Q Not the kind that was afraid? A Not a bit, of anyone.

30 Q Do you know whether she handled her own business affairs? A Entirely.

Q Did she tell you so? A Yes.

Q Did she ever tell you about one of her nieces wanting to go and see her and she wouldn't let her see her? A I have a vague recollection of something of the kind, but not knowing the niece it didn't interest me in the slightest.

Flora Scrymser, cross.

Cross examination by Mr. David.

Q Do you have any recollection at all of what niece it was that she said wanted to come to see her, but she wouldn't see? A No, I haven't any recollection of that.

Q You don't know who it was? A No. 10

Q Do you know how many nieces she had? A Mrs. Bowen and Miss Smith, two that I know of.

Q Was Mrs. Bowen a niece? A No, she was a sister-in-law.

Q She was a sister-in-law? A She was a sister-in-law. I knew nothing about the nieces, no.

Q Who was it that she said in the Babcock's that she didn't like? A I don't think she liked any of them. 20

Q I understood you to say she did like Mrs. Rice? A Of any of the family, she spoke of Mrs. Rice, but she told me she didn't like any of them.

Q Didn't you say a moment ago that she said she did like Mrs. Rice? A If there was anyone in the family that she liked, she liked Mrs. Rice, but she didn't like anybody.

Q She if she did like anybody in the family— A Yes, it would be Mrs. Rice, but she didn't care for any of the family. 30

Q You know that in October of 1923, she was friendly with Mrs. Rice, wasn't she? A That I can't say.

Q You don't know anything about it? A No, I don't know anything about that at all, only she told me she didn't like any of them. Further than that I don't know anything about her family. 40

Mary J. Grant, direct.

Q Did she ever discuss with you at all, her troubles or relations with the nieces of the Babcock family? A No, not with me.

Q She never told you that anybody was going to contest her husband's will? A Not that I ever heard.

10 Q She never told you that anybody threatened even to do that? A No, not that I know of.

Q She never talked about those things with you at all? A I would go in to see Mrs. Babcock for a very short time and take her something when she was quite ill and then I would leave. We talked about general things, not about the family.

Q She was quite ill when you went in to see her? A Very ill.

20 Q And that is the time all the neighbors went in? A Everybody, she saw everyone.

Q She never told you what she was going to do with her estate? A No.

Q To leave money to the orphan asylum? A No.

Q Or the cancer home? A No.

30 MARY J. GRANT, a witness on behalf of the defendants, being duly sworn, testifies as follows:

RECESS UNTIL TWO O'CLOCK.

AFTER RECESS.

Direct examination by Mr. Emerson.

40 Q Where do you live? A Elizabeth.

Mary J. Grant, direct.

Q Did you know Mrs. Babcock prior to her death? A Yes, sir; I did.

Q How long had you known her? A Altogether about 18 years, and 6 years a little more intimately.

Q How often did you see her during the period of 6 years? A Oh, sometimes once a week and sometimes once every two weeks. 10

Q Did you visit her? A I always visited her.

Q She didn't visit you? A No, she has been to my house once or twice.

Q Where did you live? A On Edgar Place and Boudinot Place.

Q Was that place near Mrs. Babcock's home, on Edgar Place? A About two blocks away. 20

Q Did she ever discuss with you as to what she was going to do with her property or money? A She didn't discuss it—she told me.

Q What? A She told me she was leaving some money to Mr. Hubbard, the minister.

Q She said that to you? A Yes, sir.

Q Anything else? A Yes, she did.

Q What? A She told me she was going to leave some of her money to the orphans' asylum and the cancer home. 30

Q Did she at any time say she was going to leave any to her nieces? A No. No, I asked her if she didn't have any close relatives and she said was leaving nothing to anybody but these two.

Q Did she give any reason for that? A She said she had no use for her relatives.

Q No use for them? A No.

Q Did she say anything about Mrs. Rice? A Never mentioned Mrs. Rice to me. 40

Mary J. Grant, cross.

Q Did she mention Eleanor Smith? A I never heard her name.

Q Did she mention Miss Asquith? A I never heard of her.

10 Q Did you call on her in January, 1924? A I can't tell you that, I couldn't remember, I imagine I did; yes, because I would see her once a week or every two weeks.

Q Was she a woman of strong mind? A Yes, I would say she was, decidedly.

Q Was she determined? A Yes, she was.

Q Was her mind clear and active? A So much so I used to call her lawyer Babcock.

20 Q Did she ever make any gifts to you? A Yes, she did. She wanted to make a present of her mother's engagement ring to me and I refused to take it; I said I only went there because I was fond of her and I said I didn't want anything she had, and then she said she wanted my daughter to have it.

Q When was that? A When she came from Europe, I don't know what year it was.

Cross examination by Mr. David.

30 Q Can you fix the time of the occurrence when Mrs. Babcock told you she was leaving money to Mr. Hubard, the orphan asylum and the cancer home? A Do you mean the month or the date?

Q Fix the time. A I couldn't, it was sometime in that fall, I think perhaps October or November.

40 Q What year? A I don't know when she came from Europe. I don't know what year she came from Europe, about 1928, I think, but I can't remember.

Mary J. Grant, cross.

Q Can you tell me how many years ago it is?

A I don't know, maybe two or three years ago, I can't remember when she came back.

Q She told you she was leaving something to Dr. Hubbard and something to the orphan asylum and something to the cancer home. Did she tell you about anybody else? A No, she didn't say that. 10

Q I understood you to say that? A Not to any of her relatives, I am not leaving—

Q Just what was it she said? A She said, "I don't intend to leave anything to my relatives."

Q What else did she say? A That's all she did say.

Q She said, "I'm leaving something to Dr. Hubbard, something to the orphan asylum and something to the cancer home." A Yes. 20

Q "And I'm not leaving anything to my relatives." A Yes, sir.

Q Is that all she said? A That's all I remember.

Q She never mentioned her nieces at all, did she? A I asked her when she said that she had made out a will, or was going to make it out, I asked her if she had any near relatives. She spoke of the orphans' asylum and the cancer home first and she said she had some, but she wasn't going to leave them anything. 30

Q Did she mention any particular relatives? A She might have, but it made no particular impression on me.

Q Did she mention the word "nieces"? A I heard her mention the word "nieces."

Q You did? A I have, yes.

Q As to whether she was going to leave them anything? A No. 40

Moses M. Crane, direct.

Q Didn't she say she wasn't going to leave her nieces anything? A Not going to leave her relatives anything, I don't know who they are.

Q She never mentioned that Mrs. Rice had been to see her in 1924? A No, sir.

10 Q She never mentioned that to you? A No.

MOSES M. CRANE, a witness produced on behalf of the defendants, being sworn, testifies as follows:

Direct examination by Mr. Emerson.

20 Q Where do you live, Mr. Crane? A Elizabeth, N. J.

Q How long have you live there? A Sixty-six years.

Q Did you know Mrs. Babcock? A Yes.

Q How long had you known her? A Well, I think about twenty years, possibly more.

Q Did you know her intimately? A Well, fairly intimately, yes, sir.

30 Q How often did you see Mrs. Babcock prior to her death? A Well, after she was taken sick so that she wasn't able to go downtown very often, I used to see her once or twice a month, I used to go up to see her.

Q Once or twice a month? A Yes, sir.

Q What time did that period start, Mr. Crane? A That probably started along in February, 1928, February or March, up to the time she died.

40 Q You saw her about once a month? A Once or twice a month, yes, sir.

Moses M. Crane, direct.

Q And prior to that time, how often did you see her? A Well, probably she was downtown every week.

Q Did you see on an average of once a week?
A I think so, yes.

Q What were your relations with Mrs. Babcock? A Business relations, she was a customer of ours. 10

Q You are in the banking business? A Yes, sir.

Q What are your duties in the bank? A Safe deposit manager.

Q What was the business that Mrs. Babcock would see you about? A Well, she used to come in the bank and attend to her business and I waited on her the same as other customers.

Q Did she ever discuss her affairs with you? 20
A Well, in a general way.

Q Did she ever discuss any of her securities?
A Well, sometimes she would ask about some certain security, whether it was tax free or not and whether it would be a good time to sell it, or something of that sort.

Q Did she always know the number of her box? A Yes, sir.

Q From your knowledge of her, would you say she was of a strong mind? A Yes, sir; I would, very. 30

Q Did she have a clear mind? A Very clear, a very clear conception of whatever she had in mind.

Q Do you know whether her likes and dislikes were strong or not? A Yes, I think she liked, she liked very well, and anybody she didn't like, she didn't like at all.

Q How did she ever evidence that to you?
A I couldn't say any names, but I know some 40

Moses M. Crane, cross.

people in town she didn't like. I don't recall just who they were, but I know she had expressed a dislike to certain people.

Q Express that to you? A Yes.

Q Did she ever mention her relatives to you?

A No, she never talked about her relatives to
10 me.

Q Was she the kind of a woman that formed an opinion and stuck to it? A Yes, yes, if she formed an opinion she stuck to it.

Q Why did you visit Mrs. Babcock during her illness? A I used to take up some fresh eggs from my farm after it came to be so she wasn't really well. I used to take fresh eggs to her once or twice a month.

Q Was her mind clear up to the last? A
20 Yes, up to the very last time I saw her her mind was perfectly clear, she would sit in the parlor and we talked possibly half an hour, and her mind was clear and she talked on all local subjects and she had a very clear conception of everything that was going on.

Q Which do you call the parlor? A The front room downstairs.

Q Downstairs? A Yes.

Q Were you ever upstairs? A No, not while
30 she was alive.

Cross examination by Mr. David.

Q You also had business with Mr. Babcock, her husband, in his lifetime, didn't you? A No, I only knew him in a social way.

Q Did he have a box? A No.

Q He had none at all? A No.

Q You say he didn't have a box? A No, he
40 was a New York business man and I only knew him at the club and around town.

Offer of Documentary Evidence.

Q Did Mrs. Babcock have a safe deposit box while her husband was living? A Yes, sir.

Mr. Carey: I offer in evidence an exemplified record of the report of the administrator or executor of the estate of Caroline Babcock, deceased, of Pennsylvania. It is exemplified, showing releases given to the executor by the various beneficiaries under that will. It is the estate referred to by Mr. Smith in his testimony. We offer this record so we will have the full record of that estate before the Court. 10

The Court: If there is no objection let it be received.

Mr. David: I object to it on the ground that it is immaterial, I can't see anything in this record that affects the issues in this case at all. 20

The Court: Does it show anything as to any release by Mr. Smith?

Mr. David: Not that I see.

Mr. Carey: We think it describes completely the picture of the estate referred to by Mr. Smith in his testimony. We don't think his testimony was relevant, but we offer it to have it before the Court, and if it is not relevant, the Court can exclude it, but we thought we ought to have the exemplified record in here rather than an attempt to prove in the other way. If it is not material or relevant any part can be excluded by your Honor. 30

The Court: Let it be marked.

Said exemplified copy of record, exemplified by the Register of Wills, of Montgomery 40

Offer of Documentary Evidence.

County of Pennsylvania, is marked Exhibit C. 7.

10 Mr. Carey: I offer in evidence, if the Court please, a certified copy of the mortgage made by Caroline M. Babcock and Frederick A. Babcock, her husband to Elliott C. Smith recorded in Book 130 of Mortgages, page 496, in Union County. This is the mortgage for \$2,800 that was referred to, cancelled on the 12th day of July, 1904, and recorded on the 11th day of December, 1895.

The Court: Let it be received and marked.

Said certified copy of mortgage is marked C. 8.

20 Mr. Carey: Now, I offer in evidence, if the Court please, a satisfaction of mortgage, being a satisfaction of this \$2,800 mortgage made by Elliott C. Smith, the witness who testified here, to Caroline M. Babcock and Frederick A. Babcock, dated April 8, 1904, and recorded in the office of the Clerk of the County of Union on the 13th day of July, 1904, in Book 6 of Discharges, for said county, page 178.

30 It is signed by Elliott C. Smith and acknowledged before a notary public in the City of New York. I offer this in evidence.

The Court: Let it be received and marked.

Said satisfaction of mortgage is marked C. 9.

40 Mr. Carey: Now I offer in evidence, if the Court please, a bond and mortgage made by Caroline M. Babcock to Marshall R. Van Nostrand, dated December 3, 1895, for \$5,000, recorded in the office of the Clerk of the County of Union on the 4th day of December,

Offer of Documentary Evidence.

1895. And I offer in connection with that an assignment of this mortgage from Marshall R. Van Nostrand to Edward B. Babcock under date of March 3, 1897, recorded in the Clerk's office of County of Union on the 12th day of March, 1897.

Said documents are marked Exhibits C. 10, C. 11 and C. 12, respectively. 10

Mr. Carey: I offer in evidence a satisfaction of the last mortgage referred to, executed by Edward B. Babcock on the 28th day of August, 1902.

Said satisfaction of mortgage is marked Exhibit C. 13.

Mr. Carey: Now, if the Court please, I think we will be through now, with the exception of the two witnesses whom we want to present, one is the Rev. Dr. Hubard who is home ill, otherwise he would be here. We have a certificate from Dr. Green that he is home sick. And then we desire in addition, to produce, if we can, the testimony of Nora Farrell, one of the maids at Mrs. Babcock's home. Nora Farrell is now living in New York City, and we couldn't get her down here today, although we made an effort to. I think she is afraid to come all the way to Trenton and she isn't accustomed to court usages. 20 30

We want to suggest this; we thought we might be able to take the testimony of both these witnesses before a Special Master in Elizabeth, or if necessary, at Mrs. Farrell's present home in New York City. If Mr. Powis would act as Special Master it would save the convenience of your Honor, and I 40

Carolyn B. Rice, in Rebuttal, direct.

10 think it would be satisfactory to the other side; or if your Honor is going to be in Elizabeth this week, we might get both of them there. I understand that Dr. Hubard might be able to get out of his house in a day or two. Otherwise we are ready to rest. We might be able to produce the testimony tomorrow as Mr. Hubard might want to go away before Thursday.

The Court: I had intended to sit in Elizabeth this week, but other arrangements have been made. I will hold your application until the end of the case.

20 CAROLYN B. RICE, being recalled on behalf of the complainants, testifies in rebuttal as follows:

Direct examination by Mr. David.

Q On your visit in 1924, did you have any conversation with Mrs. Babcock with reference to borrowing \$500?

30 Mr. Carey: That is objected to as incompetent, irrelevant and immaterial under the statute, under section of the act.

The Court: Objection sustained.

Mr. David: I think they have opened the door to some extent as to what Mrs. Babcock had told them.

The Court: That has not let down the bars. The objection will be sustained.

Elliott C. Smith, in Rebuttal, direct.

ELLIOTT C. SMITH, being recalled on behalf of the complainants, testifies in rebuttal as follows:

Direct examination by Mr. David.

Q Mr. Smith, I show you Exhibit C. 9, the satisfaction of mortgage Elliott C. Smith to Carolyn M. Babcock and Frederick A. Babcock, and ask you if that is your signature? A That was my signature at that time. 10

Q Will you tell us the circumstances under which that paper was signed? A I don't recollect it at all.

Q Have you any recollection of having had any such mortgage referred to in that satisfaction? A No, I have not. 20

Mr. Carey: We have no cross examination.

Mr. David: That is all the rebuttal, your Honor.

The Court: I will overrule your application for the continuance to take further testimony.

BOTH SIDES REST.

Mr. David: I would like to have time to get the testimony so as to argue the case more fully. I think certain of the testimony corroborates the complainants' case. 30

The Court: If you desire, I will hear the argument on February the 12th at 11:00 here.

Deposition of Glenn M. Pike.

IN CHANCERY OF NEW JERSEY.

Between

10 ELEANOR C. SMITH and
CAROLYN B. RICE,
Complainants,

and

20 CLARENCE D. MEYER, individ-
ually and as Executor of
the last Will and Testa-
ment of Julia P. Babcock,
deceased, the REV. LYTTLE-
TON E. HUBARD, D. D., Rec-
tor of St. John's Church,
Elizabeth, N. J., ALICE BAB-
COCK PRIES, MRS. LENA B.
BOWEN, OTTO WAGNER, M.
D., NORA FARRELL, CATH-
ERINE A. BRADY, ELIZABETH
ORPHAN ASYLUM of Eliza-
beth, N. J. and MADAM
ALPHONSE LATHROP ROSARY
HILL HOME,

Defendants.

On Bill, &c.

*Deposition
of Glenn M.
Pike, a wit-
ness produced
on behalf of
Complain-
ants, taken
de bene esse.*

30

The deposition of Glenn M. Pike, a witness produced on the part of the complainants, taken *de bene esse* before me, William D. Wolfskell, Supreme Court Commissioner, on the 7th day of October, nineteen hundred and twenty-nine, and on the 22nd day of October, nineteen hundred and twenty-nine, to which date the said hearing was adjourned, at my office, No. 207 Broad street, in the City of Elizabeth, Union County, New Jersey, in the presence of Hon. Abe J. David, of

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counsel with said complainants, Hon. Robert

Deposition of Glenn M. Pike.

Carey, of counsel with said defendant Clarence D. Meyer, individually and as executor of the last will and testament of Julia P. Babcock, deceased, Sigurd A. Emerson, Esq., appearing for Messrs. Whittemore & McLean, of counsel with the said defendant Elizabeth Orphan Asylum of Elizabeth, N. J., and William S. Meyers, Esq., appearing for Messrs. Stein, McGlynn & Hano-
 noch, of counsel with William E. Boozan, ad-
 ministrator *pendente lite*, etc., in pursuance of the notice given by me, a copy of which notice is hereto attached, I being satisfied that the said Glenn M. Pike is unable to attend court and give evidence at the trial of the above-stated cause. 10

I hereby certify that the witness produced was sworn by me, and that his deposition was taken by Mary A. McCue, a stenographer selected by me, and by me duly sworn to faithfully and truly take stenographically and reproduce in type-
 writing the testimony given, and that such deposition was taken in my immediate presence and hearing by said stenographer, and I believe that it accurately states the evidence given. 20

WILLIAM D. WOLFSKEIL,
 Supreme Court Commissioner.

STATE OF NEW JERSEY, }
 COUNTY OF UNION. } ss. 30

I, MARY A. McCUE, of full age, do solemnly swear that I will carefully, faithfully and impartially take the evidence in the above-stated cause and make a true and correct transcript thereof to the best of my ability and understanding, so help me God.

MARY A. McCUE.

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Deposition of Glenn M. Pike.

Sworn and subscribed before
me this 7th day of October,
A. D. 1929.

WILLIAM D. WOLFSKEIL,
Supreme Court Commissioner.

10 By consent of counsel the signature of the
witness to the deposition is waived.

By Judge Carey.

Before proceeding I want to object to the ex-
amination on the grounds

1st. That the notice is not the notice required
by law.

20 2nd. No facts have been established by affi-
davit or otherwise warranting the taking of the
testimony of this witness *de bene esse*.

3rd. No proper order has been made for the
taking of this testimony.

4th. The notice has not been that required
by law or by the rules of this court.

By Mr. Emerson.

30 I should like to have the same objections
entered for the Elizabeth Orphan Asylum, and
in addition we have not consented to the taking
of the testimony at this time.

By Judge Carey.

We will make that further objection also.

Deposition of Glen M. Pike, direct.

GLENN M. PIKE, a witness produced on the part of the complainants, being duly sworn on his oath according to law, and examined by Hon. Abe J. David, deposes and says:

Q Where do you live, Mr. Pike? A No. 106 Haven avenue, New York City. 10

Q What is your business? A Aeronautical engineering.

Q Are you shortly to leave the jurisdiction of this court and the United States? A I expect to leave between the 1st and the 15th of next month.

Q For where? A South America.

Q To be gone how long? A Maybe three years.

Q How long have you lived at No. 106 Haven avenue, New York City? A About two years. 20

Q And before that, where did you live? A At No. 411 West 114th street.

Q New York? A New York City.

Q And how long did you live there? A About seven years.

Q Did you know Mrs. Julia P. Babcock in her lifetime? A Yes.

Q How long had you known her? A I only met her on one occasion. 30

Q And when was that? A As near as I can recollect it was in the fall of 1924.

Q And with reference to the fall, can you tell me the month? A I can't do so definitely. I was home ill several times during the fall of 1924, and it was on one of those occasions. I believe it was in October.

Q Can you tell me whether it was early in October or late in October? A No, I can't. 40

Deposition of Glen M. Pike, direct.

Q Where was it that you saw Mrs. Babcock in October, 1924? A At my home, No. 411 West 114th street, New York City.

Q What was the occasion of her being there? A She came I believe to visit her niece, Miss Eleanor C. Smith.

10 Q Was Miss Smith living at that time with you? A Yes, she lived at our home with us.

Q Were you in any way related to Miss Smith? A No, she boarded at our home.

Q Have you any interest in this suit at all? A None whatever.

Q Did you at that time in October, 1924, have any conversation with Mrs. Babcock? A Yes.

20 Q Will you just tell what the conversation was? A Well, Miss Smith and Mrs. Babcock had lunch together in her room—

Q In whose room? A In Miss Smith's room, and I was asked if I would care to have some tea with them when they were finished with their lunch, to which I accepted, and while Miss Smith was clearing away the dishes and straightening up a little, after I had been introduced to Mrs. Babcock, we engaged in conversation and Mrs. Babcock remarked how glad she was that Miss
30 Smith was in the hands of such good friends and so fortunate to have such good friends to stop with so close to her work and then she asked if I knew Mrs. Rice. I told her I knew her quite well. She said she was awfully sorry she wasn't able to see Miss Smith oftener, but she realized on account of the nature of her work and long hours as a nurse, that it was difficult for her to get away for visiting and that she was very fond of both Miss Smith and Mrs. Rice.

Deposition of Glen M. Pike, direct.

Q Who said this? A Mrs. Babcock—and she hated to see Miss Smith have to work so hard and she said that neither of them received any help from their families and that they were certainly entitled to more consideration and that they had been very kind to her and considerate and when Mrs. Babcock's husband died she had felt that they would be taken care of to some extent in his will and there had been talk in Miss Smith's family and Mrs. Rice's family due to the fact that they were not mentioned and she— 10

Mr. Emerson: Who is saying this?

A Mrs. Babcock—and she appreciated very much, that specially due at her request, they had not contested the will and she said “I have told the girls that I am going to see that they are compensated in my will in their consideration of me and particularly in my hour of— 20

Q Take your time. A I don't remember what words she used, but I took it she meant on account of her husband—

Judge Carey: I object to witness stating what she meant; he is relating now a conversation. 30

A —and Miss Smith was present in the room at the time during this part of the conversation.

Q Can you complete the thought that you were expressing about what Mrs. Babcock was saying? You said you could not recall a certain word. Can you complete the sentence you started with reference to that thought? I will ask the stenographer to read the witness' last 40

Deposition of Glen M. Pike, cross.

testimony. The sentence was not completed. It was interrupted by objection of counsel.

Judge Carey: The only interruption was my objection to his statement of what he thought was in her mind.

10 (Stenographer reads last testimony of witness.)

A Grief is the word that I was trying to think of.

Q Will you go on and finish? A Well, there was something said about Mrs. Rice's children and Miss Smith's work as a nurse and I don't remember any other conversation relevant to this matter.

20 Q How long were you there with Mrs. Babcock at that time? A I should say from one-half to three-quarters of an hour.

Cross examination by Judge Carey.

Q How old are you? A Thirty-seven.

Q Are you married? A Yes.

Q Living with your wife? A Yes.

30 Q Where? A No. 106 Haven avenue, New York City.

Q Were you married in 1924? A Yes, I was married.

Q Was your wife then living with you? A Yes.

Q Were you boarding with anybody? A Were we boarding with anyone?

Q Yes. A No, we had an apartment.

40 Q Where? A No. 411 West 114th street, New York City.

Deposition of Glen M. Pike, cross.

Q Was anybody living with you in the apartment besides your wife and Miss Smith? A No.

Q Did Miss Smith live there? A Yes.

Q Did she board with you? A Yes.

Q How long did she board with you? A Altogether about five years. 10

Q And you and Miss Smith were very friendly? A Yes.

Q She had lived with you at all the various places you lived? A No, when she lived with us we were living at No. 411 West 114th street, New York City.

Q She had rooms with you? A Yes.

Q How many rooms? A One.

Q And did she eat with you? A Yes, part of the time and sometimes she would do her own cooking; she had the privilege of the house. 20

Q And how many rooms were in the apartment? A Eight.

Q Have you any children? A No.

Q How did Miss Smith come to be living with you? A I do not recollect, except that I believe the superintendent—no, we had known some nurse who was at the hospital, who I believe we asked if she knew of any nurse who might be seeking rooms and she sent Miss Smith to us. 30

Q Was your wife a nurse? A No.

Q Is that the first time you met Miss Smith? A Yes.

Q And for five years continuously she was a constant member of your household? A Yes.

Q Did she cook her own meals? A She had most of her meals at the hospital; occasionally she ate with us and occasionally she cooked her own meals. 40

Deposition of Glen M. Pike, cross.

Q You say you only met Mrs. Babcock once in her lifetime? A Yes.

Q You are sure of that? A Right.

Q And that was under the circumstances that you have suggested? A Yes.

10 Q What time of the day did you meet her?

A It seems to me it was around noon hour.

Q Was it noon or later? A Around lunch time and I don't remember whether they had lunch late or not; I believe they had lunch late, because I had had mine.

Q What were you doing home? A I was ill.

Q With what? A A cold.

Q How many days were you home? A I was home off and on for two or three weeks.

20 Q Did you have a doctor? A I don't believe I did at that time.

Q You didn't have a doctor? A No.

Q You were home sick for three weeks without having a doctor? A I wasn't home every day.

Q How many days during that three weeks were you home sick? A About half of the three weeks.

30 Q You went out to work one day and would be home sick the next day, is that the idea? A Yes.

Q And you didn't have a doctor? A I don't remember.

Q You would remember if you had had a doctor, wouldn't you? A No, because I was ill quite often for two or three years, as a matter of fact, so I had doctors off and on and many times I didn't have any.

40 Q Where were you working at that time? A American Bond & Mortgage Company.

Deposition of Glen M. Pike, cross.

Q Where is that company located? A No.
345 Madison avenue, New York.

Q What was your work? A Bond salesman.

Q Were you supposed to report at the office every day? A Yes.

Q Did they have a record in the office of your report? A No. 10

Q Not of your daily attendance? A No.

Q Did they keep a record in the office of your illnesses or didn't they? A No, I don't believe they did.

Q You think it was about lunch time that you met Mrs. Babcock? A Yes.

Q Who invited you into the room? A Miss Smith.

Q Miss Smith? A Yes. 20

Q Did she come to you and say, "I want you to come in the other room"? A No, I was in the kitchen when she was preparing or putting away food.

Q Which was she doing, preparing or putting away food? A I don't remember.

Q She was either preparing or putting away food, but you don't know which she was doing? A No, but she was in the kitchen on some task that had to do with the lunch that she was having with her aunt, Mrs. Babcock. 30

Q Who told you it was her aunt? A She did.

Q Miss Smith? A Yes.

Q And what did she say, "My aunt is in the other room. I want you to meet her"? A Yes.

Q And you went into the other room to meet her? A Yes.

Q Did you have a dressing gown on at that time? A No. 40

Deposition of Glen M. Pike, cross.

Q You didn't? A I don't remember; I would say that I didn't go in with a dressing gown on.

Q How were you dressed, if you remember?

A I imagine I was dressed in my street clothes.

Q How far was that room from the kitchen?

10 A About twenty feet.

Q And did you go right in with Miss Smith when she said "Come in and meet my aunt"?

A I believe I did.

Q And when you went in, was anybody else in the room? A No.

Q Just Mrs. Babcock? A Yes.

Q Where was she sitting or standing? A She was sitting at the table.

Q What kind of a table? A A bridge table.

20 Q Was anything on the table? A Yes.

Q What? A Dirty dishes; I don't remember what food was on the table; tea was on the table.

Q They had finished eating? A Yes.

Q Were dirty dishes on the table, dirty plates? A Yes, I believe so.

Q Where did you sit when you went in there?

A At the table.

Q Did you have a cup of tea with them? A Yes.

30 Q Did you have coffee for your lunch that day? A I don't remember.

Q You had finished your lunch some time before, had you not? A Yes.

Q How long before? A A couple of hours before.

Q Then this could not have been at noon time? A I made the statement that I believe it was a late lunch.

40 Q You are sure you had finished your lunch about two hours before? A In that neighborhood.

Deposition of Glen M. Pike, cross.

Q It might have been three hours? A No, not more than two hours.

Q You didn't notice the time, did you? A No; this was some time ago and it is difficult to remember.

Q Was your wife there? A No, she was working. 10

Q Where? A I can't tell you.

Q Why not? A It is irrelevant.

Q Where was your wife at the time you went into that room? A She was at her business.

Q Where? A Columbia University.

Q What doing? A Cashier.

Q She was away every day? A Yes.

Q Is your wife younger than you? A No, the same age.

Q How old is Miss Smith, do you know? A No. 20

Q About how old do you think she is? A About thirty-four I should imagine.

Q What was Miss Smith doing home that day, if you remember? A I don't remember.

Q Was she home all day? A I don't remember; I don't believe so.

Q What do you mean by that, you don't believe so? A Just that.

Q Tell us what you mean? A I don't remember her being home all day. 30

Q Would you have seen her if she had been home all day? A Not necessarily.

Q She had her own room? A Yes.

Q You don't know what time she came home that day? A No.

Q Was she nursing at that time? A I don't know if she was on duty or not.

Q Does she nurse every day? A She would be off on a case for a week at a time and then 40

Deposition of Glen M. Pike, cross.

she would be home for three or four days sometimes.

Q What time did your wife leave home that day? A Judging from the usual time she left the house, it was about 8:30.

10 Q What time did she get back that day? A I am only judging from her usual arrival at home, about 6:00 o'clock.

Q So your wife worked every day, didn't she? A Yes.

Q What kind of a chair was Mrs. Babcock sitting on? A I can't say.

Q What color table was it that was in the room? A A black top table; a card table; a bridge table.

Q Was there a table cloth on it? A Yes.

20 Q What color? A I don't remember.

Q When you sat down, were you introduced to Mrs. Babcock? A Yes.

Q What were the words of introduction, if you remember? A "This is Mr. Pike who—"

Q Is that all? A "—whom you have heard me speak of."

Q Nothing else? A No.

Q You remember that distinctly? A Not absolutely distinctly, but that is my recollection.

30 Q Is that exactly what was said? A I believe it was. I said that was my recollection.

Q That is your recollection? A That is all my recollection.

Q And what did Mrs. Babcock say when Miss Smith said, "This is Mr. Pike"? A "I am pleased to meet you."

Q Did she say that? A I can't recollect just what her words were, whether she was pleased to meet me or glad to meet me or some such usual expression.

40

Deposition of Glen M. Pike, cross.

Q Then what did you do? A I sat down to the table.

Q And did you talk about the weather? A I don't remember just what we started to talk about.

Q Did Miss Smith sit down to the table, too?
A Miss Smith did not sit down right away. She continued to carry some dishes to the kitchen.

10

Q You remember that distinctly even if it is five years ago? A Yes.

Q How many trips did she make to the kitchen while you were sitting there? A I don't remember.

Q About how many? A A couple.

Q More than one? A I should say two.

Q And how long was she in the kitchen on any one of these trips? A Five or ten minutes.

20

Q On both occasions, there was more than one trip? A I should say so.

Q And you were in the room altogether about a half hour? A In that neighborhood.

Q Is that correct? A I wouldn't be sure; about a half or three-quarters of an hour.

Q Maybe twenty minutes? A It might have been; I don't think I could drink a cup of tea in twenty minutes.

30

Q How many cups of tea did you have, if any? A I had a couple.

Q And Mrs. Babcock drank tea? A I believe she did.

Q Did she? A Yes.

Q Did Miss Smith drink tea? A Yes.

Q Between her trips to the kitchen? A Yes.

Q Do you remember if you had milk in your tea that day? A I don't remember.

Q Did you? A I did.

40

Deposition of Glen M. Pike, cross.

Q Who served the milk in the tea? A Miss Smith.

Q Was the pitcher of milk on the table? A It must have been; I had milk in my tea.

Q Was Mrs. Babcock very talkative? A Quite, yes.

10 Q You say you had never seen Mrs. Babcock before that day? A No.

Q She had never been to your home before? A No, not to my knowledge.

Q Did she tell you how she happened to be over there that day? A No.

Q Did you ask her? A No.

Q Did she tell you why she hadn't been over to the house for five years to see Miss Smith? A No.

20 Q Did you ask her why she hadn't been over? A No.

Q But she did say something to you about her being very much interested in Miss Smith, she was very kind to her, did she not? A Yes.

Q Didn't you ask her why hadn't she been over to see her? A No, I think I said I hoped she would come again when she was going.

30 Q She never came again, did she? A Not to my home to my knowledge.

Q When you said, "I hope you will come again," what did she say? A I don't remember.

Q You don't remember? A No.

Q You distinctly remember saying to her "I hope you will come again," but you don't remember her answer? A No.

Q What color hair did Mrs. Babcock have? A It was kind of iron gray.

Q Did she have a hat on? A No.

40 Q No hat on? A No.

Deposition of Glen M. Pike, cross.

Q Did she have a coat on? A No, I don't believe so.

Q What color dress did she have on? A I think it was black.

Q You can remember that five years back? A Yes, she was dressed in somber colors, but I don't remember what they were. 10

Q Did she have glasses on? A I don't believe so.

Q You would have noticed if she had, wouldn't you? A Yes.

Q Did you notice how she was dressed about the neck? A No, I don't believe I did.

Q You weren't interested in her, were you? A No, not particularly.

Q Not at all at that time? A No, my interest in her was only from having heard Miss Smith speak of her and naturally I was curious to meet her. 20

Q Did you hear Miss Smith talk about her before that? A Yes.

Q About estates and things like that? A Yes.

Q That was the only way you heard her speak of Mrs. Babcock? A I heard her on different occasions speak of going to visit her.

Q You weren't interested in the visits Miss Smith made, were you? A Not particularly. 30

Q You weren't interested in Miss Smith, were you? A No.

Q Why did you discuss with Miss Smith, Mrs. Babcock? A I didn't discuss Mrs. Babcock with her. Miss Smith voluntarily mentioned Mrs. Babcock.

Q On how many occasions? A Two or three or four.

Q When? A Both to my wife and myself. 40

Deposition of Glen M. Pike, cross.

Q When? A I can't say when; previous to this visit.

Q How long previous? A I should say within a year previous to this visit.

Q Did you ask Mrs. Babcock any questions that day? A No.

10 Q Not a one? A I don't believe I did.

Q Did she ask you any questions? A No, I don't believe she did.

Q So whatever was said was a running conversation? A Yes, a voluntary conversation.

Q What do you mean by a voluntary conversation? A Without being asked questions; just a discussion.

Q And of course the discussion about Miss Smith occurred while she was absent? A No, not all of it.

20 Q Did you begin while she was absent? A Yes.

Q What was the first thing she said about Miss Smith? A She was very happy that Miss Smith was fortunate enough to have such good friends close to her work to be living with.

Q Meaning you? A My wife and myself.

Q She had never met your wife? A Not to my knowledge.

30 Q And as far as you know she never met your wife? A No.

Q Miss Smith's family had not been very considerate of her, didn't Mrs. Babcock say that? A She didn't say they were not considerate of her.

Q What did she say? A Mrs. Rice hadn't received any help from her family.

Q What family did she allude to? A Mrs. Rice's family.

40

Deposition of Glen M. Pike, cross.

Q Did you ask her about her husband? A No.

Q Did you know about Miss Smith's family? A No.

Q You talked occasionally with Miss Smith about her family affairs, didn't you? A No.

Q Despite your five years of living together? A No; whatever Miss Smith said about her family was voluntary on her part and was not discussed by me. She made statements and they were taken on their face value. 10

Q Did Miss Smith ever tell you her family had not treated her very nicely? A No.

Q Weren't you shocked when Mrs. Babcock said her family had not been considerate of her? A She said she had not received any help from them. 20

Q Didn't you ask her if her family was in position to give her help? A It was none of my business.

Q It was none of your business? A None at all.

Q But you remember it distinctly? A Only what I am telling you.

Q Is there anything that you haven't stated that may be in your mind now that you may want to say? A Nothing that I want to state. 30

Q Can you think of anything that occurred that you have not told us? A No.

Q Did you ever write any of it for anybody? A Yes.

Q When? A Not very long ago.

Q When? A A couple of months ago.

Q Where? A At my home or office.

Q Why? A Because I was asked to do so.

Q Two months ago you wrote a statement and you don't know if it was written at your 40

Deposition of Glen M. Pike, cross.

office or at your home? A If you will let me think I may be able to tell you. (Witness thinks.) I wrote it at my office.

Q Why didn't you tell us a minute or two ago where you wrote it? A Because I couldn't remember a minute or two ago where I wrote it.

10 Q But now after a second's thought you remember where you wrote it? A Yes, at my office.

Q Who was present when you wrote it? A Nobody.

Q What did you write it with? A A typewriter.

Q Do you operate a typewriter? A Yes.

Q What kind of a machine do you use? A
20 A Remington.

Q Did you type this statement on the Remington? A Yes.

Q You didn't dictate it? A No.

Q How many copies did you make? A Two.

Q Why two? A I wanted to keep a copy of it myself. If I make a statement for anybody I make a copy for myself.

Q Have you your copy here? A No, it's in my office.

30 Q Where in your office? A In my file.

Q What file? A I don't remember what file.

Q Don't you remember what file? A I believe in my personal file.

Q You have only one personal file, have you not? A Yes, but it might be in the general or my personal file; I don't know which.

Q And you made it only two months ago? A Yes.

40 Q And you kept a copy because you wanted to be sure you had a copy? A Yes.

Deposition of Glen M. Pike, cross.

Q And you gave the other copy to whom? A Miss Smith.

Q Why did you make it? A Because Miss Smith asked me for it.

Q What did she say to you? A She asked me if I would make a statement about having met Mrs. Babcock and what Mrs. Babcock said. 10

Q Did she tell you why? A Yes.

Q What did she tell you? A They were going to contest her will.

Q When did she tell you that? A When she asked me to make the statement two months ago.

Q What did she say to you? A "Will you write a statement about the time you met Mrs. Babcock and write as near as possible what she said to you at that time?" 20

Q Is that the time she said they were going to contest the will? A Yes.

Q What did she say? A Just that; that they were contesting the will.

Q Who did she say was contesting the will? A Mrs. Rice and her.

Q Did she tell you she had a case in the Court of Chancery? A No.

Q Did she tell you who her lawyer was? A Mr. Rubien. 30

Q Who was Mr. Rubien? A A lawyer.

Q Do you know him? A No.

Q Do you know where he is located? A No. 1440 Broadway.

Q How do you know his address? A I was over at his office; I didn't say I didn't know him.

Q I thought you said you did not know him. A No.

Q Do you know him? A I know him now. I didn't know him at all at that time. 40

Deposition of Glen M. Pike, cross.

Q When did you meet him? A About six weeks ago.

Q Where? A At his office.

Q How did you come to be at his office? A I took a statement to him.

10 Q By whom were you sent? A By Miss Smith.

Q Why didn't you give the statement to Miss Smith? A Because I was asked to take it to Mr. Rubien.

Q How far is No. 1440 Broadway from your apartment? A From my apartment or my office?

20 Q From your apartment? A My apartment is No. 106 Haven avenue, probably a couple of miles.

Q How far is No. 1440 Broadway from your office? A About three or four blocks.

Q Did you ever do any business with Rubien? A No.

Q Did you know that Miss Smith had Mr. Rubien for a lawyer before that time? A No.

30 Q The first time you heard it despite the fact that you were all living there together—the first time you heard of Mr. Rubien was when you were asked to take this statement to his office? A Yes.

Q Did Mr. Rubien expect you when you called there? A Yes.

Q Did you see him personally? A Yes.

Q Did he talk to you about it? A Yes.

Q How long were you with him? A Ten minutes.

Q Did you give him the statement? Yes.

40 Q You would be able to identify that statement if you saw it, wouldn't you? A Yes.

Deposition of Glen M. Pike, cross.

Judge Carey: I now ask Mr. David to produce that statement so that the witness may identify it in view of the fact that the witness said his copy is in the State of New York at this time.

Judge David: I reply that that statement is not in my possession and never has been. 10

Q When you gave this statement to Mr. Rubien did you ask him if he was Miss Smith's lawyer? A No.

Q Did you ask him anything? A No.

Q What did you do, go in and ask him if he was Mr. Rubien? A Mr. Rubien was expecting me and I waited outside of his door for three minutes and then I was ushered into his office and I gave him the statement. 20

Q How did you know he was expecting you?

A Because Miss Smith said he would be there.

Q At what time? A That morning.

Q When did she ask you to take the statement to Mr. Rubien? A She asked me at the time I wrote it.

Q Before you wrote it? A Yes.

Q You hadn't finished writing it when she made the appointment for you to take it to Mr. Rubien? A No, she had made the appointment with Mr. Rubien but was to let me know when I was to take it to him. 30

Q What time of the day did she ask you to make that statement? A She telephoned to me—

Q She telephoned you? A Yes.

Q You met her every day, didn't you? A No, sir. 40

Deposition of Glen M. Pike, cross.

Q She is living there with you? A No, sir; I am living at No. 106 Haven avenue. Miss Smith still lives at our previous address No. 411 West 114th street.

Q Did she take over the lease on the apartment? A No, she now resides with the people
10 who took the lease.

Q From you? A No, from the real estate people.

Q She telephoned you what time of the day?
A I should say in the afternoon.

Q At what time? A Oh, about 2:00 o'clock.

Q At your office? A Yes.

Q And asked you if you would write a statement? A Yes, and I said I would be glad to.

Q You immediately wrote it? A I won't
20 say I immediately wrote it.

Q Did you meet her that day? A No.

Q Did you show her the statement? A No.

Q Up to this day have you shown her the statement? A No, I never showed it to her personally.

Q Did you show it to her in any other way?
A No.

Q Did you send her a copy of it? A No.

Q Did she see you after that? A Yes.
30

Q Where, at Mr. Rubien's office? A No; she didn't see me between the time I wrote that statement and the time I visited Mr. Rubien's office.

Q Did she see you afterwards? A Yes, several times afterwards at my home.

Q When? A As recently as Saturday night of last week.

Q When was the next time she saw you after you wrote that statement? A I should say it
40

Deposition of Glen M. Pike, cross.

was within a day or two after I visited Mr. Rubien's office.

Q When did you see her before you wrote that statement? A About a week previous.

Q At the time she met you a week previous did she talk about the statement? A No.

Q Did she say anything about the statement? A No. 10

Q Did she say anything about the estate? A No.

Q And up to the time you prepared the statement you had no conference with her about this estate? A No, except the information she had volunteered.

Q When? A Before I met Mrs. Babcock.

Q Then that was in 1924 you say? A Yes.

Q So from 1924 until two months ago she never said a word to you about the estate, about any litigation, any contest or anything, or did she? A No. 20

Q And you saw her pretty often, almost every day? A No.

Q For a long time you saw her every day, didn't you? A Before we moved.

Q When did you move? A In 1927.

Q For two years you saw her almost every day and after that you saw her very frequently, didn't you? A Yes, she visited us often. 30

Q What was she doing at your house last Saturday night? A Playing bridge.

Q Who constituted the bridge party last Saturday night? A My wife, myself, Miss Smith and Mr. and Mrs. Prier.

Q Did five play bridge? A No, Mrs. Prier did not play.

Q Did you talk about this affair then? A No. 40

Deposition of Glen M. Pike, cross.

Q Did you talk about the case then? A No.

Q Did you talk about your coming here to testify today? A Yes.

Q What was said about it? A She said "Did Carolyn call you about going to Elizabeth"? I said "Yes." That was all.

10 Q Did anybody else call you? A Mrs. Rice.

Q She called and told you? A Yes.

Q Nobody else? A No.

Q What did she tell you to do? A To meet her at the station Monday morning.

Q And you said "All right, I will be there"? A Yes.

Q Aren't you busy now? A Yes.

20 Q Who are you working for now? A Aeronautical Engineering Company.

Q Did you ask them for leave to get off today? A I don't have to get leave.

Q How many times have you seen Mrs. Rice in the last two months? A Three times.

Q Where? A Once at my office, once at Mr. Rubien's office and today.

Q Then you did meet her at Mr. Rubien's office? A Yes.

Q She was there? A Yes.

30 Q Did you go with her or was she there? A She was there.

Q Then you had an appointment for a special time at Mr. Rubien's office? A Yes.

Q What time was it? A 10:00 o'clock I think.

Q So you had an appointment to meet her at ten in the morning? A Yes.

Q And when you were sitting in his office you were waiting with her; is that right? A Yes.

40 Q You and she were outside? A Yes.

Deposition of Glen M. Pike, cross.

Q You mean to tell us you never showed her that statement? A I didn't say I didn't.

Q You said you never showed her the statement? A I said I never showed Miss Smith the statement.

Q Did you show it to Mrs. Rice? A Yes.

Q How did you come to meet her, I mean Mrs. Rice? A We had the appointment; she telephoned me. 10

Q Did Miss Smith call you, too? A Several days previous.

Q Miss Smith called you the day previous to ask you to make the statement; is that right?

A No, not the day previous.

Q Not the day previous? A No.

Q When? A About six weeks ago.

Q How many days before you made it? A A couple of days. 20

Q Are you sure you didn't say in your previous testimony she called you up the day before you made it? A No, I did not say that.

Q You do say it was about two days previous that she called you up at your office? A Yes.

Q Do you remember what time of the day it was? A Around 2:00 o'clock.

Q About six weeks ago, not two months ago? A Yes. 30

Q Is that correct, about six weeks ago? A Yes.

Q And she didn't say anything about making an appointment for you to go to Mr. Rubien's office at that time? A No; she said she wanted me to take the statement to Mr. Rubien's office and would let me know the time later.

Q The first time she called you she told you that? A Yes. 40

Deposition of Glen M. Pike, cross.

Q Didn't you tell us that when she called you up she asked you to make the statement and take it to Mr. Rubien the next morning? A No, sir, I didn't.

10 Q What did she say about Rubien to you over the telephone? A She asked me to make the statement and that she would let me know when to take it to Mr. Rubien's office but she did want me to take it to him.

Q Did you ever hear of Rubien before? A No.

Q Did you ask her on the telephone where his office was? A No.

Q Did you ask her who he was? A No.

Q Did you ask her how to spell his name? A No.

20 Q Then from the conversation you had with her you didn't know where Rubien was, how to spell his name or when you were to go? A She was to call me and tell me.

Q Just answer my question? A Not at that time.

Q She never spoke to you about it again, did she? A Certainly.

Q When? A Three or four days later.

30 Q Didn't you take this statement to Rubien the morning after you wrote it? A No, sir.

Q How many days after you wrote it did you take it to him? A About a week after.

Q When did Mrs. Rice call you up? A The morning of the day that I went to Mr. Rubien's office.

Q What time was that? A About 9:15.

Q Where were you when she called you up? A At my office.

40 Q What did she say when she called you up? "I will meet you at Mr. Rubien's office"? A Yes; Miss Smith had already told me the place.

Deposition of Glen M. Pike, cross.

Q Had Miss Smith previously told you the place? A Yes.

Q Then Miss Smith must have been in contact with you from the time you made the statement to the time you went to Mr. Rubien's office? A By telephone.

Q You didn't see her? A No. 10

Q You didn't see Mrs. Rice either? A No.

Q And you hadn't at that time told her what was in the statement? A No.

Q So that it must have been about five weeks ago when you went to Rubien's office? A Yes.

Q Because the talk was six weeks ago, was it not? A Yes.

Q Who got to Rubien's office first, you or Mrs. Rice? A I did.

Q And you waited for her? A She was there about the same time. 20

Q And did she introduce you to Mr. Rubien? A Yes.

Q What did Mr. Rubien say when you went in? A I don't remember.

Q What did he say? A He was pleased to meet me or some such remark.

Q Did he shake hands with you? A Yes.

Q What happened then? A I gave him the statement I had made for Miss Smith. 30

Q What did you do, just pick out the paper from your pocket and hand it to him? A I told him that Miss Smith asked me to bring the statement to him and that was all that was to it.

Q Mrs. Rice was with you? A Yes.

Q Did she say anything? A Yes, but I don't remember what it was.

Q This was the first time you were ever in this lawyer's office and you were delivering a document to him and you don't remember what 40

Deposition of Glen M. Pike, cross.

conversation the woman had with the lawyer right in your presence? A No.

Q And that was five weeks ago? A Yes.

Q What day of the week was it? A That I could not say.

Q What date was it? A I don't remember.

10 Q You remember the month, don't you? A Yes.

Q What month was it? A It must have been in August.

Q You think it was in August? A I am not positive but I think it was.

Q Here you are telling us about what happened five weeks ago and you can't say positively whether it was in August or not, can you? A It was late in August or early in September.

20 Q But you don't know which? A I am not positive.

Q But you can remember five years ago the month in which a casual conversation took place in your home? A Yes, I can remember some things that happened five years ago while I can't remember some things that happened yesterday.

Q How many pages were there to this statement that you prepared? A One.

30 Q Was it in single space or double space on the machine? A Single I believe.

Q You don't remember? A I don't remember; I think it was single.

Q When did you see it last? A I don't remember.

Q You don't remember when you saw this statement last? A No.

Q Did you see it last Saturday? A No.

Q Friday? A No.

Q Yesterday? A No.

40 Q This morning? A No.

Deposition of Glen M. Pike, cross.

Q Have you it in your possession this morning? A I haven't got it with me.

Q Look in your inside pocket and see if it isn't in there? A I haven't got it with me, I told you.

Q Will you show me what papers are in your inside pocket? A I will not; it is none of your business what is in my pockets. 10

Q Have you any papers in your inside pocket now? A Yes, I have.

Q How many? A I don't know.

Q You don't know? A No, I don't.

Q Do you know what color they are? A Yes.

Q What color? A White.

Q Are they letters or papers? A Papers.

Q What kind of papers? A I don't know.

Q You don't know what kind of papers are in your inside pocket now? A No. 20

Q Let me see the papers that are in your inside pocket? A No I won't take them out. There they are. (Witness just opens coat so that papers can be seen in inside pocket.)

Q You refuse to produce them? A Yes.

Judge Carey: I now ask the Commissioner to request witness to produce papers in his inside pocket. 30

By the Commissioner.

Q Won't you please produce the papers that are in your inside pocket? A (Witness takes bundle of papers out of his inside pocket and shows it to counsel.)

By Judge Carey.

Q You say you don't remember when you last saw that paper? A No. 40

Deposition of Glen M. Pike, cross.

Q How many times have you seen it since it was prepared? A Once.

Q Now that you know you only saw it once you must remember when you saw it. A At Mr. Rubien's office.

10 Q That was the day you went there in the morning? A Yes.

Q You haven't been there since? A No.

Q What did you mean when you said you didn't remember when you saw it last? A I happened to recollect that that was the last time I saw it.

Q When did that recollection come to you? A Just now.

20 Q Why did you say a few moments ago you didn't remember when you saw it last? A Because I didn't remember whether I had seen it since then or not.

Q Have you seen it since then? A No.

Q Have you seen, I mean the copy you placed in your files since then? A Yes.

Q Where is that copy? A In the file.

Q When did you last see that? A Saturday of this week.

Q You mean Saturday of last week? A Yes.

30 Q Two days ago? A Yes.

Q I asked you before if you had read that statement last Saturday, didn't I? A I meant the statement I took to Mr. Rubien.

Q Is that what you meant? A Yes.

Q Didn't I ask you if you read the statement last Saturday that you had prepared and didn't you say "No"? A No, I don't think I did.

Q Didn't I ask you where it was and didn't you say it was in your general or personal file but you didn't know which? A Yes.

40

Deposition of Glen M. Pike, cross.

Q Didn't I ask you when you put it there and you said five weeks ago? A No.

Q Didn't you say when you finished preparing that statement you put a copy in your file and one copy you gave to Mr. Rubien? A Yes.

Q And didn't I ask you in which file you put that copy and you said you didn't remember, it was five weeks ago you put it away? A No, I didn't say that. 10

Q You saw it last Saturday? A Yes.

Q Where? A In my office.

Q How did you come to see it last Saturday?
A I took it out to look at it.

Q What for? A To see what the statement was.

Q Didn't you know what it was? A Yes. 20

Q Why did you want to see it then? A I wanted to be sure that I didn't get anything wrong in the statement.

Q Was there any doubt in your mind as to whether that statement was correct or not? A No, not particularly.

Q When you took it out did you read it all over? A Yes.

Q Was anybody present with you? A No.

Q Did you put it in your pocket? A No. 30

Q You didn't take it with you to the card party you had with Miss Smith? A No.

Q Is that the only time you read it since it was written? A Yes.

Q What time of the day on Saturday did you read it? A Some time before noon.

Q Was it in the morning or in the afternoon?
A In the morning.

Q And you put it right back in the file? A Yes.

Deposition of Glen M. Pike, cross.

Q Whether you put it in the personal or general file you can't remember? A No.

Q Two days ago you put it in the file and you can't remember which you put it in? A No.

10 Q You couldn't remember where you put it five weeks ago and now you can't remember where you put it two days ago? A That's right.

Q Do you remember how much of the page it occupied? A About three-quarters or two-thirds.

Q That is the complete statement of everything that took place at that time? A Yes, I believe so.

Q Will you produce a copy of it? A No.

Q Why not? A I haven't got it.

20 Q Will you produce it at a later date? A No; I gave the original to the lawyer and he will produce it if it is required.

Q Will you produce the copy you have in your file? A If it becomes necessary I suppose I will.

Q Have you any objection to producing it? A No, but I have no desire to go to the unnecessary trouble of producing it unless it is required.

30 Q You think it would be unnecessary trouble to produce this statement? A Yes, as long as the lawyer has the original.

Q You have one, haven't you? A No, I have a copy; he has the original.

Q You think it would be unnecessary trouble to produce your copy? A Yes, because the lawyer has the signed copy and my copy is not signed.

40 Q Have you any objection to letting us have your copy? A No.

Deposition of Glen M. Pike, cross.

Q You say you are not interested in this case in any way? A Only to help friends of mine who asked me to tell as a witness what I have heard.

Q Will you if this hearing is adjourned produce that paper here? A I won't say that I will. 10

Q Will you say you won't? A I will do as counsel for the plaintiff advises.

Q What counsel, Mr. Rubien or Mr. David? A It doesn't matter which one.

Q Will you do it if advised by your counsel? A No, I will do it if the counsel for Miss Smith or Mrs. Rice asks me.

Q You won't produce that paper here in the State of New Jersey unless they ask you to? A I won't produce it except upon advice of counsel. 20

Q What do you want advice of counsel for? A I am not interested in giving you that copy of that statement either.

Q Why not? A If you want it have the lawyer get it for you.

Q That is your idea of the situation? A Certainly.

Q Will it in any way conflict with anything you said today? A No, sir. 30

Q You are sure of that? A Absolutely.

Q Did you swear to that statement in Rubien's office? A Yes.

Q Why? A Because it was customary.

Q Who did you swear to it before a few days ago? A I didn't swear to it a few days ago.

Q When did you swear to it? A When I took it to Mr. Rubien's office.

Q How long ago? A Five weeks ago. 40

Deposition of Glen M. Pike, cross.

Q Was it on a Saturday you went there? A I don't remember.

Q What day of the week was it when Mrs. Babcock was at your house five years ago? A I don't remember.

10 Q Was it on a Sunday? A I am not positive.

Q Was it on a Saturday? A I don't know that.

Q Did Mrs. Babcock have an umbrella with her that day or a cane? A I don't remember.

Q Did she walk around the room while you were there? A Yes.

Q How often? A She walked from one chair to another and she stood up, that was all.

20 Q Didn't you say she sat at the table and that you went in and joined them in tea and that you left when you had tea? A I didn't say that.

Q You stayed after the tea was over? A Yes, a short time.

Q How long? A A few minutes.

Q You said that Miss Smith came in during part of the conversation you had with Mrs. Babcock, didn't you? A Yes, she had tea with us.

30 Q She cleared away the dishes after you had the tea, didn't she? A Not at that time, no; not while I was there.

Q You said she went out to the kitchen twice with dirty dishes, didn't you? A Yes, before she served the tea.

Q While you were at tea Mrs. Babcock you said said something about—there was some talk about their contesting the will, is that right? A Yes.

40 Q What did Mrs. Babcock say; what were her exact words? A She appreciated very much

Deposition of Glen M. Pike, cross.

that the girls had not contested her husband's will.

Q And what else did she say? A That which I told you previously.

Q You tell me now. Never mind what you told me previously. What else did she say? A She said on account of the girls not having contested her husband's will that she felt that they were due a good deal of consideration and she appreciated it and she had told the girls that she would compensate them in her will for their consideration. 10

Q Those are the exact words she used? A They are substantially the words she used.

Q Miss Smith was there then? A Yes.

Q What did you say to that? A I probably said that was very kind of her. 20

Q Did you say that? A I don't remember. I made some reply I imagine but I don't remember what it was.

Q What did Miss Smith say to that? A Nothing that I remember.

Q That was the first talk you ever had with Mrs. Babcock? A Yes.

Q You had never heard of her before? A Only what Miss Smith had told me about her.

Q You didn't know whether she was wealthy or not, did you? A Yes, but I didn't know how wealthy. 30

Q You say this was in the month of October, 1924? A As near as I can remember.

Q Did you make any memorandum of it at the time? A No.

Q Do you keep a diary? A No.

Q You are sure it was not in September, 1924? A I am not positive but as near as I can remember it was in October. 40

Deposition of Glen M. Pike, cross.

Q You are sure it was not in 1925? A No, it was in 1924.

Q Could it have been in 1923? A No.

Q You are sure it was not in 1925? A It was in 1924, the time when I was sick with a cold and tonsilitis.

10 Q You had been sick with colds at other times, had you not? A Yes, but I never had an attack of tonsilitis like I had at that time.

Q And you didn't have a doctor at that time? A No.

Q It wasn't bad enough to have a doctor? A No.

Q In 1925 were you sick at all? A Yes.

Q Were you sick in 1926? A Yes.

20 Q So you have been sick a lot of times, haven't you? A Yes.

Q So there was nothing peculiar about your being sick at that time, was there? A The sicknesses I have had have not only been colds.

Q You have had colds though, haven't you? A Yes.

Q You had bad tonsils, did you? A I did at that time.

30 Q When Miss Smith asked you to make that statement did she ask you or refresh your mind when Mrs. Babcock was there? A Yes.

Q Otherwise you wouldn't have known? A I wouldn't have been sure; I wasn't sure whether it was in September or October or November.

Q And she checked it up and said it was in October? A No, she doesn't know definitely any more than I do.

Q How do you fix October then? A That was the time as far as I could recollect.

40 Q You didn't know when Mr. Babcock died, did you? A No.

Deposition of Glen M. Pike, cross.

Q Did they tell you about it? A Yes, I knew he was dead.

Q Did they tell you they were disappointed that he didn't leave them anything in his will? A Yes.

Q When did they tell you that? A Some-time prior to the time I met Mrs. Babcock. 10

Q When did they tell you that? A Within a year.

Q It might have been a whole year prior? A It might have been.

Q What size woman in your estimation was Mrs. Babcock? A She was rather slight.

Q You would call her very slight? A Quite, yes.

Q How much would you say she weighed, generally speaking? A About 115 lbs. 20

Q How tall was she if you can recollect? A About 5 feet 4 inches.

Q What color eyes did she have? A Blue, I think.

Q When are you going to South America? A I expect to go between the 1st and 15th of next month.

Q November? A Yes.

Q Who are you going for? A Pan American Airways. 30

Q You are going on business? A Yes.

Q What are you going to do, to be engaged there at Panama? A No, South and Central America.

Q What, traveling? A Yes.

Q You won't be back to New York at all? A I may be; it is very difficult to say whether I will be permitted to come back.

Q You are going in the employ of a New York company? A Yes. 40

Deposition of Glen M. Pike, cross.

Q Where is their office? A The Chanin Building, No. 122 East 42nd street.

Q Who will be your immediate employer there? A For the time being Mr. Robert G. Thatch.

10 Q Who did you tell you were going away? A Miss Smith.

Q When did you tell her? A About a week ago or two weeks ago.

Q How did you come to tell her then? A I happened to mention it. Miss Smith was at my office a week ago, no, two weeks ago.

Q And did she tell you then she would have to get your testimony before you go? A No, nothing was said about it.

20 Q You said you were going away for three years? A Yes.

30 Judge Carey: I am practically through now examining this witness except that I desire the examination be continued and that the witness be instructed by counsel or by the Supreme Court Commissioner here to produce the paper which he has in his file which he states he prepared five weeks ago or thereabouts so that I may further examine him on matters that are contained in that statement.

Cross examination by Mr. Emerson.

Q Mr. Pike, during the time that Miss Smith lived with you, did she have other visitors? A Yes.

Q Were they frequent visitors? A Some of them.

40 Q How often did she have visitors? A Every couple of weeks.

Deposition of Glen M. Pike, cross.

Q And would they stay all day? A No, except on very few occasions when she was off duty she had friends all day.

Q Men or women friends? A Relatives sometimes; her father used to come to see her.

Q No men friends? A None other than friends of the family; not her friends particularly. 10

Q Did she ever serve any of her friends or relatives lunch in her room? A Yes.

Q Did you ever have tea with her in her room? A Yes.

Q And you were called in on those occasions as you were called in on this one referred to? A Yes.

Q Who was the last person there visiting prior to this occasion when you had tea with Miss Smith in her room after lunch? A I could not recall unless it was Mrs. Rice. 20

Q Who was it or on what occasion did you next have tea in Miss Smith's room after lunch with any of her friends or relatives? A Her father I believe as close as I can recollect.

Q When was that? A That I can't remember.

Q Was it in 1923? A No.

Q Was it in 1924? A No; you said after. That would be in 1924 or 1925. 30

Q Was it in 1925? A I don't remember whether it was after Mrs. Babcock's visit in 1924.

Q It wasn't last year, was it? A I don't know.

Q I am talking about this one occasion when you were entertained in Miss Smith's room with Miss Smith's father. Was it in 1928? A I don't know. 40

Deposition of Glen M. Pike, cross.

Q You have no idea as to the year? A He used to come quite frequently.

Q I am talking about this one occasion. A I don't remember.

Q You don't remember the day, year or month? A No. You said the first occasion after I met Mrs. Babcock?

Q That's right. A The first occasion was not more than three months after.

Q And on that occasion when Miss Smith's father was there what was the conversation?

Judge David: I object to that question as being immaterial.

A I don't remember particularly the conversation except that Mr. Smith and I discussed our respective businesses.

Q What particular part of your business did you discuss with him? A Mr. Smith discussed the Public Utilities situation in the West and I was telling him about some aeronautical achievements.

Q This was on the visit within three months after October, 1924? A Yes.

Q Was that your usual discussion with Mr. Smith? A Yes.

Q You remember the discussion you had with him was along that line? A Yes.

Q When was the next time you were in Miss Smith's room having tea? A I do not know.

Q You were only in Miss Smith's room for tea on one occasion other than the occasion at which Mrs. Babcock was present, were you not? A No.

Q When were the other occasions when you had tea in Miss Smith's room? A I just recited

Deposition of Glen M. Pike, cross.

one previous occasion that I had tea in her room and there were several other occasions and many times with the same people so that I do not remember clearly which people I met and what time I met them.

Q Who were the people that visited Miss Smith and with whom you had tea in her room? 10

A There were nurses from the hospital, relatives of Miss Smith, friends of my wife and Miss Smith.

Q What are the names of the nurses that visited Miss Smith, if you know? A Miss Bissell, Miss Metcalf, Miss Aarons. That's all I remember.

Q How often did these nurses call on Miss Smith? A They called on her often.

Q And did they have lunch with Miss Smith every time they called? A No, they occasionally had tea; they generally called in the afternoon. 20

Q When did you have tea with them? A I can't recall any particular time.

Q Were you home afternoons? A Occasionally.

Q You weren't working at that time? A I was home when I was ill.

Q You don't remember any particular time when these nurses called but they were frequent visitors of Miss Smith? A If they made one call I might remember the particular occasion but having called often I don't remember any particular occasion. 30

Q Was there any particular conversation that took place when you had tea with these nurses?

A No, just a general conversation.

Q Was Mrs. Pike home on these occasions?

A Very seldom. 40

Deposition of Glen M. Pike, cross.

Q What other people other than Miss Smith were present and had tea in her room to which you were invited? A Mrs. Rice.

Q She is Miss Smith's sister? A Yes; Mrs. Reihl, another sister of Miss Smith, and her husband.

10 Q They called during the day, Mr. and Mrs. Reihl? A I have known them to call during the day, yes.

Q And you had tea with Mr. and Mrs. Reihl? A Yes.

Q When was that? A That was in 1925 I think.

Q What part of 1925? A I don't recollect.

Q It may have been in the spring, summer or winter? A Yes.

20 Q What conversation took place at this tea at which Mr. and Mrs. Reihl were present? A That I don't remember specifically.

Q Did you have tea with anybody else other than those that you have named, with Miss Smith? A Not that I recollect.

Q You knew before the occasion on which Mrs. Babcock was present that the girls had been disappointed over not receiving any part of Mr. Babcock's estate, didn't you? A Yes, from
30 what Miss Smith said about it.

Q What she told you prior to Mrs. Babcock's visit? A Yes.

Q How did Mrs. Babcock happen to call on the day in question? A That I don't know.

Q How did the conversation happen to get on to the question of the Babcock estate? A I don't know that it did. It didn't get on to the estate particularly except that it was mentioned how hard Miss Smith was working and what a
40 difficult time she and Mrs. Rice had.

Deposition of Glen M. Pike, cross.

Q Who said Miss Smith was working hard?
A Mrs. Babcock.

Q Did Mrs. Babcock volunteer that? A Something to that effect on account of her working so hard and long hours that she was busy so much of the time.

Q After Miss Smith got through clearing away the soiled dishes who opened up the conversation, you all three were present? A The conversation was opened when she came in; we had been discussing Miss Smith and Mrs. Rice. 10

Q Who opened the conversation after Miss Smith entered the room and took her place at the table? A That I don't remember.

Q Who brought about the conversation regarding the Babcock will? A Mrs. Babcock herself. 20

Q Had Miss Smith been telling her how hard she had been working and how difficult it was for her to get along? A No, not in my presence.

Q You were invited to have tea with Mrs. Babcock for a purpose, were you not? A No, except that I was there alone and she thought she would entertain me to that extent.

Q Who, Miss Smith? A Yes.

Q She also told you that you were to remember the minute details that took place, didn't she? A No, sir. 30

Q You knew that sooner or later you would be called as a witness in this case or some other case involving the Babcock estate, didn't you? A No, I did not.

Q The only discussion that took place on this occasion after you entered the room and after Miss Smith had returned to the room after clearing the soiled dishes away was the talk of the Babcock will. Isn't that true? A No, that 40

Deposition of Glen M. Pike, cross.

wasn't the only discussion. That was only mentioned in the course of conversation.

Q What was the conversation that led up to it and who did the talking? A Mrs. Babcock did the talking about the will.

10 Q What did Miss Smith say when she entered the room after clearing away the dishes and when she started to have tea? A I don't recall clearly what she had to say; I don't recall.

Q You knew what was foremost in Miss Smith's mind when she asked you to have tea with Mrs. Babcock, didn't you? A No, I had no idea that Miss Smith was contemplating anything. I only had the idea that she was trying to be nice and entertain her aunt.

20 Q Did Miss Smith ever tell you she had seen counsel, or consulted lawyers regarding what interest she should have had in the Babcock estate? A No.

Q You knew that she had consulted counsel regarding an alleged interest which she may have had in the Babcock estate, didn't you? A No, I didn't.

Q She never told you that? A No.

30 Q Is Mrs. Pike going to South America with you? A Not to begin with.

Q She is going to continue to live in New York at the same address? A Yes.

Q When you got that telephone call from Miss Smith and your instructions to prepare a statement, did you go to work immediately and typewrite that statement? A No, I didn't have time; I believe I did it the following day.

40 Q What time in the afternoon did you sit down to typewrite it? A I am a little hazy

Deposition of Glen M. Pike, cross.

about that; perhaps it was about two or three o'clock.

Q Haven't you a stenographer in your office?

A Yes.

Q Where was she at that time? A There was another man in my office she was working for and she used to go out on errands for him and I believe she was on one of those errands at the time I typed the statement. 10

Q How long did it take you to type it? A About twenty minutes.

Q Did you give it any thought? A Yes, I had to recall what was said.

Q Did you jot it down on a memorandum before you typed it? A Yes.

Q Where is that memorandum? A I destroyed it. 20

Q Did you show it to Miss Smith? A No.

Q What restrictions or alterations did you make in that original statement before it reached its final form? A I don't remember having made any.

Q How long did you sit down to think this matter over before you finally wrote this statement? A I didn't sit down to think it over at all, except when I drafted the statement.

Q How long did that take? A The whole thing took not more than half an hour. 30

Q It took you ten minutes to get your ideas in shape and twenty minutes to type the statement? A Yes.

Q Did you have any other memorandum that would refresh your memory? A No.

Q So it just took you ten minutes to form your ideas as to something that occurred five years ago? A It took me that long to formulate my ideas of what I recalled. I may have 40

Deposition of Glen M. Pike, cross.

left out something; the statement may be incomplete.

- Q In other words, it didn't take you ten minutes to recall to your memory what transpired on that occasion five years ago? A I just stated a few moments ago that it probably did take that long.

Cross examination (continued) by Judge Carey.

Q Where did you get the paper from on which you made that statement five weeks ago?

A In my office.

Q What kind of paper is it written on, letter-head paper? A The copy is written on a copy sheet and the first is written on plain letter paper.

- 20 Q What do you mean by plain letter paper? A Long hand stationery; pen and ink stationery.

Q Is it kept in your office, furnished by the firm? A No, it is my personal stationery; it has no heading on it.

Q None at all? A No.

Q Where did you get that paper from? A I don't recall just now; I had it for some time and still have some left.

- 30 Q You have some of that paper left? A Yes.

Q Where is it, at your home? A No, in my office.

Q You are sure that statement was not prepared in Rubien's office? A Absolutely.

- Judge David: I understand you want this witness to return only for the purpose of examining him on the statement and that he is to produce that statement about which he has testified; is that all?

Deposition of Glen M. Pike, cross.

Judge Carey: That is all I have in mind now, unless something else develops that we do not foresee. I ask now that further cross examination of this witness be continued until such time as the Commissioner will now fix at which time I desire to continue the examination of the witness and at that time I ask that the witness produce here the statement which he said he read last Saturday and which is in his file, and I ask also that at that time there be produced by counsel in this case the original of such statement which witness swore to in the office of Mr. Rubien, a New York counsel, in this estate, so that I may use that likewise in the further cross examination of the witness.

10

Mr. Emerson: I join in the same request.

20

By consent the hearing is adjourned until October 22, 1929, at 11:00 A. M., and the witness is directed to return at that time.

Examination resumed this 22nd day of October, 1929, at 11:00 A. M.

30

GLENN M. PIKE, being recalled and cross examination resumed by Judge Carey.

Q When we adjourned at the last hearing, I asked you to produce here today, a copy of the statement that you prepared, the original of which you delivered to the New York attorney. Will you please produce it? A Yes, sir. (Witness produces copy of statement.)

40

Deposition of Glen M. Pike, cross.

Judge Carey: I now ask that this copy produced by witness be marked for identification and impounded and returned with the testimony.

(Copy of statement marked Exhibit No. 1 for complainants and hereto annexed.)

10

Q Where was this paper prepared? A In my office.

Q By whom? A By myself.

Q At the time you stated at the last hearing? A Yes.

Q And on what machine did you prepare it? A A Remington typewriter.

Q Did you use that machine exclusively, or did some one else use it? A I did at that time.

20

Q Exclusively? A Yes.

Q Whose machine was it? A My own.

Q Where is it now? A At my office.

Q At your present office? A Yes.

Q Where is that? A No. 527 Fifth avenue, New York City.

Q The machine has not been changed since? A No.

30

Q Is this copy in the form that it was in when you delivered the original to the attorney? A Exactly.

Q The original was exactly the same as this copy? A Yes, sir.

Q Did you sign it? A Yes, sir.

Q With what? A With what?

Q Yes. A With a pen.

Q You are sure about that? A Yes.

40

Q Both the original and copy you signed with a pen? A No, the original; this copy isn't signed; do you see any signature on it?

Deposition of Glen M. Pike, cross.

Q Did you type your name on the original?

A Yes, I typed it on the original if it is on here.

Q Did you type your name on the original?

A If it is on here I typed it on the original; I believe I did.

Q Why did you do that? A I don't know; it is customary, isn't it? 10

Q I thought you said you signed it with a pen? A I did.

Q When? A At the time that I delivered it to Mr. Rubien's office.

Q Was it a fountain pen you used? A I don't remember if it was a fountain pen or an ordinary pen.

Q Did the lawyer change the paper he had at all? A No, except in the acknowledgment. I believe there was an acknowledgment on the original when I—after I signed it. 20

Q An acknowledgment where? A In Mr. Rubien's office.

Q On what part of the paper was there an acknowledgment? A I don't know, on the original paper beneath my signature; some place beneath my signature.

Q You are sure about that? A Pretty sure.

Q Did you see it? A Yes. 30

Q When did you see it? A When I signed it.

Q Was it there before you signed your name to it? A No.

Q It was there after you signed it? A Yes.

Q You saw him put it there after you signed it? A Yes.

Q What did he put there, do you remember?

A I signed it; I don't know; an acknowledgment that's all I know, in the form of an acknowledgment. 40

Deposition of Glen M. Pike, cross:

Q How do you know it was in the form of an acknowledgment? A I don't know.

Q Why do you testify here that it was in the form of an acknowledgment, if you don't know?

A That's what I took it to be at the time.

Q Do you remember what it said? A No.

10 Q Do you know what an acknowledgment is?

A Yes.

Q You have taken lots of them, haven't you?

A No, how can I take acknowledgments? I'm not a notary.

Q I don't know. How do you know what an acknowledgment is? A I have seen lots of them.

Q You are familiar with the form of an acknowledgment? A Yes.

20 Q And from all appearances what the lawyer put on that statement was just like an acknowledgment? A Yes, sir.

Q How long was it before you went to the lawyer's office that you prepared this? A About four or five days.

Q Not more than that? A I don't believe so.

Q It was at least four or five days? A I would say so.

30 Q Did you show it to anybody from the time you prepared it to the time you went to his office? A No.

Q Didn't you show it to the folks at home? A No.

Q Four or five days elapsed from the time you prepared it until the time you went to the lawyer's office. Did you see any of the parties during that time? A No.

Q Did you get any telephone communications from them? A No.

40 Q Did you get any telephone communication from anybody in relation to this during that four or five days? A I don't remember that I did.

Deposition of Glen M. Pike, cross.

- Q Did you visit them personally, any of them?
A No.
- Q Did you talk the matter over with them?
A No.
- Q During that four or five days? A No.
- Q Where did you keep it, in your desk or pocket? A Which? 10
- Q The paper? A The original?
- Q The original and copy you had for four or five days? A I kept the copy in the file and the original in my desk until I went to see Mr. Rubien.
- Q Why didn't you keep them together? A I didn't know what time I would go over to see Mr. Rubien so I kept the original in my desk and put the copy in the file.
- Q I recollect that you said you never had met this lawyer before? A No, I hadn't. 20
- Q Have you met him since? A No.
- Q Haven't seen him since? A Since when?
- Q Since you delivered the document to him?
A Yes.
- Q When? A About three weeks ago I should say.
- Q Where? A At his office.
- Q What did you go there for? A I don't remember. 30
- Q You don't remember what you went to his office for three weeks ago? A No, I don't remember that it was three weeks ago.
- Q You just said it was three weeks ago, didn't you? A I am changing that statement now.
- Q Oh, you are changing that statement now?
A Yes.
- Q Well then, when was it? A I don't know. I have seen him some time from the time I delivered the paper and the present time. 40

Deposition of Glen M. Pike, cross.

Q You just a moment ago said you saw him three or four weeks ago, didn't you? A That may be possible.

Q Did you? A I don't know.

Q Did you see him this week? A No.

Q Did you see him last week? A No.

10 Q Did you see him the week before? A No, I don't think so.

Q You don't know if you saw him the week before? A No, I don't remember.

Q Do you remember that you were at this office two weeks ago? A I remember, yes.

Q Was it two weeks ago? A Yes, I guess so; I don't remember if it was two weeks or one week ago.

Q You can't even remember that, can you?

20 A If you give me time to figure out what date I was here I will be able to tell you.

Q Let me see, were you at his office before you came here or after? A Before.

Q How long before? A That I don't remember.

Q About how many days before? A I don't remember.

Q Can't you tell within three months? A No.

30 Q Within six months? A Possibly.

Q Tell us then? A I don't know.

Q Were you there the day before you came over here? A No.

Q Two days before? A No.

Q How many days before? A I don't remember.

Q Can't even approximate it? A No.

Q And you don't know what you went there for? A No.

40 Q Did you meet anyone there when you went there? A No.

Deposition of Glen M. Pike, cross.

Q Did you see him? A Yes.

Q What did you talk about? A I don't remember.

Q Not the stock market? A No; I don't remember.

Q Did you talk about church? A No.

Q Did you talk about the war? A I don't remember. 10

Q Did you talk about this case? A I don't remember.

Q You don't recall when you were there, what you talked about and why you went there?
A No, I don't recall.

Q That is as true as everything else you said. What color hair has this lawyer? A Brunette.

Q What color eyes? A Blue, I believe. 20

Q Did he wear glasses when you talked to him? A I don't remember.

Q What room were you in when you saw him last? A His private office.

Q How many rooms are there in his suite or didn't you notice? A I know of two.

Q Was anybody else in his office when you were there? A I believe his stenographer was in the outside room.

Q That was three weeks ago? A Possibly. 30

Q You say approximately three weeks ago?
A I said possibly.

Q Was it? A I don't know.

Q Who did you come over here with today?
A Miss Smith.

Q Where did you meet her? A At the Pennsylvania station.

Q By appointment? A Yes.

Q You can remember that, can't you? A Yes.

Deposition of Glen M. Pike, cross.

Q She is here now, Miss Smith I mean? A Yes.

Q Have you seen her since you were here the last time? A Yes.

Q Where did you see her? A At my home.

Q When? A I believe two weeks ago.

10 Q That was right after you were here at the last hearing? A Yes.

Q Did you talk it over with her about the hearing? A No.

Q You didn't mention it? A No.

Q You didn't say anything about it? A No.

Q Did you tell her you found the paper? A I don't suppose she knew anything about it.

Q Did you tell her you found the paper? A No.

20 Q Did you see anybody else besides Miss Smith about that statement since then? A No.

Q Where did you get this yellow paper from? A From my file.

Q Where did you get it from before you typed it? A I don't remember.

Q From the office where you typed it? A Yes.

Q Who furnished the paper there? A I did.

Q You furnished your own paper? A Yes.

30 Q Do you remember where you bought it? A No.

Q You don't remember where you bought it? A No.

Q Did you buy it for the office? A Yes.

Q Did you have any more of that paper? A Yes, plenty more.

Q Have you still got some of that paper? A Yes.

40 Q Was the original made on the same color paper? A No, that's on writing paper, white.

Deposition of Glen M. Pike, cross.

Q What kind of paper? A Penmanship paper; letter paper.

Q Are there lines on it? A No.

Q Is there any letterhead on it? A No.

Q Anybody's name on it? A No.

Q Was there any heading on the paper at all? A No. 10

Q You are sure of that? A Yes.

Q You had no stenographer there at the time you wrote that statement? A No, not at that time.

Q Did you have a stenographer there the day before? A Yes.

Q And the day after? A Yes.

Q Where was your stenographer when this statement was written? A Out.

Q Where? A On an errand of some kind. 20

Q What time of the day did you write it?

A I don't remember exactly; around 2:00 o'clock; sometime early in the afternoon.

Q You think it was written about 2:00 o'clock?

A Yes, but I'm not sure.

Q You aren't sure? A No.

Q The stenographer was not out to lunch then, was she? A I don't remember whether she was or not.

Q She did all of your typewriting in the office, didn't she? A No, not all. 30

Q How much typewriting did you do? A I wrote letters sometimes.

Q Did you write any letters on the typewriter since you typed that statement? A No.

Q When was the last time before you prepared this statement that you used it? A I used it a couple of days ago.

Q I mean before you wrote this statement?

A I don't know. 40

Deposition of Glen M. Pike, cross.

Q You hadn't used it at all, had you, for a long time? A I wouldn't say that.

Q You probably hadn't used it for a long time, had you? A I used it quite frequently.

Q What was your stenographer's name that you had at that time? A That I don't remember.

Q How long did you have her? A I didn't have her at all; my associate had her.

Q Who is your associate? A John G. Treacy.

Q Where is he located now? A At the same address.

Q Where is that? A No. 527 Fifth avenue.

Q With you? A Yes.

Q Where is your stenographer who was out for a little while that day while you prepared this statement? A I don't know.

Q Is she working for you now? A No.

Q Or for your associate, Mr. Treacy? A No.

Q When did you last see her? A I don't remember.

Q About when? A I don't remember.

Q Tell us within six months when you last saw her? A Well, possibly a month ago.

Q Where? A At the office.

Q Was she working there then? A Yes.

Q And you haven't seen her since? A No.

Q Did she leave? A Yes.

Q Do you know her last name? A No.

Q Do you know her first name? A No.

Q How long had she been working there before she left? A A short time.

Q How long? A I don't remember; probably three weeks.

Q Have you a stenographer now? A No.

Deposition of Glen M. Pike, cross.

Q You haven't had one since she left? A No.

Q And neither has Mr. Treacy? A No.

Q Who does your typewriting now? A I do mine and he does his.

Q Who owns the machine that you wrote this statement on, you or Treacy? A I do. 10

Q Before you prepared this statement, did you talk to any lawyer about it? A No.

Q Did you talk to anybody about it? A Yes.

Q Who did you talk to about it? A Miss Smith.

Q Did she tell you what she wanted? A Yes.

Q Did she tell you what to write? A She told me what she wanted but not what to write.

Q What did she say she wanted? A She told me to make a statement of my conversation with Mrs. Babcock at her home on a certain visit which she made. 20

Q Did she tell you what kind of a statement she referred to? A No.

Q Did she tell you what it was for? A Yes, for evidence in the contest of the will.

Q You are sure about that? A Yes.

Q She said she needed this statement for evidence in a contest of the will? A Yes.

Q Did she mention contest of the will? A Yes. 30

Q Did she? A I think she did.

Q Are you sure about it? A Yes.

Q Are you in the insurance business? A No.

Q What is your business? A Aeronautical engineering.

Q You are listed in the telephone directory as being in the insurance business, are you not? A Yes, at that time I did have an insurance business. 40

Deposition of Glen M. Pike, cross.

Q What insurance company did you work for?
A Aeronautical insurance.

Q Did you ever meet Miss Smith's father?
A Yes.

Q Was he there the day of this visit? A
No.

10 Q Did you ever see him with Mrs. Babcock?
A No.

Q When did you see him last? A Two
months ago.

Q Where? A At Miss Smith's home.

Q And you haven't seen him since then? A
No.

Q Was that before you prepared this state-
ment or after? A I believe it was before.

20 Q Now, can you tell us with any real or ap-
proximate accuracy, when you prepared this
statement? A I don't know; I can't recollect.

Q Approximately? A I can't recollect.

Q Was it three months ago? A Less than
that.

Q Two months ago? A Yes, I should say
around that.

Q About two months ago? A I guess so.

30 Q Did you date it? A I don't remember
dating it.

Q You saw it last Saturday. You ought to
know if you dated it or not? A I don't know
whether I dated it or not.

Q You saw it this morning before you handed
it to me, didn't you? A Yes.

Q You read it this morning, did you? A
Yes.

Q And you can't remember now whether it
is dated or not? A The copy isn't dated.

40 Q You remember that? A Yes.

Deposition of Glen M. Pike, cross.

Q But you don't know whether you dated the original or not? A I know I didn't date it myself.

Q What do you mean? A I assume it is dated by the acknowledgment of the signature.

Q Did you write these words "To Whom it May Concern"? A Yes. 10

Q Why did you write those words? A Because I considered that the statement was for any one concerned.

Q I thought you were asked to make it for the lawyer? A He is concerned, isn't he?

Q Is he? A I believe he is.

Q Did you make it for him? A I made it for anybody who wanted to look at it.

Q Can you tell me now where you were when you were asked to make this statement? A At my office. 20

Q And who it was that asked you to make it in your office? A Nobody asked me where to make it.

Q I asked you who it was asked you to make it in your office? A Nobody asked me where I was to make it.

Q I asked you where you were when you were asked to make this statement. Your answer was "In my office." Is that correct? A Yes. 30

Q Who was in your office at the time when you were asked to make the statement? A Nobody.

Q Who asked you to make this statement while you were in your office? A Miss Smith.

Q How did she ask you? A By telephone.

Q And was the telephone call received the same day you made the statement? A No, I don't believe so. 40

Deposition of Glen M. Pike, cross.

Q How many days before? A I think a day or two.

Q You hadn't seen her at her house just prior to that time? A Not within a week.

Q Or at your house? A No.

10 Q So that the only request you ever got to make this statement was over the telephone from Miss Smith? A Yes.

Q That you are sure of? A Right.

Q Did she tell you what to do with it over the telephone? A She told me to take it to Mr. Rubien.

Q Did she give you his address? A I don't remember whether she did or whether Mrs. Rice gave it to me.

20 Q Did Mrs. Rice talk to you about it? A Yes, Mrs. Rice called me up just before I went to Mr. Rubien's office.

Q Why did you keep this copy of the paper? A For no particular reason except that it is customary for me to keep copies of all my letters.

Q That is the only reason? A Yes.

30 Q When did you take it from the file in your office, if that is where you took it from, before bringing it here today? A Immediately after the last visit here.

Q Where has it been since then? A In my pocket.

Q Continuously since then? A Yes.

Q Why? A No particular reason.

Q Wasn't it safe in your file? A Yes.

Q Were you reading it often? A No.

Q How often did you read it since you took it from your file? A Not at all.

40 Q You read it this morning, didn't you? A No.

Deposition of Glen M. Pike, cross.

Q You looked at it, didn't you? A Yes.

Q You have been carrying that statement around with you in your pocket for two weeks?

A Yes.

Q Did you show it to anybody? A No.

Q Did you hand it to any of the complainants in this case? A No. 10

Q Did you tell any of the complainants that you found it? A I spoke to Mr. Rubien about it.

Q How did you come to speak to him about it? A I asked him if he wanted me to bring it over here.

Q You went to his office after being here? A No, I telephoned him.

Q What did you ask him? A I asked him if he wanted me to present that copy at this hearing. 20

Q What did he say? A He said yes.

Q Did you read it to him over the phone? A No.

Q What time of the day did you telephone him? A During the forenoon.

Q You are sure you haven't seen him since the last hearing at this office? A Yes.

Q Have you been paid for coming over here? A No. 30

Q Have you been given any promises? A No. Yes I was paid my carfare over here.

Q By the way, have your plans about going to South America been changed? A No.

Q When do you leave? A Indefinitely.

Q It may not be for months? A It may not be for a month.

Q You are sure you are going within a month? A I am not positive. 40

Deposition of Glen M. Pike, cross.

Q And of course if you don't go you can come over here to court? A Yes.

Q There will be nothing else to prevent you from coming? A I don't know of anything else.

Q How long have you owned the typewriter that you are using now? A Five or six years.

10

Cross examination (continued) by Mr. Emerson.

Q When you telephoned Mr. Rubien about the hearing that was held over here and asked him about the statement did he ask you what was in it? A No.

Q Did he say he must read it first before you could offer it or not? A No.

Q Did he know what was in it? A I guess he did.

20

Q When did he last read it to your knowledge? A I don't know.

Q When were you there prior to your last visit here? A I don't remember; sometime ago.

Q What does that mean? A I don't remember when it was.

Q You have no idea when you were there? A No.

30

Q Mr. Pike, your stenographer that worked for you and Mr. Treacy, you don't know her name? A No.

Q And she worked for you about three weeks? A I believe so.

Q And she left about a month ago? A I believe so.

Q Was she a blonde or brunette? A Brunette.

Q What color were her eyes? A Dark.

Q How much did she weigh? A About 120
40 or 125 pounds.

Deposition of Glen M. Pike, cross.

Q How tall was she? A About five feet six inches.

Q Did you ever dictate to her? A Very little.

Q You did dictate to her though, didn't you? A Yes, once and a while.

Q How did you address her? A I don't remember ever having addressed her. I was in the office very little and had very little opportunity to get in any dictation. 10

Q Where did you dictate to her when you wanted her to take dictation from you? A At my desk.

Q How did you address her to get her to take your dictation? A I would step out and ask her to take a letter for me.

Q Did you ever hear her name? A Yes, I believe I did. 20

Q You don't remember her name? A No.

Cross examination (continued) by Judge Carey.

Q Isn't it a fact that you prepared that paper since the last hearing at this office? A No.

Judge David: I offer in evidence the statement produced by the witness at this hearing. 30

Statement received in evidence and marked Exhibit No. 1 on part of the complainants.

To Whom It May Concern:

This is my recollection of the visit of Mrs. Babcock to her niece Eleanor Smith.

She came to the apartment to have lunch with her niece at 411 West 114th Street, 40

Deposition of Glen M. Pike, cross.

N. Y. where I then lived. I happened to be at home and was introduced shortly before she left.

10 She mentioned that she regretted seeing her niece so seldom, but that she realized how little time a nurse has to herself and how tied down they are. She spoke of how fond she had been of their Mother and asked if I knew Mrs. Rice. Being told that I did she said that she had had a visit from her some time ago. She said until recently she had not seen her nieces since they were babies and how badly this had made her feel. She felt that it was because their Mother had died when they were so young, that they were separated from their Mother's family. Why even when their Grandmother Babcock died they were not mentioned in her will, but specially due to the fact that they had made no contention of their Uncle's will, which had once been under consideration she understood, she expected to take care of them in her will.

20

30 She then thanked me for the friendship my wife and I had shown her niece and said she was glad she lived among such good friends.

I remember these things as Miss Smith lived five years in our apartment and I was always under the impression she felt sure she would receive a substantial sum in her Aunt's will.

GLENN M. PIKE.

(Copy of statement produced by witness marked Exhibit No. 1 on part of complainants.)

40

Notice of Taking Deposition.

IN CHANCERY OF NEW JERSEY.

Between

ELEANOR C. SMITH and CAROLYN B. RICE,

*Complainants,**and*

CLARENCE D. MEYER, individually and as Executor of the last Will and Testament of Julia P. Babcock, deceased, the REVEREND LYTTLETON E. HUBBARD, D. D., Rector of St. John's Church, Elizabeth, N. J., ALICE BABCOCK PRIES, MRS. LENA B. BOWEN, OTTO WAGNER, M. D., NORA FARRELL, CATHERINE A. BRADY, ELIZABETH ORPHAN ASYLUM OF ELIZABETH, N. J., and MADAM ALPHONSE LATHROP ROSARY HILL HOME,

Defendants.

10

*On Bill, &c.**Notice of Taking Depositions.*

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To

Pursuant to the direction of William D. Wolfs-Keil, a Supreme Court Commissioner of this State, you are hereby notified that on the 7th day of October, 1929, at the hour of ten o'clock in the forenoon, at his office, No. 207 Broad street, in the City of Elizabeth, County of Union and State of New Jersey, I shall proceed to take *de bene esse* the deposition of Glenn M. Pike, a material witness for the complainants

40

Notice of Taking Deposition.

Eleanor C. Smith and Carolyn B. Rice, in this cause, and who is about to leave this country, before the said William D. WolfsKeil, a Supreme Court Commissioner of this State.

10 This notice is given to enable you to attend at the taking of said testimony, and to put questions and cross examine the said Glenn M. Pike, if you shall see fit.

ABE J. DAVID,
Solicitor of Complainants.

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Certificate of Supreme Court Commissioner.

IN CHANCERY OF NEW JERSEY.

Between

ELEANOR C. SMITH and CAROLYN B. RICE,

*Complainants,**and*

CLARENCE D. MEYER, individually and as Executor of the last Will and Testament of Julia P. Babcock, deceased, the REVEREND LYTTLETON E. HUBBARD, D. D., Rector of St. John's Church, Elizabeth, N. J., ALICE BABCOCK PRIES, MRS. LENA B. BOWEN, OTTO WAGNER, M. D., NORA FARRELL, CATHERINE A. BRADY, ELIZABETH ORPHAN ASYLUM OF ELIZABETH, N. J., and MADAM ALPHONSE LATHROP ROSARY HILL HOME,

Defendants.

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*On Bill, &c.**Certificate.*

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I, WILLIAM D. WOLFSKEIL, Supreme Court Commissioner, do certify the within examination of Glenn M. Pike, a witness produced on the part of the complainants, taken *de bene esse* before me, at my office, No. 207 Broad street, Elizabeth, New Jersey, on the 7th day of October, nineteen hundred and twenty-nine, and on the 22nd day of October, nineteen hundred and twenty-nine, in pursuance of notice given by me, a copy of which is hereto attached.

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Certificate of Supreme Court Commissioner.

WITNESS my hand the twenty-eighth day of October, nineteen hundred and twenty-nine.

WILLIAM D. WOLFSKEIL,
Supreme Court Commissioner.

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Exhibit C. 1.

EXHIBIT C. 1.

Statement of Mary Asquith

During the early part of 1924, sometime between January 1st and Washington's Birthday, which is the nearest I can come to a date, Carolyn Biddle Rice and I came into town from Westport, Conn. Mrs. Rice was on her way to Elizabeth to lunch with her aunt, Julia Babcock, and I had shopping errands. Mrs. Rice had not been well and felt so badly that day that I advised her to phone her aunt and cancel the appointment. She refused, saying if her aunt were a younger woman she would but old people felt disappointments keenly. However, she would appreciate my coming to Elizabeth for her when I finished my errands, instead of meeting her at the train. So sometime in the neighborhood of three P. M. I reached Elizabeth. Mrs. Rice had given me explicit directions for walking and as I went up the steps, before I could ring, Mrs. Babcock opened the door. Mrs. Rice said they had just gone to the door with a neighbor and were about to go upstairs when she heard my step on the walk. We went upstairs to Mrs. Babcock's sitting room.

Mrs. Babcock appeared to be quite fond of Mrs. Rice for she told me how much she had loved Carolyn's mother, Nellie, how much Nellie loved her—and how they always made it a rule to go to church together, especially on Easter morning. She asked if I didn't think Carolyn the image of her mother's picture, which I had never seen. Mrs. Rice mentioned that the room we were in had been a bedroom when she was a child and Mrs. Babcock said her husband died in the room, after which she had the bed taken out. Mrs. Rice

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Exhibit C. 1.

left us while she went to the bathroom and in one of those idiotic efforts to make polite conversation I mentioned that I had met Mrs. Babcock's sister-in-law, Mrs. Bowen and thought her such a gracious, old-fashioned gentlewoman. In about one second I found I had touched a match to a

10 barrel of gunpowder.

In what follows I can't swear that I am quoting verbatim, or giving accurate sequence to each word, but Mrs. Babcock was so emphatic that I have never forgotten the *meaning* of her words, and in many cases recall whole sentences.

She turned on me in a rage—Lena Bowen wasn't gracious, she was a grasping, selfish hag, who had cheated everyone in the family—she had cheated Nellie's children out of their grand-

20 mother's estate—she had tried to make her brother cheat them—she was trying to break her (Mrs. Babcock's) husband's will—that is what Lena Bowen was trying to do—Carolyn had told her—and I knew she was doing it, didn't I?

I tried to quiet her by saying I had not seen Mrs. Bowen since Mr. Babcock died, but she didn't believe me—she was sure I knew how Lena Bowen—(That woman, she usually called her) was trying to get around Carolyn.

30 Before the scene went very far Mrs. Rice returned, but Mrs. Babcock merely transferred her attention from me to her niece. She began a tirade about all the things Mrs. Bowen had done—how she was the only one who got money from Grandmother Babcock—how she made her brother pay *momeny* into the estate so it could be settled and she could get hers.— She had tried, after Fred died, to get Ned (Mrs. Babcock's husband) to make his will and lrave out Nellie's

40 *children*—she didn't see why they hade to be con-

Exhibit C. 1.

sidered—and how she, (Julia Babcock) had found out—I assume from her lawyer; she didn't state to my recollection) that Nellie's children *ahd* as much right to a share as Lena had—and she (Mrs. B.) never gave her husband any peace until he made his will leaving *everything* in her hands, so Lena couldn't get it, But she knew what Ned wanted done—and had promised to do it—she had all the say now and she was going to see that Nellie's girls got 10

Asquith statement

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their half. She told of coming home one day when her husband was ill and finding "that woman" beside her husband—she'd been trying to get him to change his will back again, but Mrs. Babcock had got rid of Lena Bowen and her husband had promised that he wouldn't change his will again. 20

At some point in her torrent of words she turned to Mrs. Rice and said "Don't you do anything Lena Bowen asks. She'll cheat you—she wants Ned's money—and she won't let you have any. Don't you join with her. You let Uncle Ned's will alone. I'm going to leave you and Eleanor half the money—and I'll take care of my sister—and Katy—but Lena Bowen can't have a penny. Don't you help her. I'll take care of you. I loved Nellie and I didn't love Lena—never loved her. I'll leave you and Eleanor half if you don't fight the will." 30

Mrs. Rice promised not to contest her uncle's will, though both she and Eleanor felt that he should have remembered them after always saying he would. Mrs. Babcock assured her, "you're going to get it. Not just the few thousand Lena Bowen cheated you out of—but more—I know 40

Exhibit C. 1.

what Ned wanted—he loved your mother and I loved her—and Nellie's girls are to have half. But don't you let that woman make you fight now."

10 Personally the whole thing embarrassed me greatly and I could see that Mrs. Rice would have preferred my not hearing all this, but no one could have stopped that woman once she started. We finally insisted that we must go because it would be late when we got back to Westport, where we had left someone with the children. Mrs. Babcock went downstairs with us—and into the front room—something had been said upstairs about her baby—Mrs. Rice had told me she had had just one and lost it and what a tragedy it had been to her; she wanted
20 us to see a picture of the baby and herself, when she was younger. She had a picture of Nellie, too, that she wanted Carolyn to see—she didn't think anyone else had one of these—but she couldn't find it. She promised to send it to Carolyn when she did find it. She had grown normal again by the time we left and wanted Carolyn to come again soon—she wanted to see the children, too. She was very pleasant at parting.

30 After we left I asked Mrs. Rice why she hadn't posted me not to mention Aunt Lena's name. She replied that she never knew Aunt Julia disliked Aunt Kena so much.

"I'll say she dislikes her," I remember telling her. "I don't know what the dear old lady has—except temper—but whether it's five cents or five million it's a safe gamble that you and Eleanor are going to have half of it wished on you."

40 It is probable that I have omitted things that were said, for the whole scene hit me with such

Exhibit C. 1.

swift force that it left me rather breathless; but some things that were said made an indelible impression on my memory, even though I have tried to forget the whole unpleasant incident. I had expected to ring the bell, stop long enough to let Mrs. Rice put on her hat and coat and get out. Suddenly having the history of a family feud flung at me was just a bit startling and rather unforgettable. 10

One thing more may be important. Mrs. Babcock made Mrs. Rice promise never to let Aunt Lena know that they had this talk. Just let Lena think Carolyn didn't want to fight.

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Stipulation.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

	<p><i>Between</i></p>	
10	<p>ELEANOR C. SMITH, <i>et als.</i>, Complainants,</p>	} <i>Stipulation.</i>
	<p style="text-align: center;"><i>and</i></p>	
	<p>CLARENCE D. MEYER, execu- tor, etc., <i>et als.</i>, Defendants.</p>	

20 The solicitors for the respective parties in the above cause hereby stipulate that on February 12, 1930, which was the day set for final argument, the solicitors of complainants asked permission to take the testimony of Nora Farrell, a witness on behalf of complainants. There was an objection interposed because the case had been closed and there was no stenographer present. The Court considered the matter and permitted the testimony of the witness to be taken orally. She was duly sworn.

30 In her examination in chief Nora Farrell testified that she was employed by a family in New York City and was living at 1085 Park avenue. She was at one time employed with Mrs. Babcock as a maid. She said she was in the employ three years and five months and that she came in September, 1923. Mr. Babcock had died before she was employed in the family. She recalled the winter that Mrs. Rice was at the Babcock home for luncheon. It was five or six months after Mr. Babcock died; that Mrs. Babcock always opened the door to greet people and the witness

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Stipulation.

remembered the time when Mrs. Rice called for lunch and another woman came that day and was let in by Mrs. Babcock. She did not recall the day or recognize the woman.

Upon cross examination Miss Farrell testified that Mrs. Rice called at her home Thursday or Friday previous to this hearing. She let Mrs. Rice in around lunch time. Witness said she came to court with the New York attorney and met Mrs. Rice and Miss Smith in Elizabeth. 10

By Mr. Carey: "Do you remember speaking with Mr. Meyer?" Answer: "Yes."

Question: "Did you not tell Mr. Meyer that you know nothing whatever about the case?" Answer: "Mr. Meyer asked me to come and testify that Mrs. Rice came to lunch." 20

Question: "Did you not tell Mr. Meyer that you knew nothing whatever about the case?"

(Witness hesitated and did not answer.)

Question repeated and Vice-Chancellor Buchanan demanded that she reply. Witness then declared that she had once informed counsel for the estate that she knew nothing about the case. 30

By the Court: "Why did you say that?" Answer: "I thought the other side was right."

ISRAEL B. GREENE,
Solicitor of Complainants.

CLARENCE D. MEYER,
Solicitor per se and for Defendants
other than Orphan Asylum. 40

WHITTEMORE & McLEAN,
Solicitors of Elizabeth Orphan Asylum
Association of Elizabeth, N. J.

Exhibit C. 9.

EXHIBIT C. 9.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

10 I, ELLIOTT C. SMITH, formerly of the City of Elizabeth, County of Union, State of New Jersey, Do HEREBY CERTIFY, that a certain Indenture of Mortgage bearing date the Eleventh day of June in the year one thousand eight hundred and ninety five, made and executed by CAROLINE M. BABCOCK and FREDERICK A. BABCOCK her husband, of the City of Elizabeth, New Jersey, to me the said Elliott C. Smith, to secure payment of
20 Twenty eight hundred dollars and interest, and recorded in the office of the Clerk of the County of Union, New Jersey, in Book 130 of Mortgages page 496 on the Eleventh day of December in the year one thousand eight hundred and ninety five at 9 o'clock 40 minutes in the forenoon Is PAID and satisfied and do hereby consent that the same be discharged of Record.

Dated the 8th day of April 1904.

ELLIOTT C. SMITH.

Signed in the Presence of

30 HENRY A. HIMMELMANN,

Acknowledgment of satisfaction of Mortgage taken before Henry A. Himmelmann, Notary Public of N. Y. Co.

County Clerk's notarial certificate annexed.

Recorded in Book 6 of Discharges of Union County on pages 178, etc.

WILLIAM HOWARD,

Clerk.

124 WEST JERSEY STREET.

Elizabeth N. J.

C. 5
RP

My dear Carolyn,
Your letter with
pictures of your two
children was received.
I was glad to hear
from you, as I was
always so fond of your
mother, she and Fred
Babeock were my
"favorite" in Louisiana.
As to your kind invita-
tion to visit you I am

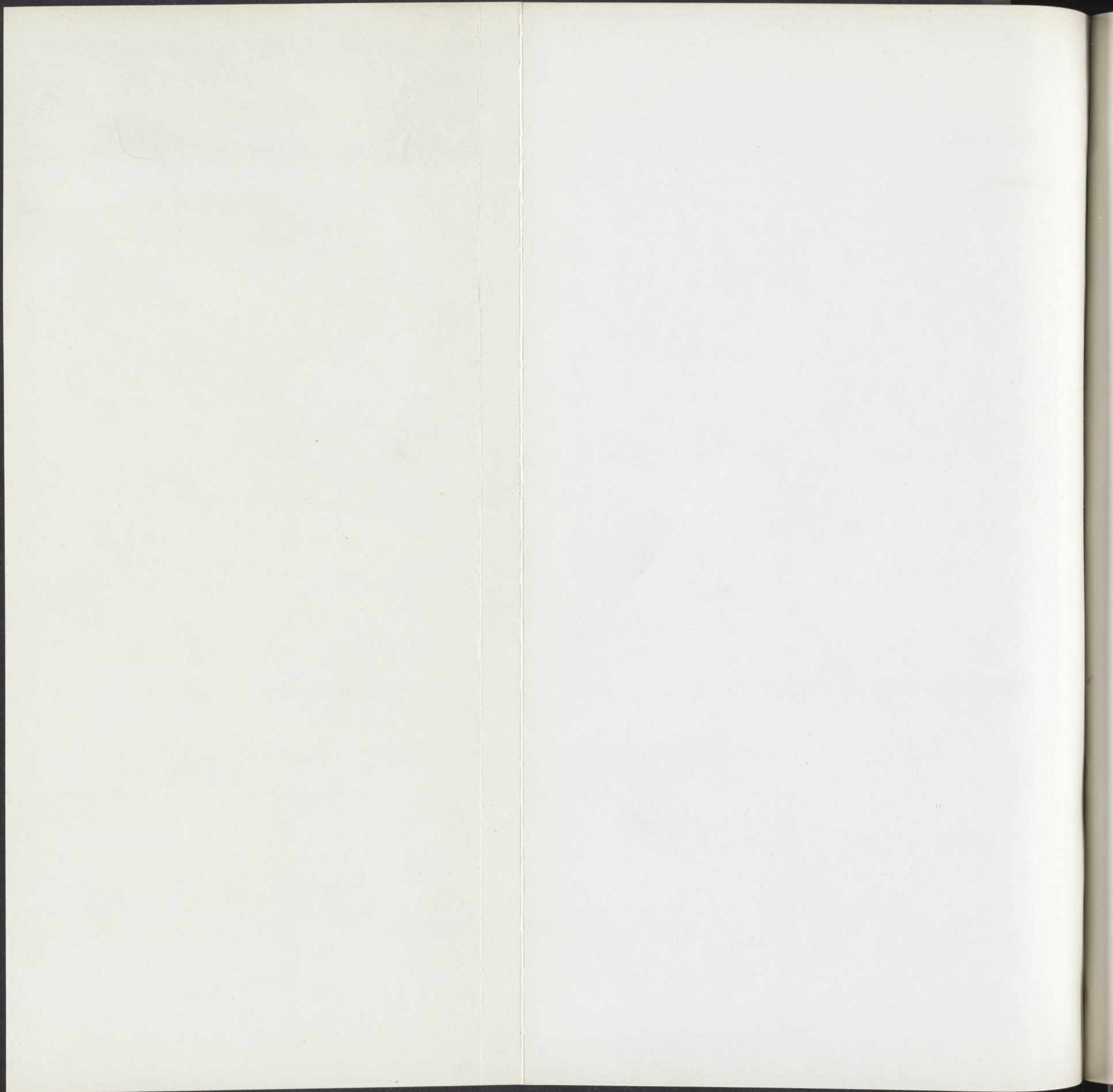
afraid I will have
to decline as I never
venture far away
from home these
days, but if you and
your husband are
ever in this neighor-
hood I will be glad
to see you. I am glad
you like your new
home and are so
happy there.

Affectionately
Aunt Julia
Oct 29th 1923.

ELIZABETH N. J.
OCT 29
12³⁰ PM
1923
N. J.



Mrs Frank H. Rice
Saugatuck
Conn. C. 5
RP



D. 15.





New Jersey Court of Errors and Appeals

Between

ELEANOR C. SMITH and CAROLYN B. RICE,

Complainants-Appellants,

and

CLARENCE D. MEYER, individually and as executor under the last will and testament of Julia Pratt Babcock, deceased, *et als.*,

Defendants-Respondents.

On Bill, &c.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF APPELLANTS.

Statement.

This is an appeal from a decree advised by Vice-Chancellor Buchanan, dismissing the complainants' bill of complaint.

The complainants, *nieces of Julia Pratt Babcock, now deceased*, brought this suit to enforce specific performance of an oral agreement made by Mrs. Babcock, in her lifetime, whereby she agreed to leave them, by her will, a half of her estate, in consideration of their agreement not to contest the will of their Uncle Edward B. (*Ned*) Babcock, Mrs. Babcock's husband. Mr. Babcock died on August 6, 1923, and by his will left his entire estate to his wife (pp. 11, 12).

Mrs. Babcock died on June 27, 1928, leaving a will with several codicils thereto, by which, after making several bequests, she gave the bulk of her estate in equal shares to the Elizabeth Orphan Asylum of Elizabeth, N. J., and the

Rosary Hill Home of Hawthorne, N. Y. (pp. 13-20). Her executor and all legatees and devisees under her will are parties to the bill.

The Vice-Chancellor held that the only issue in the case was "*one of fact—as to whether the alleged contract was made or not,*" and dismissed the bill, because, in his opinion, the complainants had not "*sustained the burden of proof, establishing the making of the contract*" (p. 39).

The Evidence.

The reason assigned by the Vice-Chancellor for dismissing the bill makes it necessary to review the evidence, pro and con, with some degree of detail.

The complainants' case is supported by the following evidence.

I.

Elliot C. Smith, complainants' father testified that: He had known Edward B. Babcock (his brother-in-law) since about 1880 (p. 43). In the 1890's he advanced money to Frederick Babcock (Edward's father), and supported his family and a crippled son for about three years (p. 52), for which the *elder* Babcock gave him a \$6,000 mortgage on property in the City of Elizabeth, which he kept off record (pp. 46, 48, 52). A short time thereafter the elder Babcock made another mortgage to Edward, his son, which the latter recorded and which mortgage rendered his (Smith's) mortgage worthless (p. 46). As a result of this incident his relations with Edward B. Babcock became strained and they did not see each other for many years (pp. 46, 47).

In the summer of 1918, he met Edward B. Babcock on the boat between New York City and the New Jersey shore, and on one occasion Edward approached him and spoke to him "*about the possible hard feelings or resentment*" on his (Smith's) part, resulting from the mortgage transaction above referred to, and said "*that he considered there was a moral obligation on his part to make some kind of repayment for the money, which I, (Smith) had advanced and the things I had done for his (Edward Babcock's) family 25 years or more before*" (p. 47), and he promised to make a will whereby he, would leave "*a very substantial amount of money to my daughters (the complainants) both in consideration of the moral obligation he had for the \$6,000 and for the affection he had for his sister ('Nel' the mother of complainants, deceased) and his sister's children*" (p. 48).

Smith further testified that when he learned, after Edward's death, that he had left all his property to his wife, Julia, he advised his daughters, the complainants, to retain a lawyer and contest his will because of the breach of his promise; but because his daughters were very friendly with Mrs. Babcock, he suggested that they go out to see her, tell her of the promise made by her husband and see if she was inclined to carry it out (pp. 49, 50). He also testified that in the middle of January, 1924, one of his daughters visited Mrs. Babcock (p. 56).

Mr. Smith's testimony stands uncontradicted.

II.

Carolyn Rice, one of the complainants, testified that: In October, 1923 (after Mr. Babcock's death) she conferred with her father and

her sister, Eleanor Smith about contesting her uncle's will (pp. 96, 97, 98), and it was suggested that she visit Aunt Julia and try to settle the matter peaceably. At that time she lived in Westport, Conn., and due to illness she was unable to make the trip immediately (p. 96). In the latter part of January, 1924, she visited her aunt at her home in Elizabeth, N. J., arriving at luncheon time, and stayed until a little after 4 P. M. She testified that about 3:30 P. M., Mary Asquith, a friend called for her to assist her home (pp. 94, 95).

Mrs. Rice's conversations with Mrs. Babcock were ruled out by the Court as incompetent under Section 4 of the Evidence Act (2 C. S. 1910, p. 2218) (p. 95). However, she testified that after her visit she reported to her sister, Eleanor that Aunt Julia "*had agreed that if we wouldn't contest her husband's will, and make no trouble for her in her old age, which she wanted to be peaceful, she would, in turn, leave us half of her estate.*" Eleanor was satisfied with the arrangement and as a result thereof the proposed contest was abandoned (p. 100).

Mrs. Rice's visit to her Aunt Julia is attested to by three of the defendants' witnesses. *Catherine Brady*, one of Mrs. Babcock's maids, testified as follows (p. 112):

"Q When did you see Mrs. Rice there that you remember? A I can't exactly tell you, but I think maybe it was in January; it was the year after Mr. Babcock died, and she called just at lunch time, so Mrs. Babcock didn't expect her, so she told me I could get some lunch, which I did; and she remained to lunch, and they seemed to have a very nice time. *She left and everything went along very peacefully.*"

Miss Brady's testimony is entitled to great weight, *firstly*, because she was an eyewitness and, *secondly*, because she is a defendant to the bill by reason of the \$5,000 legacy given her by Mrs. Babcock's will. Her statement that *after* Mrs. Rice left "*everything went along very peacefully*" (for Mrs. Babcock) suggests that a conflict or contest was threatened or impending—while Mrs. Rice was there and before she left. While serving lunch, she undoubtedly overheard the conversation at the table.

Nora Farrell, another maid, testified that she recalled the time when Mrs. Rice was at the Babcock home for luncheon (Stipulation, Supplemental State of Case, p. 274). Miss Farrell though called by the complainants was really the defendants' witness (see statement of Mr. Carey, p. 197, ll. 19-38). Miss Farrell's testimony is also very important because of the fact that she is a defendant in the suit having received a legacy under Mrs. Babcock's will.

The presence of Mrs. Rice at the Babcock home seems not to be controverted by the defendant. On the contrary it seems to be conceded, because Miss Farrell testified that Mr. Meyer, Mrs. Babcock's executor asked her to testify that Mrs. Rice came to lunch (Stipulation p. 275, Supplemental State of Case).

Mrs. Mary Dix, an intimate friend of Mrs. Babcock, who was called by the defendants, testified that Mrs. Babcock told her of Mrs. Rice's visit and that Mrs. Rice requested her (Mrs. Babcock) "*she should leave her something*" in her will (p. 133). This clearly indicates that Mrs. Rice talked to her Aunt Julia about the provisions to be embodied in the latter's will.

III.

Mary Asquith testified that: Between January 14th-25th, 1924, she met Mrs. Babcock for the *first and only* time at her home in Elizabeth, where she went to meet Mrs. Rice by appointment to assist her home to Westport, Conn. At that time she boarded with Mrs. Rice. She called for Mrs. Rice because the latter had been ill and suffered from fainting spells, the after-effects of child birth. She arrived at Mrs. Babcock's home at about 3:30 P. M. (p. 57). The following is her account of what happened upon her arrival (pp. 57 to 61):

"A I met Mrs. Babcock in the hall. Mrs. Rice had been waiting for me and as I turned into the place one of them opened the door and Mrs. Rice introduced me to Mrs. Babcock, just inside the door. Mrs. Rice said that she was just going to get her wraps and Mrs. Babcock said, 'They are upstairs, come up.' I really didn't want to climb the stairs, but Mrs. Babcock went ahead of us and led us into a large room in the front upstairs. It was a room Mrs. Rice had told me little things that had happened in her childhood. Mrs. Rice said, 'Mary, this is the room that used to be the big front bedroom when I was a child,' and Mrs. Babcock said, 'Yes, after your Uncle's death, I had the bed taken out.' Mrs. Rice went to the bathroom and Mrs. Babcock either pointed it out and went a few steps up, I know she came back to the room and sat down quite a distance across from me. We had nothing in common. Mrs. Babcock asked me—she said, 'You make your home with my niece?' I said, 'Yes,' She said, 'I think you are in business with her husband.' I said, 'Yes.' She said, 'I don't believe I ever understood just what that business is.' I said, 'We are author's agents,' and I saw that that didn't seem to mean anything to her and I told her in a few words that I could how we sub-

mitted a play or story and if we got anyone interested in it we got a commission for our services. She said, 'That is something like the real estate business.' I told her, 'It is a broker business and a broker is the same in any business.' She said, 'I suppose Mr. Rice draws the contracts?' I said, 'No, we both do, our knowledge is equal as to contracts.' She said my niece is very fond of you.' I said, 'Yes, a very loyal friend' and Mrs. Babcock said, '*She is just like her dear mother. Her mother was my favorite in-law and Carolyn is just like her.*' I don't honestly know all the little things she said because she was telling me about Mrs. Rice's mother and I wasn't really paying much attention. I knew we had to make a train to make our connection and I was simply wishing Mrs. Rice would hurry and come back. Mrs. Babcock said something about always going to Easter services with Nell—that was the first Mrs. Smith (complainant's mother*) and how much they had always been together and her voice was very, very low and going on in monotone and I suddenly became conscious that the woman had stopped and I didn't know what she said last and I thought she was talking about one sister-in-law, so I told her I had met her other sister-in-law (referring to Lena Bowen, Mr. Babcock's other sister). I said, 'She is such a gracious, charming old fashioned gentle woman,' and her voice simply snapped and she said, '*Lena Bowen isn't gracious, she was a grasping, selfish old woman, she made trouble for evryone of the family and now she is trying to cheat the daughters, Nell's daughters, out of theirs and she is trying to break the uncle's will and you know she is.*' I said, 'I haven't seen her since the death.' She said, 'You know it—Carolyn told me.' She said, '*All Lena Bowen wants is to get Ned's money for herself. She had tried to get my nieces to contest the will.*' I told her that I didn't think Mrs. Bowen had anything to do with it. She said, 'Yes, she

has, I know her,' and she said, 'One day I came home to find that woman here and sick as Ned was she was trying to make him change his will and leave her more money. *But I put a stop to that,*' she said, 'I got rid of that woman and I got Ned Babcock not to make another will and he told me if I would carry out his wishes he would never change it, and I promised him. I know what Ned wanted, half of everything for Nellie's children (complainants), and I am to have money to take care of my sister as long as she lives and to provide for Katie, but not for Lena Bowen. *She can't have anything.*' Now, at some time while Mrs. Babcock was speaking Mrs. Rice had come back into the room and without any pause or any change she turned right to her the instant Mrs. Babcock saw her and she said, 'You musn't help her.' She said, 'Lena Bowen is at the bottom of all this and I wouldn't want any litigation with Lena Bowen. I don't want to see her again and if you and Eleanor don't contest your uncle's will I will leave in my will one-half of my estate to you and Eleanor.' Mrs. Rice said, 'Aunt, I talked this over with you. I told you all that father had said.' And she said, 'If you really mean that I will tell father and Eleanor and I feel sure they will be satisfied.' She said, 'You can't blame us the way we felt. Uncle Ned had always promised to take care of us and when he didn't we didn't see anything else to do but to contest.' Mrs. Babcock said, 'I don't want any litigation, you tell your father and Eleanor that I know Ned meant to take care of you and if you just leave me in peace and let me have the rest of my life without law troubles, I will see that you and Eleanor get half of the estate.' And Mrs. Rice said, 'Well aunt, if that is a definite promise, I'm sure that will be satisfactory and we will just let matters drop.' And Mrs. Babcock said, 'That's a bargain, then, but you can't convince me that Lena Bowen didn't stir this up.' Mrs. Rice told her that

Mrs. Bowen had never told them until a few years before that Uncle Ned meant to leave them anything, but that her father had told her that he did in payment of past obligations and Mrs. Babcock said *that the girls were going to get it and that it would not be just the few thousand that Lena Bowen kept them out of in the grandmother's estate.* She said, *'You and Eleanor will never have to work again after I go.'* Mrs. Rice, I could see she was very much annoyed at my hearing any of this and she was trying to quiet Mrs. Babcock. I told her that everything was all right and I interrupted them and told her we were missing our train that we had to get back to Westport, because we had a strange woman with the children, so we started downstairs and Mrs. Rice reminded her aunt that Mrs. Babcock had not shown her a picture of which she had spoken and I think Mrs. Babcock said she had given it to her and Mrs. Rice said, 'No, that's not the one. There is a picture of mother that you said no one else had' and Mrs. Babcock said, 'It will only take a minute, it is right here in this room.' We went into the front room downstairs, at least Mrs. Babcock and Mrs. Rice went in and I stood just inside the door and Mrs. Babcock got the picture from some place at the end of the room—she got the pictures. I don't know what she took them out of—

Q Is there anything more at the interview that pertains to this question of the will?
 A When we left she asked Mrs. Rice to return and wanted to see the children and the last thing she said was, *'Remember now, no contest and I will see that you and Eleanor get half.'*''

Miss Asquith gave a good description of the Babcock residence (pp. 89, 90 and 91), portrayed Mrs. Babcock accurately and recognized her picture from among several shown her (p. 89). Her delineation of Mrs. Babcock's personality

(pp. 58-61, 78-79, 149) harmonizes with the description of Mrs. Babcock by her most intimate friends who testified for the defense. Only a person who had actually met Mrs. Babcock and observed her manner could have described her so realistically; only a person who had actually conversed with Mrs. Babcock could have related so spontaneously and coherently the foregoing conversation, so full of intimate family history, and reminiscences. *The story has the ring of truth, and is uncontroverted.*

Mrs. Asquith's presence at the Babcock home is corroborated by Nora Farrell who testified that she remembered the time when Mrs. Rice called for lunch and that "*another woman came that day and was let in by Mrs. Babcock*" (Stipulation p. 275, Supplemental State of Case). Miss Farrell was really the defendants' witness as previously shown.

IV.

Miss Asquith's testimony is supported by Glenn Pike. Mr. Pike is an aeronautical engineer (p. 203). In 1924 Eleanor Smith, one of the complainants boarded with the Pike family at 411 W. 114th street, New York City (p. 204). Mr. Pike testified that in October, 1924 he met Mrs. Babcock in his home while she was visiting Miss Smith. He testified as follows (pp. 204-205):

"Q In whose room? (Referring to the room in which he was introduced to Mrs. Babcock). A In Miss Smith's room and I was asked if I would care to have some tea with them when they were finished with their lunch, to which I accepted, and while Miss Smith was clearing away the dishes and straightening up a little, after I had been introduced to Mrs. Babcock, we engaged in conversation and Mrs. Babcock remarked

how glad she was that Miss Smith was in the hands of such good friends and so fortunate to have such good friends to stop with so close to her work and then she asked if I knew Mrs. Rice. * * * She said she was awfully sorry she wasn't able to see Miss Smith oftener, but she realized on account of the nature of her work and long hours as a nurse, that it was difficult for her to get away for visiting and that she was very fond of both Miss Smith and Mrs. Rice.

“Q Who said this? A Mrs. Babcock—and she hated to see Miss Smith have to work so hard and she said that neither of them received any help from their family and that they were certainly entitled to more consideration and *that they had been very kind to her and considerate and when Mrs. Babcock's husband died she had felt that they would be taken care of to some extent in his will and there had been talk in Miss Smith's family and Mrs. Rice's family due to the fact that they were not mentioned and she—*

Q Who is saying this? A Mrs. Babcock—and she *appreciated very much that specially due at her request, they had not contested the will and she said 'I have told the girls that I am going to see that they are compensated in my will in their consideration of me and particularly in my hour of—grief.'*”

* * *

Q Will you go on and finish? A Well, there was something said about Mrs. Rice's children and Miss Smith's work as a nurse and I don't remember any other conversation relevant to this matter.

Q How long were you there with Mrs. Babcock at that time? A I should say from one half to three-quarters of an hour.

In view of the fact that Mr. Pike is a total stranger to the parties in this litigation and is entirely disinterested, his testimony is entitled to great weight. *His testimony stands uncontradicted.*

V.

The foregoing evidence clearly establishes that Mrs. Babcock was very fond of the complainants. This fact is further corroborated by *Mrs. Scrymser* an old friend of Mrs. Babcock, who though called as a witness for the defense, admitted that Mrs. Babcock had told her that she (Mrs. Babcock) "*liked Mrs. Rice*" (p. 196, ll. 11 and 12). Perhaps the best and conclusive evidence of Mrs. Babcock's affection for the complainants is her letter to Mrs. Rice, in her own handwriting, dated October 29, 1923, whereof the following is a facsimile:

C. 5
20

124 WEST JERSEY STREET.

Elizabeth N. J.

My dear Carolyn.

Your letter with
pictures of your two
children was received.
I was glad to hear
from you, as I was
always so fond of your
mother, she and Fred
Zubeck were my
"favorite" in Lunenburg.
As to your kind invita-
tion to visit you I am

afraid I will have
to decline as I never
venture far away
from home these
days, but if you and
your husband are
ever in this neigh-
hood I will be glad
to see you. I am glad
you like your new
home and are so
happy there.

Affectionately
Aunt Julia

Oct 29th 1923.

OCT 29
12:30 PM
1923
N. J.



Mrs Frank H. Rice
Saugatuck

Conn. C. 5
20



VI.

The foregoing is a summary of the material testimony produced on behalf of the complainants in support of their bill, and it is respectfully submitted that such evidence established a very clear case, entitling the complainants to a decree in their favor, in the absence of proof to the contrary. *Laune v. Chandless*, 99 N. J. E. 186, 131 Atl. 634; *Messenger v. Paterson Savings Bank E. & A.* (not officially reported) 103 Atl. 178; *Rue v. Meiers*, 43 N. J. E. 377.

The Defense.

Bearing in mind that the only issue in the case is "*one of fact—as to whether the alleged contract was made or not,*" let us now examine the testimony adduced by the defendants.

I.

Catherine Brady, one of the maids of Mrs. Babcock's household testified in January, 1924 Mrs. Rice visited Mrs. Babcock at lunch, that they had a *very nice time* and that after Mrs. Rice left "*everything went along very peacefully*" (p. 112). She didn't know whether Miss Asquith was there that day because she couldn't tell whether she was at home in the afternoon (p. 112). She also testified that Mrs. Rice called twice thereafter but that Mrs. Babcock was too ill to see her (p. 113), and that she attended Mrs. Babcock's funeral (p. 114).

II.

Margaret McEvoy, another maid, testified that in March, 1928 Mrs. Rice called to see Mrs. Babcock, but she was "*terribly sick and nervous*"

and couldn't see her (pp. 122, 123). She never saw Miss Asquith because she was not in Mrs. Babcock's employ in January, 1924. According to her testimony she left Mrs. Babcock in September, 1923 (p. 121) and didn't return until the early part of 1927 (p. 122).

III.

Mrs. Dix, a friend of Mrs. Babcock (related to her by marriage) testified that Mrs. Babcock told her that she didn't leave anything to the Smith girls (pp. 129, 130). On cross examination, however, she admitted that Mrs. Babcock had told her that Mrs. Rice had been to see her and thought "*she should leave her something, and she was not going to do it; she had no such intention*" (p. 133).

III.

Jane Mahan, another friend of Mrs. Babcock testified that Mrs. Babcock told her that she was going to leave her estate to the two institutions (p. 126); that she had no dear relatives; and wasn't going to leave anything to the Smith girls (pp. 127, 128).

IV.

Dr. Wagner, Mrs. Babcock's physician, who received a \$5,000 legacy under her will testified that in August, 1926 Mrs. Babcock told him that she had or intended to leave him \$5,000 in her will, that she had or was going to leave some money to the two institutions, and asked his opinion thereon (p. 174); and that in 1928, when she became ill, she told him that she didn't like her husband's relatives (p. 175).

V.

Mrs. Woodruff, a neighbor of Mrs. Babcock testified that in 1926 when Mrs. Babcock returned from Europe she told her that she intended to leave her estate to the two institutions, and that she had left \$5,000 to the rector of her church. She also testified in February or March, 1928 Mrs. Babcock told her that she didn't intend to leave anything to the complainants (182-184).

VI.

Mary J. Grant, another friend of Mrs. Babcock testified that in October, 1928, Mrs. Babcock told her she intended to leave some money to Dr. Hubbard and the two institutions (pp. 189, 190) but that she never mentioned the complainants.

VII.

Mrs. Scrymser, another friend of Mrs. Babcock, testified that Mrs. Babcock told her that *she liked Mrs. Rice* (p. 186), but that she never told her what she intended to do with her estate (p. 188). Her testimony that Mrs. Babcock was fond of Mrs. Rice seriously affects the credibility of the other witnesses for the defense who testified to the contrary. Mrs. Babcock's affectionate letter to Mrs. Rice, dated October 29, 1923 casts great suspicion upon the motives and credibility of such of the defendants' witnesses as testified that Mrs. Babcock disliked her nieces.

VIII.

Moses M. Crane, a bank executive, simply testified that Mrs. Babcock had an account or safe deposit box in his bank and that she had a clear mind until the end.

ARGUMENT.

In approaching the consideration of this case, we must constantly bear in mind that the *only* issue in the case is "one of fact—as to whether the alleged contract was made or not." The legal sufficiency of the consideration is not and cannot be questioned. Whether the complainants' threatened contest of Mr. Babcock's will was well founded or not, or whether they would have succeeded in their litigation is immaterial so long as they asserted their claim in good faith: *Rue v. Meiers*, 43 N. J. E. 377; *Grandin v. Grandin*, 49 N. J. L. 508; and their good faith is not impugned or put in issue.

Now the testimony of the defendants' witnesses with respect to what Mrs. Babcock told them *after January, 1924* is pure hearsay and incompetent to disprove the existence of the agreement sought to be enforced in this suit. These alleged conversations appear to have taken place in 1926 or in 1928, from two to four years after the making of the agreement.

Assuming, however, that this testimony was admissible to show Mrs. Babcock's intention or state of mind (in 1926 and 1928) it in nowise disproves the making of the agreement in January, 1924.

Moreover, Mrs. Babcock's alleged statements to her neighbors are not inconsistent with, or repugnant to the existence of said agreement. Mrs. Babcock may have made the agreement with no intention to keep it; she may have failed to draw a will in accordance with her agreement, through negligence; she may have made a will in accordance with her agreement, which has been lost or destroyed; she may have made the agreement in good faith, but was induced not

to keep it by undue influence or unknown motives; or she may have made the agreement and then concluded that she made a bad Bargain. In any event, her alleged statements to her neighbors, as to what she intended to do with her estate in nowise contradict the fact that she made the agreement. There is no evidence to suggest that the complainants lost their rights to enforce said agreement by anything that accrued after January, 1924. See *Winfield v. Bowen*, 65 N. J. E. 637, 652. And indeed, Mrs. Babcock could not defeat the legal rights and just expectations of the complainants who performed their part of the agreement by forbearing to contest her husband's will,—relying upon her promise. *Rue v. Meiers, supra*.

Assuming, however, (if it be a fact) that Mrs. Babcock told her neighbors that she didn't intend to leave anything to the complainants, (whom she is alleged to have mentioned *by name*)—that rather lends credence and support to the claim of the complainants that she promised to leave them part of her estate, because it indicates that this promise was on her conscience and was constantly pursuing her. On no other rational theory can it be explained why she should have singled out, *by name* the complainants (out of all her relatives, in connection with the disposition of her estate. Mrs. Babcock, according to her friends and neighbors was a very loquacious woman, and this description lends credence to Miss Asquith's story.

Thus, we are presented with a situation in which the complainants' case stands substantially uncontradicted; and notwithstanding that fact the Vice-Chancellor dismissed the bill for failure to sustain the burden of proof. This he did without, in anywise criticising or impeaching the

complainants or their witnesses, or the stories told by them. The only possible explanations for the Vice-Chancellor's conduct are that he either cast upon the complainants an insurmountable and exaggerated burden of proof—unjustified in law, (See *Laune v. Chandless*, 99 N. J. E. 186, 131 Atl. 634), or that he *arbitrarily*—though perhaps not intentionally—*disregarded* the testimony adduced by the complainants. This he could not do, for the law is well established that the Court cannot disregard the uncontradicted testimony of credible witnesses, which is not inherently improbable or contrary to human experience.

In *Laune v. Chandless*, *supra*, which was also a suit for specific performance of an oral contract made by a decedent to make a will in favor of the complainant, Vice-Chancellor *Bentley* said:

“In this she is corroborated, first, by the testimony of other witnesses such as her niece and Robert M. Souvay, who is not subject to the criticism of bias that might be urged with regard to the testimony of the complainant's niece. In view of the fact that no evidence was produced by the defendants in contradiction of the foregoing, I would be inclined to hold that the contract had been proved by the witnesses produced in the complainant's behalf. They presented good appearances, their stories were credible on their respective faces, and, while I am not unmindful of the scrutiny with which such testimony is always scanned, the fact remains that contracts of this nature are frequently entered into.”

And further on, in speaking of the burden of proof, the learned Vice-Chancellor said,

“It is true that I expressed some doubt at the close of the proofs as to the complainant having sustained the unusual burden under which she labored in this peculiar

sort of case. That uncertainty arose, however, from a misconception of the degree of conviction that the surviving party to such a contract must establish in the mind of the Court.

“I have been greatly concerned about the decision of this case. It appeared to me at the close of the final hearing that stronger proof should have been available in the complainant’s behalf; in fact, correspondence has been had with the respective solicitors looking to that end. It appears that no further witnesses are procurable. My ultimate determination is that my first impression was erroneous, and that sufficient has been shown to justify the bill.”

See also *Messenger v. Paterson Savings Bank*, (E. and A.) (not officially reported) 103 Atl. 178; and *Clawson v. Brewer*, 67 N. J. E. 201.

In *Tracy v. Tracy*, (1901) 62 N. J. E. 807, this Court held that a Vice-Chancellor in an equity case may not arbitrarily disregard the uncontradicted, unimpeached testimony of a party, not inconsistent nor improbable. In that case the Vice-Chancellor denied a divorce to the petitioner upon the ground that he didn’t believe that she came into this State for the purpose of giving up her home permanently and settling here or that she had acquired a permanent or actual residence in New Jersey. On appeal this court reversed the decree saying,

“The petitioner was not impeached in any way, and her testimony not contradicted, it was consistent, clear and relevant; did not bear any intrinsic evidence of improbability, and was sufficient after the other testimony produced, under the statute, to establish her residence here, and entitled her to the divorce prayed for.”

“A Court or jury may consider the weight of evidence, and pass upon the credit of the respective witnesses, but can they arbi-

trarily and capriciously refuse to accept the unimpeached, uncontradicted testimony of a witness which is not inherently inconsistent or improbable? *Lomer v. Meeker*, 25 N. Y. 361; *Seibert v. Erie Railroad Co.*, 49 Barb. 583."

In *Cooley v. Barcroft* (1881) 43 N. J. L. 363, the Supreme Court held that a Justice trying a case could not arbitrarily reject the uncontradicted testimony of the defendant. Justice Reed who wrote the opinion of the Court, quoted with approval the following excerpt from the opinion in *Newton v. Pope*, 1 Cow. 109,

"It is difficult to establish a rule which will regulate and limit the discretion of a court or jury in the degree of credit to be given to the testimony of different witnesses. But there is no difficulty in saying that where the witness is unimpeached, the facts sworn to by him uncontradicted, either directly or indirectly, by other witnesses, and there is no intrinsic improbability in the relation given by him, neither a court nor jury can, in the exercise of a sound discretion, disregard his testimony."

The opinion in *Cooley v. Barcroft* was cited with approval by the Third Circuit Court of Appeals in *Beaumont v. Beaumont*, 152 Fed. 55, 62 (opinion by Gray, Circuit Judge).

In *Roeber v. Society for Prevention of Cruelty to Animals*, 74 N. J. L. 237, 241, our Supreme Court said,

"When the testimony is thus all one way, credible and unimpeached, the court and jury must not disregard it, and if they do, the judgment of the court in opposition thereto will be reversed. *Cooley v. Barcroft*, 14 Vroom 363. Upon the record and the case, as here presented, the judgment of the Court of Common Pleas will be reversed."

The prevailing rule in other jurisdictions is in harmony with the rule laid down by our Courts. A few cases will be cited. In *Larson v. Glos* (1908) 235 Ill. 584, 85 N. E. 926, the Court reversed a judgment based on a master's disregard of the testimony of an interested witness who "*was not contradicted or impeached, and the facts testified to were not improbable in themselves or in connection with any circumstances in the case.*"

In *Kelly v. Jones* (1919) 290 Ill. 375, 125 N. E. 334, the Court said,

"The reason alleged for sustaining the decree is that the chancellor did not believe the complainant, and it is evident that such was the fact, because on no other ground could the decree be sustained. There may be such inherent improbability in the testimony of a witness as to justify a court in disregarding his evidence, even in the absence of any direct contradiction. If his testimony is contradictory of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, or if facts stated by the witness demonstrate the falsity of the testimony, the court is not bound to believe him. (Citing cases.) There was no inherent improbability in the testimony of the complainant, and nothing incredible about his statement that he sold stock to go into certain business enterprises in Joliet. There was no reason arising out of the testimony of the complainant for disbelieving him. If there is a contradiction of testimony either direct or by facts and circumstances proved, much weight is to be given to the findings of the chancellor, who saw and heard the witness, since his credibility may be seriously affected by his appearance, manner, and conduct while testifying. (Citing cases.) But there was no question of weighing the testimony of the complainant against contradiction, since there was no contradiction what-

ever of the facts testified to. *Where the testimony of a witness is uncontradicted, either by positive testimony or circumstances, and is not inherently improbable, it cannot be rejected. (Citing cases.)*"

In *Peter v. Wright* (1885) 6 Ind. 183, 193, the Court said in reversing a decree which dismissed a bill in Chancery,

"If they could discredit this witness, they should have done so by some of the known modes of impeachment. His general character for truth was not questioned * * * nor did the most rigid and skillful cross examination by numerous counsel in succession elicit any contradiction. The slight discrepancies between his evidence and that of other witnesses are no more than may be found wherever men of different capacity and different powers of observation and habits of thought undertake to narrate the same event. Such discrepancies tend as often to **confirm** as to impair the credibility of a witness.

To justify the rejection of evidence, it must be either contradicted, or improbable in itself, or obnoxious according to some established legal mode of testing truth."

In *Lusee v. Hayes* (1870) 22 La. Ann, 307, the appellate court reversed a judgment for the defendant, as it declined to "ignore the positive sworn statements of five witnesses whose veracity has not been impeached."

In *Second Nat. Bank v. Donald* (1894) 56 Minn., 491, 58 N. W. 269, the Court said,

"The plaintiff does not claim that, if the facts were as thus testified to, this money would be defendant's, and not Magraw's; but its contention is that the court was not bound to accept the testimony of defendant and Magraw as true, although there was no direct evidence contradicting it; that it contained such inherent improbabilities as to furnish a reasonable ground for concluding

that it was not true. While recognizing the correctness of the general rule invoked, and the propriety of its liberal application, especially in cases of alleged frauds, yet it must be remembered that in all cases the positive testimony of an otherwise unimpeached witness can only be disregarded when its improbability or inconsistency furnishes a reasonable ground for doing so, and this improbability or inconsistency must appear from facts and circumstances disclosed by the evidence in the case. *It cannot be arbitrarily disregarded by either court or jury, for reasons resting wholly in their own minds, and not based upon anything appearing on the trial.*"

In *Beene v. Rotan Grocery Co.* (1908) 50 Tex. Civ. App. 448, 110 S. W. 162, it was held that the Court trying the case without a jury ought not to disregard the defendant's uncontradicted evidence of fraud, where his answer charged fraud, and the persons charged with the fraud did not testify.

"Interested persons are by our law competent witnesses, and their testimony is binding on the Court, unless overcome by counter testimony or irreconcilable with the known facts on the case." *Marks v. New Orleans Cold Storage Co.*, (1901) 107 La. 172, 31 So. 671.

In *Harrigan v. Gilchrist*, (1904) 121 Wis. 383, 99 N. W. 909, 989, an equity case the Court said:

"It seems that in setting aside Mr. Owen's evidence as false, the court overlooked the familiar rule that the undisputed reasonable evidence of one witness, though a party interested, should be given controlling weight in determining a question of fact."

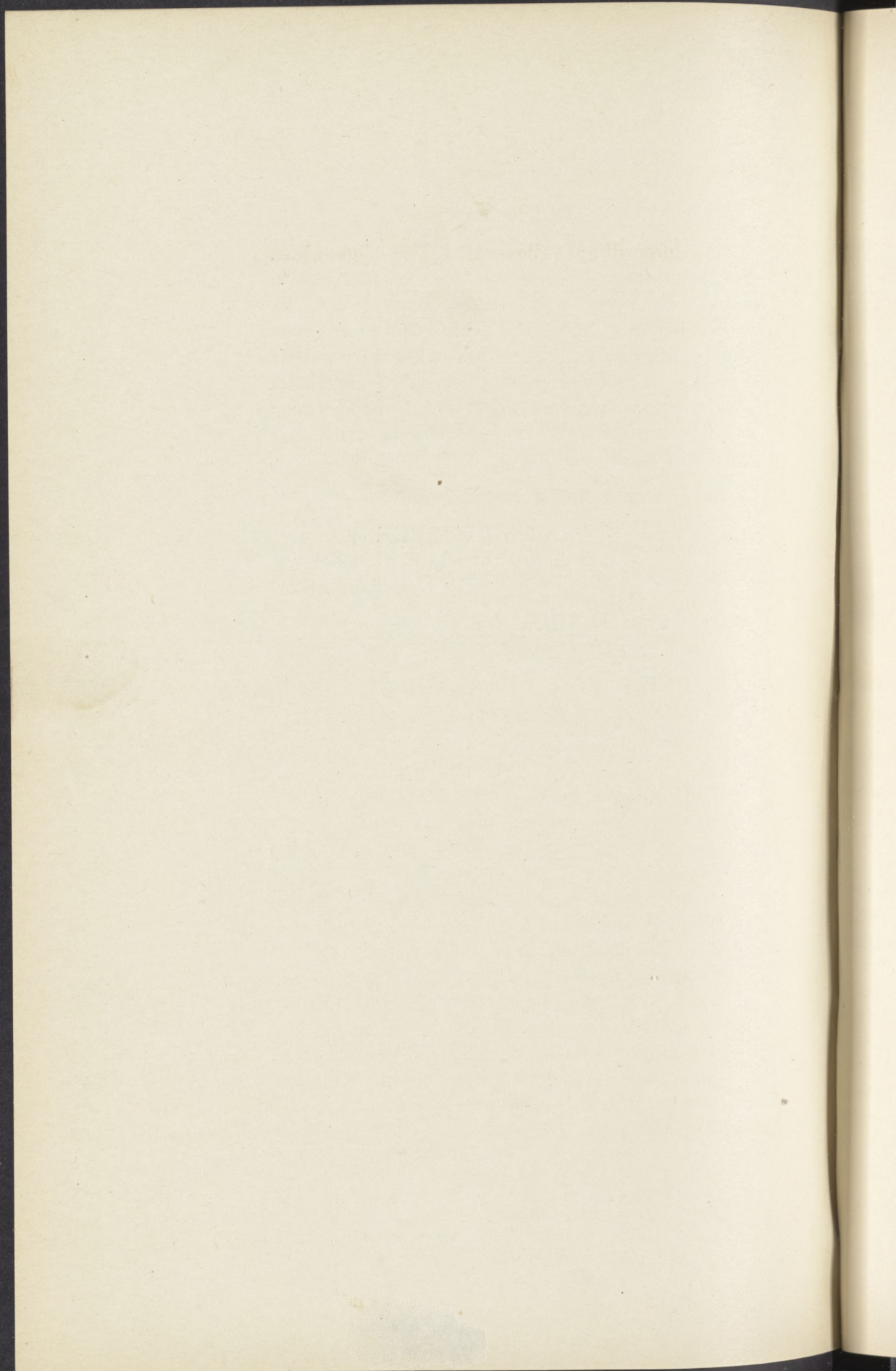
Conclusion.

Since, according to the learned Vice-Chancellor, the only issue in the case is "*one of fact—as to whether the alleged contract was made or not,*" it is respectfully submitted that *that* fact was clearly established and stands uncontradicted; and that consequently the decree of dismissal should be reversed and a decree entered in favor of the complainants, in accordance with the prayer of their bill.

Respectfully submitted,

ISRAEL B. GREENE,
Solicitor for and of Counsel
with Complainants.

JAMES F. MINTURN,
Of Counsel.



New Jersey Court of Errors and Appeals

Between

ELEANOR C. SMITH and CAROLYN
B. RICE,
Complainants-Appellants,

and

CLARENCE D. MEYER, individually
and as executor under the last
will and testament of Julia
Pratt Babcock, deceased, *et al.*,
Defendants-Respondents.

70/434

On Bill, &c.

BRIEF FOR CLARENCE D. MEYER, EXECUTOR, *ET AL.*

Statement.

This case is an appeal from a decree of the Court of Chancery, and involves the complainants' claim to a one-half portion of the estate of Julia Pratt Babcock.

Julia Pratt Babcock was a life-long resident of the City of Elizabeth, New Jersey. She died on the 27th day of June, 1928, leaving an estate valued at approximately \$400,000. She was the widow of Edward B. Babcock. He died a resident of the City of Elizabeth on the 6th day of August, 1923. He left a last will and testament devising and bequeathing his entire estate to his widow, Julia Pratt Babcock. His estate was approximately \$100,000. *The estate of Edward B. Babcock con-*

sisted entirely and exclusively of personal property (see Exhibit D-6). He left him surviving his widow. They had one child, which child died in infancy long before the death of the father. He left no issue him surviving.

Mrs. Babcock, the widow, executed her last will and testament on the 1st day of October, 1923, about two months after the death of her husband. The will was drawn by Clarence D. Meyer, of Elizabeth, who had been the attorney of her husband and also her attorney in the settlement of her husband's estate. In this will she created a life estate in favor of her sister, Annie C. Wall, who lived with the testatrix. She made reference in said will to another sister, Amanda Pratt Wall, who predeceased her. "I make no provision for her children and her grandchildren, and it is unnecessary that I should." See page 14. She provided that after the termination of the life estate, her estate should be devised as follows:

- (a) Unto Job W. Angus "a close friend of Mr. Edward B. Babcock" \$5,000.00
- (b) Catherine A. Brady "my faithful maid" \$5,000.00
- (c) \$5,000.00 to "my friend Alice Babcock Pries for whom I was chosen godparent."
- (d) Unto my sister-in-law Mrs. Lena Bowen \$100.00
- (e) To Otto Wagner, her physician "as a remembrance and appreciation of his devoted and kind treatment to my husband and the sympathy shown during his illness" \$5,000.00,

and the residue of the estate, share and share alike to:

- (a) The Elizabeth Orphans Asylum, of Elizabeth, N. J.

- (b) Madam Alphonsa Lathrop Rosary Hill Home, of Hawthorne, New York, "for treatment and care and comfort of patients suffering incurable cancerous disease."

The evidence taken discloses the fact that Mrs. Babcock was interested in both of these charitable institutions.

On February 11, 1924, she executed a codicil to her said will cancelling the legacy to Job Angus "because I have given him various articles," and giving a legacy of \$5,000.00 to Mr. Harry C. Sheehy, who was connected with her bankers in New York and who apparently handled her banking business for her.

On June 2, 1924, she added a second codicil to her will giving unto Norah Farrell five shares of stock in the Elizabethport Mutual Building and Loan Association "providing she, the said Norah Farrell, is in my employ at the time of my death," and in this codicil she cancelled the bequest to Catherine A. Brady.

NOTE.—Norah Farrell was not in her employ at her death.

In a third codicil bearing date the 5th day of November, 1926, she recited the fact that her sister, Annie Campbell Wall, had died since the making of her original will. She then provided for the payment of all legacies without deduction for taxes and she cancelled the legacy to "my friend, Mr. Harry C. Sheehy * * * for the reason I have already paid him that sum of money in cash April 15, 1925 to enable him to become interested in the firm of Wilcox & Company, bankers of New York City, in which firm my husband was formerly connected," and she re-established the legacy to Catherine A. Brady "as a small token in remem-

brance of her kindness and attention to me and faithfulness extending over a long period of years."

Her will and codicils were admitted to probate in the office of the Surrogate of Union County on the ~~17th day of September, 1923.~~ *July 10 1928* Several months thereafter and just prior to the statutory time limit, an appeal from the probate of her will and codicils was filed by two grandnieces living in California. The hearing of the contest resulted in a decree sustaining the probate of the will and codicils. An appeal was taken to the Prerogative Court and after hearing, the probate of the will and codicils was sustained by the Prerogative Court.

The bill of complaint in this cause was filed in the Court of Chancery on the day of November, 1928. The complainants, Eleanor C. Smith and Carolyn B. Rice, resided in the City of New York, *and were nieces of the husband of Mrs. Babcock.*

We recite these facts so that the Court will readily see that if the said Edward B. Babcock had died intestate, the complainants in this cause would have had no interest whatsoever in his estate under our statutes. If Mr. Babcock had died intestate, the estate being exclusively personal property, would vest entirely in Mrs. Babcock, there being no issue; and further, the complainants are in no sense kin of Mrs. Babcock and would have had no distributive share in her estate in the event she had died intestate.

The Bill of Complaint.

The bill of complaint charges first, in paragraph 2 (p. 4), that Edward B. Babcock made a will prior to the one probated as his last will and testament

in which he devised a substantial share in the estate to the complainants.

NOTE.—*There was not a scintilla of evidence produced to establish this allegation. There was no such will.*

The bill then goes on to allege that Julia Pratt Babcock, the widow, exercised undue influence upon the said Edward B. Babcock to change his will.

NOTE.—There was not a scintilla of evidence offered to establish any such contention. It had no foundation whatever, except in somebody's imagination.

The bill then charges, paragraph 3 (p. 5), that immediately after the death of Edward B. Babcock, the complainants undertook to contest his will and have it set aside on the ground of its having been procured and executed through "said undue influence" and that in consideration of their refraining from contesting said will that the said Julia Pratt Babcock did agree to make a last will and testament wherein and whereby she, the said Julia Pratt Babcock, would bequeath and devise *half of her estate* to the complainants.

NOTE.—Under the statutes, as any lawyer could readily ascertain, the time to contest the will of Edward B. Babcock, even should the right have existed in the complainants, which it did not, would have expired on the 17th day of March, 1924. In this connection, it should be noted that no steps had been taken to prosecute an appeal by complainants and no appeal was taken by the complainants or by anyone else.

In the fourth paragraph of the bill of complaint, they allege that by reason of the promise of said

Julia Pratt Babcock to make a last will and testament devising and bequeathing to these two nieces of her husband one-half of her estate, that the complainants thereupon agreed to refrain from contesting the will of Edward B. Babcock, and charge that this was done in consideration of the promise.

In the fifth paragraph of the bill of complaint, they allege that the said Julia Pratt Babcock made this alleged agreement to bequeath and devise one-half of her estate to them "for the consideration aforesaid and for the further consideration that the said Edward B. Babcock had intended to make a large and substantial bequest and devise to the complainants, but had been persuaded from and changed in said intention by the influence of the said Julia Pratt Babcock."

NOTE.—There was not a scintilla of evidence offered in support of this allegation in the bill.

In the subsequent paragraphs of the bill of complaint, paragraph 10, page 8, they charge their right to a one-half interest in the estate of Mrs. Babcock by reason of the failure of Mrs. Babcock to have made the provision agreed upon in her last will and testament. In the prayer for relief they ask that Clarence D. Meyer, as executor, be decreed and directed to pay over and transfer to them one-half of the estate.

The answer of the several defendants deny absolutely the making of any such agreement or agreements as alleged and set forth the statute of frauds as a further defense. The defendants further urged the defense that no consideration passed from the complainants to the decedent, Julia Pratt Babcock, for the alleged agreement.

The case was tried before the Hon. MALCOLM G. BUCHANAN, Vice-Chancellor. The concluding ses-

sion, and argument of case was heard before him on Lincoln's birthday, February 12, 1930, and immediately at the conclusion of the argument, he dismissed the bill with a few curt words.

The Wills.

It will be noted that the will of Mr. Babcock, who was in the stock brokerage business in New York, gave his entire estate to his wife, and appointed her sole executrix. This will was dated October 28, 1922. Mr. Babcock died August 6, 1923, and this will was probated September 17, 1923. The records incident to the probating of this will, found in the office of the Surrogate of Union County, *discloses that Mrs. Babcock did not know the addresses of the said complainants* at said time. In view of the fact that the Babcocks had no living children, no more natural will could be suggested.

Mrs. Babcock's will was dated October 1, 1923, and the several codicils were dated February 11, 1924, June 2, 1924, November 5, 1926, and January 17, 1927 (pp. 13-20 of case). A study of the will of Mrs. Babcock showed that she gave a most careful consideration to all her obligations, and manifested an appreciation of every kind and friendly service rendered to her, giving finally the residue of her estate to two deserving charities in which she was interested. She was particularly interested in the cancer hospital due to the fact that some of her close relatives had died from the effects of cancer. The changes in her will expressed in the codicils in each instance give evidence of her fine type of character. She made no reference therein in any place to the complainants in this cause. We will establish by reference to the testimony that she had absolutely no interest in them

and that they played absolutely no part in her life.

The consideration of the wills and codicils in the light of the estates involved and the disposition of the property involved presents a very important element of the picture to be considered in the determination of this case. It should further be kept in mind that even if Mr. Babcock had died intestate without leaving his widow surviving, any interest of the complainants in his estate would have been only a *small percentage of a one-half interest in Mrs. Babcock's estate, Mr. Babcock's estate being only one-quarter the amount of Mrs. Babcock's estate*. The family tree in evidence sets forth the relationship of Mr. Babcock to the complainants *and other kin*.

Origin of Complainants' Claim.

The whole claim of the complainants was developed in the mind of Elliott C. Smith, father of complainants. He was a brother-in-law of Edward B. Babcock (p. 43). His wife, Edward Babcock's sister, died about thirty-three years ago (p. 43). He claimed that he rendered certain family services to Edward Babcock's *father* many years ago, and that for these services (p. 46) he received a bond and mortgage from the father. He says he kept this bond and mortgage for two or three years and then destroyed it without recording it, having learned that another mortgage had been put on record covering the property. He says this was about 1896 or 1897 (p. 46). *He said at that time his friendship with Edward Babcock ceased and that he never saw Edward Babcock until 1918* (p. 47). He then met him, he said, on a ferry boat and in a casual few words with him (p. 47) in 1918 Edward Babcock suggested some sort of a

moral obligation to him (Smith). He said that the mortgage he destroyed was for \$6,000. He states that in view of this \$6,000 old mortgage that Mr. Babcock in this casual conversation on the ferry boat (p. 48) in 1918 suggested that he intended to leave "a very substantial amount of money to my daughters." He said this conversation was repeated on several other occasions on a ferry boat (p. 49). He evidently forgot all this until after Mr. Babcock's death in 1923. He said (p. 49) he was told of the death "I think by one of my daughters and was told that he had left all his property to his wife" *and of course upon that knowledge coming to me, I began to think of the fact that he had made other promises to me.*" He then invited his daughters to meet him at his office (p. 49) when *he told them of Edward Babcock's death* "and then I told them of the promises which he had made to me two or three years before several times on the boat." And he told them "that they should possibly begin to contest the will of Edward Babcock." He stated that in view of the fact, however (p. 50), that his daughters were on very friendly terms with Julia Babcock, had seen her frequently, had corresponded with her, and had talked with her over the telephone, that it would be wise for them to go out to Elizabeth and "see their Aunt Julia (p. 50) and to see whether she was inclined herself in any measure to make good the promises which I told them Ned Babcock had made to me."

Up to that time he had apparently never mentioned these alleged promises to his daughters and as will be demonstrated later his daughters were not on any terms of social relationship with Mrs. Babcock and had not engaged in correspondence, telephone calls or other social contact with her. *Neither of them had the slightest social relation-*

ship with Mrs. Babcock. He said this talk in his office was in October, 1923, and that over three months afterwards he learned that one of his daughters made a visit to Mrs. Babcock's home at Elizabeth. On cross examination Mr. Smith was obliged to admit (pp. 53-54) that he never had a \$6,000 mortgage as first testified to by him, it being made to appear *what he did have from the father of Edward Babcock was a mortgage for \$2,800 executed June 11, 1895 and recorded December 11, 1895, which mortgage was paid and cancelled of record July 13, 1904.* He denied any knowledge of this \$2,800 mortgage until being recalled (p. 199) and shown Exhibit C-9, the satisfaction of said mortgage, and he was obliged to admit his signature to it.

The only evidence of any correspondence passing between Mrs. Babcock and either of the complainants is the letter Exhibit C-5, dated October 29, 1923. From this letter it would appear that immediately after Mr. Smith, the father, had taken hold of the picture, Carolyn Rice must have written to her aunt. The answering letter of the aunt is the type of letter a cultured woman would write in reply to the letter of a niece who was apparently demonstrating a new family interest, and the terms of Mrs. Babcock's letter indicate that the letter she received was both a novelty and a surprise. The letter to which Mrs. Babcock's letter was an answer evidently also included an invitation to visit Carolyn but Exhibit C-5 is a very courteous declination of this invitation. Mrs. Babcock was a woman of 75 years of age, and evidently had no desire to visit her niece. *The fact is, as will be shown, she never did visit her nieces, and never received any visits from her nieces except on the one occasion hereinafter referred to.* This letter

to Mrs. Babcock was undoubtedly the first effort to secure some money.

The next thing we find is a visit of Mrs. Rice to the home of Mrs. Babcock in the early part of 1924. Certainly no intervening correspondence passed between them or it would have been produced with the other letter, and the contention is now made that on the occasion of this visit in the early part of 1924 that Mrs. Babcock promised to leave one-half of her estate to the two complainants, provided they did not contest her husband's will. After Mrs. Babcock's death they consulted a lawyer named Rubein, of New York. When they first consulted him does not appear in the testimony. Of course, the statute precluded a case being made out predicated on the testimony of Mrs. Rice; other witnesses had to be presented, and two of them appeared, one a young man named Glenn M. Pike (p. 203), who testified to an alleged meeting with Mrs. Babcock *some time in the month of October, 1924*, at the home of Miss Smith who was then living with Mr. and Mrs. Pike. We will treat of this in dealing with Pike's testimony. The other witness was one Mary Asquith who for the past ten years or more has been living with the complainants. On the case represented by the testimony of these named witnesses, the claim of the complainants is attempted to be sustained. The absolute unreliability and falseness of the testimony of both Pike and Mrs. Asquith (whose real name was not Asquith at all) is so apparent that it hardly requires discussion, but the importance of this case to the two charities that are the residuary legatees is such that we feel it our duty to analyze this testimony.

Not a single token of friendly relationship between the complainants and Mrs. Babcock was produced.

Personality, Character and Social Relationship of Mrs. Babcock.

Mrs. Babcock was a woman of social prominence in the City of Elizabeth. She was interested in public charities (p. 125), particularly in the Orphan Asylum in Elizabeth and in the cancer hospital at Rosary Hill. Her mother died of cancer. She was identified with St. John's Episcopal Church in Elizabeth, the rector of which she remembered in her will. She lived in a comfortable home in the City of Elizabeth. She maintained a very active social relationship with many friends. She was a strong-minded woman (p. 115). She had a great deal of company. She kept two maids to attend to the door and house details (pp. 115 and 116). The character and live personality and intellectual character of Mrs. Babcock is set forth in the testimony of Jean Leigh Mahan, a sister of Admiral Mahan (p. 124), Mary Louise Dix, the wife of an Elizabeth lawyer (p. 129) and a companion of Mrs. Babcock for over forty years, Henrietta Chatsworth Woodruff (p. 176) another wife of an Elizabeth practicing lawyer, who knew her intimately for years, and Flora Scrymser, an intimate neighbor (p. 125), and Mary Grant (p. 188), a close friend for eighteen years, and Moses M. Crane, of Elizabeth, who had known her intimately for over twenty years (p. 192). They all testified to her fine morality, clear-mindedness and strength of character. Their testimony was supplemented by testimony of Dr. Wagner to the same effect.

Mrs. Babcock is descended from the Vroom family, distinguished both in law and politics in this State. It is apparent that she was the type of woman, who, if she had made any promise, would have kept it, or at least would have made some reference to it in some form or other to her

many friends, or would have given some evidence of it in correspondence or otherwise. Her general character displayed in the testimony of these witnesses and evidenced in the provisions of her will and codicils clearly demonstrate that there never was in the mind of this fine lady and relationship with the complainants warranting the consideration of any court.

The Alleged Contract.

It is contended that the agreement made to give the Rice-Smith girls half of Mrs. Babcock's estate was made on the occasion of a visit by Mrs. Rice to the home of Mrs. Babcock at Elizabeth "the latter part of January, 1924" (p. 94) and the only witness who testified as to what passed at that time between Mrs. Rice is Mrs. Asquith. Mrs. Rice testified that she arrived at Mrs. Babcock's home between half-past twelve and quarter of one, and that she remained there until a little after four o'clock "and possibly four" (p. 94). Said Mrs. Asquith came to get her "close to half past three" and said that Mrs. Asquith was there about half an hour. She said prior to this visit in the "early part of October, 1923, she had a talk with her father with reference to contesting her uncle's will (p. 96). She had a conversation with her sister (p. 98) just prior to her visit to her aunt and that thereafter her sister agreed to the arrangements she made with her aunt (p. 99). She admitted (p. 101) that she could not remember when she had previously seen her aunt. *She admitted she had not been to her aunt's house in over twenty years.* She stated that she made several other visits to the house (p. 203) but was refused permission to see her aunt. She was not very definite about the dates of these alleged visits, *but she ad-*

mitted seeing Katie, the maid, since the death of Mrs. Babcock and giving her Christmas presents (pp. 103 and 104), and on one occasion she gave Katie \$10. She clearly wanted something from Katie (p. 104). There is no evidence that Miss Smith ever called to see Mrs. Babcock; in fact, the proofs throughout the entire case (see testimony of servants and others) is that Miss Smith was never seen by anyone at the Babcock house. She did not testify in the cause.

Mrs. Asquith is the witness whose testimony was developed for the purpose of making complainants' case. Without her testimony, it is manifest the complainants offer nothing. With her testimony, we contend that they offer very little more than nothing.

The Complainant's Witnesses.

The only two witnesses of the complainant having any relation to the case were Mary Asquith and Glen Pike.

First we will discuss Glen Pike's testimony.

Glen Pike said that he knew Julia P. Babcock, having met her on one occasion (p. 203). *He said this occasion was "in the Fall of 1924" (p. 203). He said it was on one occasion when he was home ill. He was not very definite as to the time (p. 203). He said she had called on that occasion to visit her niece, the complainant, Eleanor C. Smith, who was living at that time with the Pikes in New York (p. 204). He attempts in detail (p. 204) to outline a conversation which he was brought into by invitation and stated that Mrs. Babcock told him, a perfect stranger to her, a lot of details about her family and about her husband. She said they had been very kind to her "and when Mrs. Babcock's husband died, she had felt that they*

would be taken care of to some extent in his Will" and said "*I have told the girls that I am going to see that they are compensated in my Will for their consideration to me and particularly in my hour of——*" (p. 205).

Mr. Pike said that Miss Smith had been absent for a part of the conversation but that she had appeared on the scene during this last mentioned part of the conversation (p. 205). Pike says that his wife was not home at the time of this visit; that she was working as a cashier somewhere at the time; that Miss Smith had been a part of his household for over five years (p. 207). He said that he was home ill at the time but didn't have a doctor (p. 208); at least, he couldn't remember it.

Pike further stated that he was a bond salesman at the time (p. 209).

He was very indefinite about the preliminaries to his entering the room where Mrs. Babcock was (p. 209). *He stated at first that he met her about noon-time; later (p. 210) he said he had eaten his lunch a couple of hours before.* Asked where his wife was at the time, his answer was "It is irrelevant" (p. 211). He said Miss Smith nursed intermittently (p. 211).

He attempted to describe (pp. 212-213) incidents of commonplace things that occurred that day that no ordinary human mortal could remember, if they did occur—the number of cups of tea consumed and things of that sort (p. 203). This testimony was given in *October, 1929*.

He attempted to describe even Mrs. Babcock's clothing that day. He said Mrs. Babcock had no glasses on (p. 215). Witnesses for the defendants proved that Mrs. Babcock always wore glasses.

He said he heard Miss Smith on several occasions speak of visits to Mrs. Babcock but the proofs show Miss Smith never visited Mrs. Babcock.

He said that he and his wife had never met Mrs. Babcock before, indicating, at least, that for five years Mrs. Babcock had never made a social call on Miss Smith at her home (p. 216). He said he never discussed Mrs. Babcock with Miss Smith at any time during the five years (p. 217) succeeding the alleged visit.

And then came the remarkable part of his testimony relating to the preparation of a written statement by him of what was alleged to have occurred at the time of Mrs. Babcock's visit. He said that just two months prior to his testifying, he wrote out a statement. His memory as to the details of this preparation were very meager—he could remember what took place five years previously but *his memory of what took place two months before his testifying was very defective* (p. 218). He said he wrote out this statement himself on the typewriter, despite the fact that he had a stenographer. He said he kept one copy in his office "in my file." Asked what file, he could not remember (p. 218). *That he gave the other copy to Miss Smith* (p. 219). *On page 225 he said he never showed Miss Smith this statement.* He couldn't remember his stenographer's name (p. 256) and he couldn't tell where she could be located. *He said he prepared the statement "for evidence in the contest of the Will" despite the fact that there was no contest of the Will pending at the time he prepared this statement.*

On page 220 he says that he gave this statement to Mr. Rubin, a lawyer, at 1440 Broadway, New York. He said he took it to the office of Mr. Rubin at the request of Miss Smith.

His testimony from page 218 on was a rambling, conflicting statement relating to the preparation of this statement and its uses.

He said his call at Rubin's office was six weeks prior to his testifying (p. 220). He said he handed the statement to Mr. Rubin and spent only ten minutes with him. He said that the request for the statement was made by Miss Smith by telephone despite the fact that they were almost constantly meeting—playing bridge, etc. *On page 222, he says he never showed the statement to Miss Smith. On page 219, he said that he gave her a copy.* He said he didn't see Miss Smith from the time he wrote the statement until he delivered it to Mr. Rubin (p. 222), but they met frequently afterwards—even the Saturday before he testified. He said that he had no talk with Miss Smith about the matter from the time he met Mrs. Babcock in 1924 until the day she telephoned for the statement (p. 223). The Court will note that these folks were living together a great part of this time (p. 223).

He testified that he met Mrs. Rice, the other complainant, at Rubin's office.

He said on page 225, that the statement had been prepared six weeks back; previously he said it had been made two months back.

He could not detail what occurred at Rubin's office just a few weeks before he gave his testimony (p. 227). He was not even sure of the month of his visit.

On page 228, he was asked, "When did you see it last?" His answer was, "I don't remember." He said he saw the statement only once since it was prepared (p. 230) "at Mr. Rubin's office." *On page 230 he admitted seeing it on Saturday, two days before he testified, after he had first testified that he did not see it on Saturday.* On pages 230 and 231 he admitted taking the paper from his file on Saturday. Previously, he had testified that he had not seen it since he filed it six weeks before. On

page 231, he admitted that he took the statement out on Saturday "to see what the statement was." *He said he wanted to be sure that "I didn't get anything wrong in the statement."* He said he put it back in the file after reading it. *He couldn't remember what file he put it in* (p. 231). *This was two days before his testifying* (p. 232).

He was asked if he would produce a copy of the statement and his answer was "No." His attitude on the production of this paper was almost a contempt of Court (pp. 232-233). Finally, after persistent request for its production, he said he would not produce it unless Mr. Rubin agreed to it. The demand for the production of the original in Mr. Rubin's possession was met by counsel saying that they had not such a paper. A copy of his statement produced is set forth on page 263. The Court will note the similarity in the wording of the statement and testimony on direct examination as to the substance of his conversation with Mrs. Babcock on the only occasion he ever saw her. On page 236, he admitted that he stated that the conversation with Mrs. Babcock was in the month of October, but that he was probably mistaken and might have been some other month (p. 236). He couldn't remember calls of Miss Smith (p. 241). He said that he never knew that Miss Smith had consulted lawyers in connection with the Babcock Estate (p. 244).

Being recalled as a witness on the 22nd day of October, 1929, he changed his ideas as to the number of days that had elapsed between his preparation of this statement and his visit to the lawyer's office (p. 250). He admitted that he called occasionally (after leaving the statement) at Lawyer Rubin's office. He said that three weeks prior to his testifying, he had been in Lawyer Rubin's office. On being asked, "What did you go there

for?", said, "I don't remember." On page 252, his memory went forlorn again and he said he couldn't tell within three months of the occasion of his last call at Lawyer Rubin's office (p. 252); he said he couldn't even approximate when he had been there and that he didn't have the slightest notion what he went there for. *Asked what he talked about in Lawyer Rubin's office, his answer was, "I don't remember."*

"Q. Did you talk about this case? A. I don't remember."

He could remember that he attended the court hearing with Miss Smith and that they had spent some time together between the two hearings at which he testified, but he said they never discussed the hearing in any way (p. 254).

He couldn't tell when he had last seen his stenographer (p. 256). *He did admit having talks with Miss Smith's father just shortly before the hearing (p. 258).*

On page 260, he couldn't tell who gave him the address of the lawyer. He said that since the occasion of his previous testifying he had been carrying a copy of the statement around in his pocket for practically two weeks (p. 261).

He testified that he never discussed Mrs. Babcock's affairs or her estate with Miss Smith, but in his copy of the statement offered in evidence, he said, *"I was always under the impression she felt sure she would receive a substantial sum in her aunt's will."* Apparently, she had forgotten to tell him that she and her sister expected one-half of Mrs. Babcock's Estate. I think it is manifest that they were careful not to have his phraseology jibe too closely with that of Miss Asquith's.

Testimony of Mary Asquith.

Mary Asquith is the witness, and the only witness, produced by the complainants to support their contention, and her testimony is confined exclusively to an alleged visit made by her in *January, 1924, "between possibly the 14th and 15th and the 25th"* (p. 56). She states that she called at the home of Mrs. Babcock that afternoon, going all the way from New York, her only object being to meet Mrs. Rice to go back to New York. There is not the slightest evidence in the case that Mrs. Rice required the presence of Mrs. Asquith at Elizabeth. She said she had been very ill and had great trouble in getting around. Is it probable that this ill woman would have taken the trouble to go from New York to Elizabeth simply for the purpose of immediately returning to New York in company with Mrs. Rice? She says she was in temporary financial distress at the time, not having sufficient money to take a taxicab from the railroad station in Elizabeth to Mrs. Babcock's house. She says she met Mrs. Babcock in the hall at the house entrance (p. 57).

She says that immediately after entering, she went upstairs into a big front room (p. 58), and that Mrs. Babcock remarked to Mrs. Rice, "Yes, after your uncle's death, I had the bed taken out." This is rather an important item because *Dr. Wagner and the several other intimate friends of Mrs. Babcock who testified, all said that this room had never been used as a bedroom, and that there had never been a bed in it even during the lifetime of Mr. Babcock.* She said Mrs. Rice left the room and that while Mrs. Rice was absent, Mrs. Babcock, who had never laid eyes on Mrs. Asquith before, immediately started a tirade about some of her family relatives. She describes Mrs. Babcock as being in a passion. Note this fact—the

maid was in the next room and never heard any of this. She said that Mrs. Babcock then said, "I don't want to see her again," referring to one relative, and she said, "If you and Eleanor don't contest your Uncle's will, I will leave in my will half of my estate to you and Eleanor." She said that Mrs. Rice came into the room and said, "If you really mean that, I will tell Father and Eleanor. I feel sure they will be satisfied." Further, that Mrs. Rice said, "Well, Aunt, if that is a definite promise, I am sure that will be satisfactory and we will just let matters drop." She testified in relation to the leaving: "When we left, she asked Mrs. Rice to return and wanted to see the children, and the last thing she said was, Remember now, no contest and I will see that you and Eleanor get half." Taking in conjunction with the fact that Mrs. Babcock never did see the children, and never saw Mrs. Rice again and had no relations whatsoever with either Mrs. Rice or Miss Smith from that alleged meeting until the time of Mrs. Babcock's death, and had no correspondence with them of any sort, kind or character, not even a telephone call, the falsity of all this testimony is manifest.

Her cross examination finally elicited from her the fact that she had also prepared a typewritten statement.

It developed that she was an actress, and at the time of her testimony she was engaged in working on show plays. She said she did not have "the fiction touch." She said her job was to work on ideas and pretty pictures (p. 62).

In her direct testimony, she kept eyeing the Court Stenographer in a most unusual fashion, and kept breaking her sentences as if she was trying to remember a story. This is all brought out on page 63. She explained her ability to remember the details of the conversation at Mrs. Babcock's

house by this interesting statement: "*It is rather a well-known fact that I have a phonographic brain and almost a photographic memory.*" She said she was recognized for that.

We must keep in mind that she lived with Mrs. Rice for a long number of years and was living with her at the time of her testimony. She explained her inability to explain the date of the making of her typewritten statement by saying, "I am not very good on dates." She was asked this question:

"Q. Well, you were very good on the date in January 1924? A. Because I had a very definite reason for remembering.

"Q. Didn't you, from the date of the visit in January until Mrs. Babcock's death, discuss this matter with Mrs. Rice? A. Absolutely not one word.

"Q. Never mentioned it to Mrs. Rice? A. No.

"Q. Never? A. Not to anyone.

"Q. Not a single word? A. Not a word.

"Q. Not to a living soul? A. No."

She said she was pledged to secrecy by Mrs. Rice (p. 65). Can there be anything more absurd than this? She said that the statement she prepared was not requested by Mrs. Rice, but was volunteered by her. This woman also testified that she was a business associate of Mr. Rice (p. 66). When asked to whom she volunteered to make the statement, her answer was "Mrs. Rice or her lawyer." Mr. Rubein was the lawyer (p. 67). He was apparently her lawyer in other matters. *She could not remember whether she saw Mr. Rubein in 1928 or 1929.* That photographic mind seemed to break down (p. 67). The Court will note that it took her a minute and a half to answer one question (p. 68). The Court interrogated her at this point of her testimony (p. 68), as it was apparent that

she was a little doubtful just as to why she prepared this statement. She said she typewrote it personally at Mrs. Rice's home. She said she put in the statement all the things that "I thought was relevant." She was asked how many pages and her first answer was "Only one," and she changed this and made it "One and Three Quarters Pages"; and (on p. 69) she said, she did not give this statement to Mrs. Rice, but she personally took it to Mr. Rubein (p. 70). She said then her statement was revised and retyped, but there was a further statement prepared. We asked for the production of this further statement, but it was not produced (pp. 72-73). Counsel stated that they had no such further statement. She could not testify what time elapsed between the preparation of the two statements. She could not tell whether it was a week or a month or three months. Her memory seemed to fade at this point (pp. 74-75).

We finally succeeded in getting one of her statements made to the lawyer in evidence—Exhibit C-1. We draw attention to the fact that in this statement she described the date of her visit to Mrs. Babcock in these words "*during the early part of 1924 some time between January 11th and Washington's birthday which is the nearest I can come to a date.*"

NOTE.—The revised statement she testified she made was never produced.

NOTE.—The variation of her testimony as compared with the date fixed in the prepared statement as to the time of her alleged visit to Mrs. Babcock.

Several of the witnesses testified that Mrs. Babcock always wore glasses. Mrs. Asquith claimed to have studied Mrs. Babcock on the occasion of her only visit to the Babcock house but that Mrs. Babcock didn't wear glasses (p. 76). *It is apparent*

that her whole story was a committed piece of prepared fiction. On her cross examination she would be asked to repeat parts of her conversation and she repeated word for word some portions of her statement and portions of her own direct testimony in such fashion it was apparent that it was parrot-like utterance of an actress playing her part. She made this significant remark referring to the alleged interview with Mrs. Babcock (on p. 79): "I know I sat up with a *jerk and I watched her very closely after that because I thought she was going to try to trick me into something.*" She said, "I didn't want Mrs. Babcock to ask me or try to make me make any statement." She said she knew the purpose of Mrs. Rice's visit—it was (p. 79) "to see if Aunt Julia had any knowledge of past conditions. Mrs. Rice didn't want a contest." *She said she knew Mrs. Rice was making the visit "to make some deal of some sort with Mrs. Babcock"* (p. 80). She said she knew that beforehand and yet she gave this testimony immediately to the question, "Did you talk over the possibility of a contest with her—to Mrs. Rice?" Her answer was "No." Question: "The night before?" Answer: "Mrs. Rice never discussed that with me at all." Question: "She didn't discuss it at any time?" Answer: "No," despite the fact that she lived continuously with Mrs. Rice for eleven years eating her meals with Mr. and Mrs. Rice every night (p. 81).

A description of the trip from New York to Elizabeth (commencing on p. 83) further shows the absolute falsity of her whole story. She says she had a luncheon engagement of her own that day but she couldn't tell where or she couldn't tell with whom (pp. 83-84).

She testified that enroute home from Mrs. Babcock, she remarked, "I don't know what the dear old lady has except temper, but whether it is five

cents or five million, it is a safe gamble that you and Elizabeth are going to have one-half of it wished on you." She said she quarreled about the matter with Mrs. Rice on the way home to Westport that afternoon.

"Q. What was the occasion of the quarrel?"

It is well here to keep in mind the personal character of Mrs. Asquith. She admitted on page 85 that Asquith was not her real name; that she was born under the name of Brown (p. 85); she was married in Wisconsin. Asked when, she answered, "about 1895." That her husband's name was Richardson; that she never used his name; that she was divorced from him—first she said in 1891 then she said in 1901. *She couldn't remember the month in which she was divorced.* She said her photographic brain was not working on that subject. On page 86 she said her next husband's name was Jacobs; *she thought she married him in a town in Connecticut—she couldn't even remember the name of the town. She was not sure of the year—she said it must have been 1902. She didn't know when he died—she hadn't been divorced from him.* She never used the name Jacobs. She says she came from a theatrical family (p. 88).

"Q. Your whole life was spent on theatrical things? A. Always.

"Q. Drama, plays, fairy tales and things like that? A. I won't say fairy tales."

On cross examination she attempted to describe the windows, porch and things of that sort on the Babcock house and a lot of details that no human being could have collated in their mind simply out of the alleged visit she said she made to Mrs. Babcock (pp. 88-89). Being later recalled, she testified (p. 138) that at the time of her alleged trip

from New York to Elizabeth she was not very strong or well. What then was the purpose of this alleged visit—the inconvenience involved in her running all the way from New York City to Elizabeth and back?

She testified (on p. 141) that Mrs. Rice did not know whether her aunt had a phone or not. Mr. Smith, Mrs. Rice's father, testified that his daughters had been in frequent phone relationship with Mrs. Babcock. Of course, this was not true. She, Mrs. Asquith, made no attempt to telephone Mrs. Babcock's house to see if Mrs. Rice needed her there (p. 142). Her theatrical frame of mind is demonstrated by this question and answer (on p. 144):

“Q. You didn't look for any? (referring to telephone). A. I did not. I had said I would go for her. When I promise to do anything, if I'm alive, I'm there.”

In her statement she said that when she arrived at the Babcock house, Mrs. Babcock and Mrs. Rice were down at the door where they had just seen a neighbor out. On her cross examination (p. 145) she said she didn't see the neighbor coming out. She did not even see a maid in the house. In the statement, she said that Mrs. Babcock opened the door; in her testimony (p. 145) she said she did not know who opened the door. She said (p. 146) that no one had ever mentioned that Mrs. Babcock and Mrs. Rice had been seeing a neighbor out.

She reiterated (on p. 147) that Mrs. Babcock said the bed had been taken out of the front room. This is the room in which there had been no bed—how could Mrs. Babcock have made such a statement when there was no fact as its basis?

(On p. 149) she again parrot-like repeated her testimony as to the occurrences in Mrs. Babcock's

house using such words as no one would ordinarily use in a conversation reciting an event unless it had been written out, prepared and committed to memory. She said she concluded at the interview that Mrs. Babcock was afraid of something but she said she never mentioned that fact to Mrs. Rice because Mrs. Rice "wouldn't let me discuss that situation with her" (p. 152).

What was the reason for Mrs. Rice taking any such attitude?

Further (on p. 152), she says, referring to Mrs. Babcock's fear, "I think I put that in the statement, didn't I?—that she seemed to be worried more than the litigation." A discussion of this proposition on cross examination demonstrated what an absolute falsifier she is.

She says that her conversation relating to the Babcock visit was closed forever when they reached the railroad station enroute home (p. 153).

An evidence of her mental makeup is also shown on page 154 when she said in response to a question, "five cents or five million because that is quite a common phrase of mine referring to money."

She admitted that at the time of the visit of Mrs. Rice to Elizabeth that the family needed money (p. 155) and (p. 156) she was asked did her nieces ever say to her that "there was going to be a contest?" Answer: Yes. Question: When? "*After Mrs. Babcock had said she would leave half of the estate to them*" (p. 156). According to Mrs. Rice's story, Mrs. Rice must have been with Mrs. Babcock over three hours up to that time. What would have prompted her to say at the end of the three hours' visit that she contemplated a contest—after Mrs. Babcock had made the alleged settlement with her? She testified further (p. 159) after leaving the Babcock house, she and Mrs. Rice

never talked over the extent of Mrs. Babcock's will. She said she was not interested. In her statement prepared for the lawyers (p. 161), she said Mrs. Rice said they had just gone to the door with a neighbor and were about to go upstairs when she heard my step on the walk. As previously noted, she denied getting any such information from Mrs. Rice (pp. 161 and 162). That she had her statement pretty well committed to memory is further exhibited on pages 162 and 163.

This is the woman and this is the type of testimony upon which the complainants lay their whole speculative effort to get possession of this large estate. Is it any wonder that the Vice-Chancellor, immediately at the conclusion of the case, very curtly and with very few words dismissed the bill? Words were unnecessary. He had watched this incredible woman telling her impossible and incredible story and it is apparent the Vice-Chancellor did not feel that there was any occasion for him to waste words in ending this baseless case.

Defendants' Witnesses.

In a case of this character, of course, it is almost impossible to produce any direct testimony to refute an alleged conversation held with a deceased person in the absence of any witness. Mrs. Babcock being dead, her mouth is closed. We did do this, however. We produced a series of witnesses to demonstrate the absolute improbability and the fallacy of the complainants' contentions. We showed by these witnesses without refutation that Mrs. Babcock was a woman of strong, vigorous mind and intellect, who had a keen appreciation of her obligations. Her will and codicils operate as strong witnesses in refutation of the claims of the complainants. Her discussion of her will and

family obligations with Dr. Wagner, the family physician (commencing p. 165), offered and received without any objection, is a complete refutation of the complainants' case; likewise, the testimony of Mrs. Woodward (p. 176), Mrs. Scrymser (p. 184), Mary J. Grant (p. 188), Moses M. Crane (p. 192), and Jane Leigh Mahan (p. 124), and Mary Louise Dix (p. 129). We also produced Catherine A. Brady (commencing p. 110), for many years a household servant of Mrs. Babcock's, who testified to the household conditions and to the fact that one maid was always present in the house to attend to the door bell, visitors, and the general wants of Mrs. Babcock, and testified that Miss Smith never called at the house, and that Mrs. Rice had only seen Mrs. Babcock once in many years; and *that Mrs. Asquith never called at the house* (p. 113). Catherine Brady was the servant in charge of the home on the occasion of Mrs. Rice's visit. *Her testimony is to the effect that Mrs. Asquith was not a caller that day* (pp. 112 and 113). *She further testified that Mrs. Babcock discussed Mrs. Rice's call with her but never mentioned Mrs. Asquith.*

The testimony of the several intimate friends of Mrs. Babcock showed that she discussed her will with them and all the terms thereof in an intimate way, and stated that she had never had any intention of making any provision for any of her husband's relatives as she was not interested in them in any way, shape or manner. She omitted any reference in her will and codicils to any of her husband's relatives except one, to whom she gave \$100.

One of the witnesses, Margaret McAvoy, a servant employed by Mrs. Babcock, stated that the purpose of Mrs. Rice's visit related to her desire to obtain a \$500 loan to help her husband in the opening of a moving picture house (p. 123). None

of the intimate friends of Mrs. Babcock called as witnesses had ever seen or heard of Mrs. Asquith, or ever seen Mrs. Rice or Miss Smith. *Is it reasonable to presume that if anything such as Mrs. Asquith describes had occurred at Mrs. Babcock's home that she would have refrained from ever mentioning any incident of it to her family physician or any of her intimate friends?* Some of these intimate friends were her next door neighbors and were in almost constant attendance upon Mrs. Babcock. These neighbors also testified that it was not the custom or habit of Mrs. Babcock to personally admit anyone to her house. This was also testified to by one of the servants.

The most important testimony, however, in refutation of the complainants' case was developed by the cross examination of two witnesses depended upon by the complainants. The cross examination of Pike proved him to be unconscionable, unbelievable, unstable, and absolutely incredible. We contend it would be impossible to read his cross examination without reaching the conclusion that the Vice-Chancellor reached very speedily. Incidentally, we suggest that Pike's testimony did not operate as a corroboration of anything testified to by Mrs. Asquith. Even he, incredible as he was, only went far enough to say that Mrs. Babcock expressed the determination to remember her husband's nieces substantially.

We contend that the cross examination of Mrs. Asquith establishes beyond any question the absolute falsity of her whole statement. The Vice-Chancellor who heard the cause had ample opportunity to study this lady and the conclusion that he reached that there was absolutely no merit in or basis for her testimony should be approved by this Court.

Incidentally we showed by testimony that Mr. Babcock's estate at the most did not exceed \$100,000, and that if his will had been set aside every dollar of it would have passed to the widow, he having possessed no real estate. *We must bear in mind that at the very time the alleged meeting between Mrs. Asquith and Mrs. Rice occurred, Mrs. Babcock was being constantly advised by reputable counsel who was representing her in the administration of her husband's estate and in attention to her own affairs.* And we showed that her own personal estate far exceeded that of her husband, she leaving at her death substantially \$400,000. How absurd it would be to contemplate that a woman of strong mind and intellect without any interest whatsoever in the complainants in this case would agree to give these complainants, who happen to be only two of her husband's relatives, substantially \$200,000 for their refusal to start a will contest, which under the law they had no right to start, and which they did not offer a scintilla of evidence to substantiate in any way, shape or manner.

The Law.

There are three legal propositions involved. First, it is pleaded that the alleged promise is without any legal consideration.

Second, it is pleaded that in view of the fact that Mrs. Babcock's estate consisted partially of real estate, the alleged agreement was without any basis because of the statute of frauds. These two points will be fully considered in a brief to be submitted on behalf of other defendants.

The third and the primary question involved, assuming the existence of the alleged agreement is, was there an agreement between the complain-

ants and Mrs. Babcock which would be recognized by the courts of this state.

We have examined all of the cases cited in the appellants' brief and in each case cited the Court found it established by credible testimony, unimpeached testimony, uncontradictory testimony, that the contract claimed had been made or the fact contended for had been proved. In the case of *Tracy v. Tracy*, 62 New Jersey Equity 807, a divorce action, the Court said: "the testimony of the petitioner was not impeached nor contradicted, it was consistent, clear and relevant and did not bear any intrinsic evidence of improbability." In the case of *Cooley v. Barcroft*, 43 N. J. Law 363, the Court said substantially that where witnesses are unimpeached and the facts sworn to are uncontradicted either directly or indirectly, and where there is "no intrinsic, improbability in the relation given by him" the testimony must be regarded. In the case of *Laune v. Chandless*, 99 New Jersey Equity 186, the Court simply held that the Court cannot disregard the uncontradicted testimony of credible witnesses, which is not inherently improbable or contrary to human experience. In the case of *Kelly v. Jones*, 290 Illinois 375 (cited on p. 22 of Appellants' Brief), the Court there held that testimony such as we have in this case would absolutely justify the Court in rejecting the testimony. That case states absolutely the principal contended by us in this case. In the case of *Peter v. Wright*, 6 Indiana 182, cited by appellants, the Court found that the testimony there given was both credible and unimpeached *and not affected by cross examination*. In our case, the witnesses produced to establish the appellants' case went to pieces completely on cross examination. The wicked purpose of their testimony is established beyond any doubt.

The law in New Jersey on this subject is completely stated and settled in the case of *Howells v. Martin*, 101 N. J. Equity 275; opinion written by Mr. Justice CAMPBELL for the Court of Errors and Appeals. The Court of Errors and Appeals in that case cited with approval the law as laid down in *Vreeland v. Vreeland*, 53 N. J. Equity 387, and *Tooker v. Vreeland*, 92 N. J. Equity 340. In the *Vreeland* case, the Court said:

“But a parol agreement of this character because of the situation and relations of the parties to it and the consequent opportunity for the perpetration of fraud, is regarded with suspicion, and, when its enforcement is sought, is subjected to close scrutiny. It must not only be mutual, but also definite and certain, both in its terms and as to its subject matter, and it must be clearly proved. * * * So, also, it must plainly appear that that which is alleged as part performance is referable to and was consequent upon the contracts alone, for the purpose of carrying it into effect.”

CONCLUSION.

We most respectfully submit that the complainants below did not make out a case entitling them to the relief claimed. The testimony which they offer as the basis of their claim has been completely destroyed as far as its credibility is concerned. They did not produce a single credible, believable, or unimpeachable witness to prove a single element in their case. As set forth in the *Vreeland* case (*supra*), a case of this sort should be subjected to the closest scrutiny. The testimony of Mrs. Asquith was so incredible, unbelievable, and false on its face and the entire case of the appellants is so patent a conspiracy to obtain a portion of the estate of Mrs. Babcock, that even a careful scrutiny isn't requisite to warrant this Court

in determining to sustain the findings of the Vice-Chancellor. The Vice-Chancellor had the opportunity to personally study the witnesses produced, but without this opportunity a study of the testimony given is convincing that Mrs. Babcock never agreed to present to two nieces, in whom she did not have the slightest interest in the world, \$200,000 of her estate in consideration of their refraining from prosecuting an action for a portion of her husband's estate, a proceeding in which they could possibly have had no legal interest or no legal right to institute.

If the diversion of any person's estate could be effectuated by the type of testimony offered by the appellants in this case, then the will-making power of our citizens is gone forever. In the *Vreeland* case, the Court emphasizes the fact that cases of this sort present an opportunity for the perpetration of fraud and for that reason should be regarded with suspicion. In our case the testimony has established the fraud. In the *Vreeland* case the Court said "the case must be clearly proved." In our case not only have the appellants failed to prove a clear case, but the testimony clearly establishes that they simply concocted a wicked conspiracy.

We respectfully submit that the decree of the Court of Chancery should be affirmed.

CAREY & LANE,
Solicitors for and of Counsel with
Clarence D. Meyer, Executor,
and other defendants.

ROBERT CAREY,
HARRY LANE,
Counsel.

New Jersey Court of Errors and Appeals

Between

ELEANOR C. SMITH and
CAROLYN B. RICE,

Complainants-Appellants,

and

CLARENCE D. MEYER, individ-
ually and as executor under
the last Will and Testament
of Julia Pratt Babcock, de-
ceased, *et als.*,

Defendants-Respondents.

OCT. TERM.

No. 53

70/434

On Bill, &c.

BRIEF ON BEHALF OF THE EXECUTOR AND DEFENDANTS.

Statement.

The complainants-appellants, two of the nieces of Edward B. Babcock, by their bill of complaint claim one-half of the estate of Julia Pratt Babcock upon an alleged contention that they were given substantial shares of the estate of Edward B. Babcock in his Will and that his wife, Julia Pratt Babcock, subsequently exercised such undue influence upon her husband to cause him to change the Will to her benefit.

By their bill they say after the death of Edward B. Babcock, which occurred September 6, 1923, the complainants-appellants undertook to contest his Will and have it set aside as having been procured through the undue influence of his widow, and state that in the month of January, 1924, and at prior and subsequent times, the said Julia Pratt Babcock is said to have

promised the complainants that if they would refrain from taking proceedings to have that Will set aside, she the said Julia Pratt Babcock would agree to make a last Will and Testament wherein and whereby she, the said Julia Pratt Babcock would bequeath and devise one-half of her estate to the complainants-appellants.

There was no caveat filed or any proceedings undertaken against the estate of Edward B. Babcock or under the rule to limit creditors, and his Will was probated September 17, 1923, or just eleven days after his death. (See application for probate.) "Exhibit D. 4."

Rule to limit creditors July 20 1928 Exhibit D. 5.

Offered in evidence and referred to Case pages 105-106.

Eleven days after the death of Edward B. Babcock his widow probated his Will and in her application she does not remember the full names of the complainants or the residence of either. Within twenty-five days after the death of her husband, or on October 1, 1923, Mrs. Babcock made her Will which was never altered to any extent. See "Exhibit D. 13."

Clarence D. Meyer represented Mr. Babcock in his lifetime, attended to the settlement of his estate and represented Julia Pratt Babcock after the death of Mr. Babcock.

Mrs. Babcock died June 27, 1928, leaving a Will wherein she made several personal bequests and left the bulk of her estate to two charitable institutions.

Neither of the complainants are mentioned in her Will, which was contested by her two grand-nephews (her only heirs at law) upon the ground

that it was procured by the undue influence of her attorney.

The will of Mrs. Babcock was probated in the office of the Surrogate of Union County and an appeal taken from the probate to the Orphan's Court of Union County where the Will was sustained. Further appeal was taken to the Prerogative Court and there dismissed.

The executor qualified before the Surrogate and administered the estate without interruption until this action was undertaken in the Court of Chancery, on or about November 19, 1928. The appeal from probate was filed on behalf of the grand-nephews about January 3, 1929, or just within the period of six months, the contestants residing in San Francisco, California. Upon that appeal an administrator *pendente lite* appointed in March, 1929 and after the decree in the Prerogative Court that administrator was removed and the executor restored.

The case now on appeal was heard before his Honor, Malcolm C. Buchanan, Vice-Chancellor who devoted several days to the trial and dismissed the bill of complaint at the close of the case.

The decree of the Court of Chancery should be sustained.

POINT I.

Distribution.

The estate of Edward B. Babcock consisted only of stocks and bonds and the gross estate was \$162,569.24 against which there was a broker's loan indebtedness of about \$60,438.81. He owned no real estate. (Exhibit D. 6.) The title to

the homestead in Elizabeth and to the farm at Lebanon, New Jersey were held by Julia Pratt Babcock. (Exhibits D. 9, D. 10, D. 11.) Susan Wall Babcock born June 17, 1895, was the only child of Edward B. Babcock and Julia P. Babcock and she died in infancy at the age of 10 months and 22 days, May 9, 1895. (Exhibit D. 8.)

Therefore at the time of the death of Edward B. Babcock, September 6, 1923, he left him surviving his widow as his only next of kin.

He also left surviving one sister Lena B. Bowen, of Waterbury, Connecticut and two nephews and three nieces; Fred A. Babcock and George E. Babcock of Phillipsburgh, Montana, and Marie * * * of Seattle, only children of George H. Babcock, a deceased brother; and Eleanor C. Smith of New York City and Caroline Rice * * * only children of Nellie Smith a deceased sister.

(See certified copy of application for probate of his Will.) (Exhibit D. 4.)

It is provided in section 169 of an act respecting the Orphan's Court and relating to the powers and duties of the ordinary and the Orphan's Court and Surrogate (Revision 1898, approved June 14, 1898, as amended, Chapter 63, laws of 1918, pages 179-180).

169. The whole surplus of the goods and chattels and personal estate of which any person shall die intestate shall be distributed in the manner following, that is to say:

I (To the immediate family.)

II (In case there be no children, nor any legal representative of them, then the whole of the said estate shall be allotted to the husband or widow, as the case may

be of the said intestate.) P. L. 1918—
page 180.

This statute was in force at the time Edward B. Babcock made his Will in favor of his widow, which the complainants claim was the procurement of her undue influence. His Will simply expressed his wish and approval of the law then and still in force. Had he left no Will at all she would have become seized of his entire estate.

POINT II.

Revocations.

The complainants claim that they were mentioned and left a considerable estate in a former Will made by Mr. Babcock. This is denied, such a Will never existed. But suppose for the purpose of argument, we follow the complainants and fancy that Mr. Babcock had previously made such an instrument as the complainants allege: Was he precluded from burning, cancelling, tearing or obliterating that instrument or revoking it?

Section two of the Act Concerning Wills, Volume 4, Compiled Statutes of New Jersey page 5861, provides several methods of revoking a devise or bequest and any Will may be destroyed by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence, and by his direction and consent. It can also be revoked by some other Will or codicils in writing.

Any Will of Edward B. Babcock could have been cancelled in any manner above indicated and Mrs. Babcock would have been entitled to his entire estate, and if Mrs. Babcock were deceitful, it was only necessary to destroy the Will of Mr. Babcock to defeat the alleged claim made by the complainants.

She made her Will October 1, 1923, exactly twenty-five days after the death of her husband. Could she have had some of his wishes in mind regarding the ultimate disposition of her estate?

Within twenty-five days from his death she makes her Will and the four codicils covering a period of five years did not alter the original to any extent. It remained about the same.

POINT III.

As to Contract.

When the complainants say they called upon Mrs. Babcock and she is alleged to have made statement promising them one-half of her estate, there was no contest of any kind undertaken; no caveat filed; and no claim under oath filed by creditors. The Will had been probated, and there was no appeal taken from the probate.

At that time Mrs. Babcock not only had inherited the personal estate of her husband; but she had several parcels of real estate, one consisting of a farm of upwards of 100 acres, together with the dwelling and barns situated at Lebanon, New Jersey; the homestead wherein she resided at 124 West Jersey street, Elizabeth, New Jersey and a tract of land along the Pennsylvania Railroad in Hamilton Township.

The alleged promise and agreement, which the complainants say the decedent made, should have been reduced to writing and signed by the party to be charged therewith, or some other person thereunto by her lawfully authorized.

It is provided by the fifth section of An Act for the Prevention of Frauds and Perjuries:

That no action shall be brought (4) upon any contract or sale of lands, tenements or

hereditaments or any interest in or concerning them or (5) upon any agreement that is not to be performed within one year from the making thereof, unless the agreement, upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized.

1. A contract to devise land is within the statute of frauds.
2. The statute of frauds is available as a defence to a suit for specific performance of a contract to devise, under an answer denying any promise to make the devise.
Lozier v. Hill, 69 N. J. Eq. 300.

The executor specifically denied the allegations of the bill of complaint and in paragraph three of his answer, he specifically denied that the said Julia P. Babcock on or about January, 1924, and at prior and subsequent times agreed with and promised the complainants, that if they, the said complainants would refrain from contesting the said Will of Edward B. Babcock and would refrain from undertaking proceedings to have the said Will set aside, she, the said Julia P. Babcock would agree to make a last Will and Testament wherein and whereby she, the said Julia P. Babcock would bequeath and devise one-half of her estate to the complainants. The statute of frauds is pleaded specially and is a defence.

Johnson v. Hubbell, 10 N. J. Eq. 332.

Gould v. Mansfield, 103 Mass. 408.

Mrs. Babcock had considerable personal estate in her own right and her sister Annie Campbell Wall, who lived in the homestead with Mrs. Babcock, also had a separate estate. Annie Wall died March 6, 1926 and left upwards of \$21,000

in bonds which became the property of Mrs. Babcock.

The witnesses for the estate have shown that Mrs. Babcock was an intellectual woman in full possession of all her faculties; strong in her likes and dislikes; frank in her expressions and not given to equivocation or fraud. She had a keen mind and quick to detect cunning and deceit. Her grandfather, Garret D. Wall was a member of the New Jersey Bar and a United States Senator from 1835-1841. Her father James W. Wall also was a learned man and a member of the New Jersey Bar and represented the State in the United States Senate for an unexpired term in 1863. The late Judge Garret D. W. Vroom of Trenton is her cousin.

The complainants alleged that Mr. Babcock was under a legal or moral and equitable obligation to leave them a substantial portion of his estate; but Courts do not make contracts for the parties; they attempt to construe contracts and enforce those entered into by persons of sound mind.

The Courts of our state hold that a declaration of testamentary intentions and purposes, even when the beneficiary of those intentions and purposes act upon such declaration to his injury, does not necessarily constitute a contract; the lure of a legacy is often held out to attract attention and service, and personal attention and service are often assiduously rendered in the hope of a legacy.

It is settled that a parol agreement of this character because of the situation and relation of the parties to it, and the consequent opportunity for the perpetration of fraud is regarded with suspicion and when its enforcement is sought is subjected to close scrutiny.

It must not only be material but also definite and certain both in its terms and as to its subject matter and it must also be clearly proved.

Howland v. Martin, 101 N. J. Eq. 275.

Vreeland v. Vreeland, 53 N. J. Eq. 387.

VanHorn v. Demarest, 76 N. J. Eq. 386 at p. 389.

Tooker v. Vreeland, 92 N. J. Eq. 340.

Where it is held that a person may make an agreement which will be legally binding upon him to make a particular disposition of his property by last Will, are cases where the agreement is entered into fairly, without surprise imposition or fraud, and are reasonable and moral.

POINT IV.

As to Evidence.

Neither of the contestants are competent to testify concerning any transactions with, or statements alleged to have been made by Mrs. Babcock, unless her representative first offers himself as a witness and testifies to any transaction with or statements by such decedent.

Sec. 4 Evidence Act, Comp. Stat. Vol. 2, page 2218:

Lodge v. Hullings, 64 N. J. Eq. 761.

Howells v. Martin, 101 N. J. Eq. 275.

Lip v. Fielder, 72 N. J. Eq. 439.

The Complainants, at the hearing shifted their position and abandoned their case as made by the bill. They endeavored to place Mr. Edward B. Babcock under some moral and equitable obligation to Elliott C. Smith.

Whatever imaginary obligation Edward Babcock is said to have been under to Smith, for convenience, is transferred to the complainants.

By innuendo, the complainants infer that Edward B. Babcock was a shrewd man and did not pay the just debts of his parents. He was executor of the estate of his mother, Carolyn M. Babcock. The statement of Mary Asquith sets forth that Mrs. Babcock refers to Lena Bowen as having cheated the complainants out of their grandmother's estate and stated that Lena Bowen also tried to make her brother cheat them.

It is only necessary to read the opinion of the probate judge of Montgomery County upon the adjudication of the estate of Carolyn M. Babcock to show that Edward B. Babcock had done all and more than was required of him in settling the estate of his mother. It is found and concisely stated in Exhibit "C. 7."

I.

Complainants' testimony was contradictory and not convincing.

Elliott C. Smith wanted the Court to believe that he had loaned \$6,000 to Edward Babcock's father and he said he had a mortgage for that amount which he kept from record for two years and which he magnanimously tore up, when he found that Edward Babcock procured and recorded a mortgage for the full value of the property, which, in the opinion of Smith, made the Smith mortgage worthless. Case, page 46.

Upon this alleged transaction Elliott C. Smith and Mr. Rubien (the New York Theatrical Attorney) lay the foundation for this case against Mrs. Babcock's estate. Smith fixed the time in formulating this scheme at his office early in October, 1923. Case, page 50, lines 30-40. Smith

had his daughters come to his office. (Case, page 49.) He told them of having learned of their uncle's death and he learned that Mr. Babcock had left nothing to them. He thought that they should possibly begin to contest the Will of Edward B. Babcock; but he had known that both the daughters had been on friendly terms with Julia Babcock, Ed Babcock's widow, (Case, page 49-50) and Smith suggested that they see her. Smith said his daughters had seen Mrs. Babcock frequently, corresponded with her and telephoned and Smith thought it better that his daughter go to see Julia. Case, page 50 (although Mary Asquith testified later on that Mrs. Rice (Smith's daughter) didn't know whether her aunt had a phone or not on the day she is alleged to have gone to visit Mrs. Babcock). Case, page 141, line 12.

Their whole case, the testimony and the dates appear to have been formulated after the death of Mrs. Babcock and from the contents of "aunt Julia's" letter written by Mrs. Babcock to Mrs. Rice October 29, 1923.

See Exhibit C. 5 offered by the complainants-appellants.

In that letter we find Mrs. Babcock beginning with: "My dear Carolyn. Your letter with pictures of your two children was received." Smith said his daughter went out to see Mrs. Babcock in January, 1924, around the middle of January. Case, page 50, lines 30-40.

Upon cross examination it was shown that this \$6,000 mortgage made by Caroline M. Babcock and Frederick A. Babcock to Elliott C. Smith was a mortgage for only \$2,800, dated June 11, 1895, acknowledged June 14, 1895, and recorded

December 11, 1895 in book 130 page 496. See Case, page 54, lines 14-22.

Q Is that the mortgage you refer to?

A Possibly it is.

Q The consideration is \$2,800 That was cancelled of record July 13, 1904. Did you receive that money? A No.

Q Are you positive of it? A Positive.
(See satisfaction piece Ex. C. 9.)

Smith said there were not two mortgages and he had forgotten about the \$2,800 mortgage. Case, page 54, line 10-30. See record and satisfaction piece of Smith mortgage Exhibits C. 8 and C. 9.

Referring to the Union County records Elliott C. Smith procured a mortgage for \$2,800 June 11, 1895, which he did not record for six months, or until December 11, 1895. Mr. Babcock did not have a mortgage from his father. The father of Mr. Babcock made a mortgage to Marshall Van Nostrand for \$5,000 bearing date December 3, 1895, which he recorded December 4, 1895 and about March 3, 1897 Edward B. Babcock took an assignment and that mortgage was cancelled August 20, 1902.

Elliott C. Smith had a first mortgage \$2,800 for a period of two years until he was paid in full by Edward B. Babcock April 8, 1904. Then Elliott C. Smith executed in solemn form a satisfaction of this mortgage which was recorded July 13, 1904 in Book 6, page 178.

See Exhibits C. 8, C. 9, C. 10, C. 11, C. 12.

In the direct examination of Elliott C. Smith and in reply to the question of the Vice-Chancellor:

By the Court.

Q Where is this bond and mortgage that were given to you? A I destroyed it shortly after.

Q Shortly after that? A Shortly after I found out that Mr. Ned Babcock had obtained another mortgage which apparently wiped mine out. Case, page 48, lines 1-10.

Upon cross examination Smith said he only had one mortgage. Case, page 53, line 25.

Elliott C. Smith said his daughters were on very friendly terms with Julia P. Babcock; they had seen her frequently; had corresponded with her etc. Case, pages 49-50.

His daughter Carolyn B. Rice, one of the complainants-appellants testified upon cross examination (page 101, line 21):

Q Prior to the date you say you visited a house on West Jersey street in Elizabeth, at noon or thereabouts of the day you have specified, when was the last time prior to that that you were ever at that house? A That I couldn't say I was so young.

Q Had you seen that house in twenty years? A Well, I might have seen it.

Q Do you know whether you did or not? A I might have.

Q Had you been in that house in twenty years prior to that alleged visit in January 1924? A No, I hadn't been in it.

(Two servants stood up in the court room.)

Q Do you know either of these two ladies? A Well, I know Katie.

Q How long have you known Katie? Since what date? A I first saw Katie to my recollection in the early part of October 1924.

Q 1924? A Yes.

Katie Brady had been a maid in the Babcock family since March, 1883. See testimony of Katie Brady. Case, page 110, lines 11-40 and page 111.

This shows that Mrs. Rice was not on such very friendly terms as Smith, her father, said she was.

The testimony of Mr. Smith is not only contradicted but is absolutely unreliable and unworthy of any consideration.

II.

Carolyn Rice testified that she conferred with her father Elliott C. Smith in October, 1923. We find Mrs. Rice wrote to her "aunt Julia" and on October 29, 1923 her aunt Julia sent her a very courteous answer. See Exhibit C. 5.

Mrs. Rice went to Elizabeth without a special invitation and remained to lunch.

We do not deny that Mrs. Rice visited Mrs. Babcock after October 29, 1923. But we say Mrs. Rice after receiving that letter she came to call unexpectedly and was asked to remain for luncheon. See testimony of Katie Brady, page 112, lines 20-30.

Mrs. Woodruff, a very close friend and neighbor of Mrs. Babcock testified that she had seen Mrs. Babcock the day after Mrs. Rice was at the Babcock house.

Q What did she say to you about Mrs. Rice and when? A When?

Q What and when. A I was there the day after Mrs. Rice called. She, Mrs. Babcock, said that she, Mrs. Rice, had come to ask her to tell her about a book that her husband was going to publish. She had been to see Mrs. Smith's aunt, and asked her if she would let her have \$500 and Mrs. Smith's aunt declined to give it to her because she was supporting herself, Mrs. Babcock said to me. She had spoken to Mrs. Rice and she said, "How could you go and ask your aunt

to give you money when she has to support herself? I wouldn't give you \$500." Case, page 179, lines 20-30.

Nora Farrell is an unloyal and disappointed maid. Had she been in the employ of Mrs. Babcock at the time of the death of Mrs Babcock she would have received five paid up shares in a building and loan association. See codicil 2 of Will of Julia P. Babcock. Exhibit D. 13. Also set out in Bill Schedule B. Case, page 17.

Nora Farrell left the employ of Mrs. Babcock about two years before the death of Mrs. Babcock. Nora Farrell was not the defendant's witness. We endeavored to procure her testimony but she said she knew nothing whatever about the case.

Supplemental Case, pages 274-275. Nora Farrell is not only an unloyal maid but a person whose testimony is absolutely false.

Nora Farrell said Mrs. Babcock always opened the door to greet people (while Nora Farrell was employed for that purpose). See testimony of Katie Brady. Case, 111, line 20. See stipulation supplemental Case, page 274.

The learned Vice-Chancellor said: "Much testimony was taken which it would serve no useful purpose to recite. My conclusion at the close of the hearing, after hearing the testimony and observing the witnesses was that complainants had by no means sustained the burden of proof of establishing the making of the contract; which led of course to decree of dismissal."

III.

Asquith Is Controverted.

Mary V. A. Brown—Richardson—Jacobs—
(ALIAS) Mary Asquith.

This is the actress and movie star with a "Photographic brain" and a "phonographic memory." Case, page 63, lines 17-20. A play writer: She said: "The only writing I do now is a play that is under consideration and needs a little work done on it." Case, page 62, line 20.

Could it be the Babcock case she had in mind?

Mary Asquith lived with Mrs. Rice. She saw the letter Exhibit C. 5 from "aunt Julia." In her testimony she said: "A little idea is worked out into a pretty picture." Case, page 62, lines 30-40.

I heard quite a great deal about the house after Mr. Babcock died. She (Mrs. Rice) told me a number of things that happened when she was a child there— Case, page 140, line 30.

Mary Asquith wrote out a statement of an alleged interview at Mrs. Babcock's home which is alleged to have taken place over four years prior to the writing. See Case, page 64. See Exhibit C. 5 and follow the ideas gathered from it. This letter from "aunt Julia" written by Mrs Babcock October 29, 1923, to Mrs. Rice.

("I was glad to hear from you as I was always so fond of your mother. She and Fred Babcock were my favorite 'in-laws' always.") Now refer to the statement of Asquith, Exhibit C. 1 or her testimony page 58, lines 35-40 and page 59. "She is just like her dear mother. Her mother was my favorite in-law and Carolyn is just like her. I don't honestly know all the

little things she said because she was telling me about Mrs. Rice's mother and I wasn't really paying much attention."

If we refer to the Will of Mrs. Babcock we find provisions for her sister and for Katie and for Lena Bowen. This witness makes use of the Will in her statement. "I know what Ned wanted. Half of everything for Nellie's children and I am to have money to take care of my sister as long as she lives and to provide for Katie but not for Lena Bowen." Case, page 60, lines 2-10.

Ned Babcock was not concerned about Miss Wall (the sister of Mrs. Babcock) for she had an estate of her own which Mrs. Babcock inherited.

Another strange thing about the Asquith statement repeated in her testimony was that she (Asquith) was worried about the children of Mrs. Rice being left with a strange woman. Mrs. Rice should have been concerned about that. Case, page 61, line 27.

When the newspaper account of bequests of Mrs. Babcock appeared or were published this witness says she volunteered to make a statement of happenings over four years before—first made to Mrs. Rice and then to Mrs. Rice's lawyer, Mr. Rubien. Case, pages 66-67.

Yet the witness hesitated and became confused over the time of the year 1929 or 1928, when she prepared the statement. Case, page 67.

The Court asked her:

Q Six months ago? A Wait, just a moment, please. Yes it was this last year—

By Mr. Carey.

Q Last year, are you now satisfied of that? A Yes, wait a minute.

Q Are you going to change your photographic mind again? A No, I am trying to tell the truth about it.

Q Well you have had a minute and a half, can't you answer that question?

By the Court.

Q Don't you know whether it was six months ago or a year and a half ago? A No—I am under the impression that it must have been earlier than that when I first came to Mr. Rubien. Case, page 68.

Q Did he ask you to write it down? A I think he did. Yes.

Q Did he? A Yes.

Q And did you write it down? A Yes, sir.

Q How many days did it take you? A I would say possibly—I think I put in one morning thinking over the things and getting in all the things I thought was relevant.

Q How many pages were there? A Only one.

Q Only one page? A Yes. You mean the entire statement? No, my own statement goes further than that—my own story was a page and three quarters of single space.

Lawyer Rubien asked her to make the statement and she turned it into him. Case, page 70, lines 10-20.

She could not remember about things happening six months past. She could not remember whether she swore to this statement made only six months before. Case, page 70. Yet she repeats conversation and small talk going back four years or more ago.

Asquith was always evading and never frank, leaving two ways out. She didn't remember if she swore to the statement.

Q And that is only six months ago? A It is a custom in a lawyer's office to swear to a statement isn't it?

Q Did you swear to it? A I don't know whether I did or not.

Miss Asquith went several times to Rubien's office (Case, page 70) about this case. Evidently there were too many fainting spells and Mrs. Rice was throwing too many fits for Rubien cut some out of her statement. Case, page 72, lines 20-30.

Q Now was the second statement changed any from your first statement? A Only that Mr. Rubien has left some of the little things where I said Mrs. Rice was having so many fainting spells and like that. My own statement was recalling some of the events that led up to it to my own mind. Case, page 72, lines 20-40.

Q Was your statement different from the statement you finally signed? A Yes—Mr. Rubien didn't state why I had gone into town. He didn't state why I remembered very distinctly the particular ten days.

Truly Mary Asquith believes "a little idea is worked into a pretty picture." Case, page 62, lines 30-40.

Q What time did you leave New York?

A I imagine it must have been after two because I had a luncheon engagement and I had a business appointment at half-past one. I know it was very close to half-past three when I got to Elizabeth and I hurried up the street. Case, pages 72 and 72.

Q How many days if you remember elapsed between the time you left this statement with Mr. Rubien and you signed the corrected statement? A That I don't remember.

Q Was it a week? A I couldn't tell you the period of time.

Q Was it a month? A I don't recall.

Q Was it three months? A I don't recall.

Q Was it four months? A I told you that I have no recollection of the time when I was asked to come in and sign. Case, page 74.

Asquith cannot remember things that happened from one to six months ago but she remembers photographically all that Mrs. Babcock said, although the alleged interview took place more than four years before. Asquith signed the statement and in the statement offered (Exhibit C. 1), she said:

"Mrs. Rice was on her way to Elizabeth to lunch with her aunt Julia P. Babcock and I had a shopping errand. Mrs. Rice had not been well and felt so badly that day that I advised her to phone her aunt and *cancel the appointment*. She refused, saying, if her aunt were a younger woman she would; the old people felt disappointments keenly etc. Exhibit C. 1, lines 10-20."

Katie Brady with reference to this luncheon appointment says:

Q When did you see Mrs. Rice there that you remember? A I can't exactly tell you, but I think may be it was in January; it was the year after Mr. Babcock died, and she called just at lunch time, so Mrs. Babcock didn't expect her so she told me I could get some lunch, which I did; and she remained to lunch and they seemed to have a very nice time. She left and everything went along peacefully. Case, page 112, lines 20-30.

Asquith photographically sees Mrs. Babcock an old decrepit woman "talking in monotone and suddenly realized the woman had stopped." Case, page 59, lines 12-15.

"and her voice was very very low and going on in monotone and I suddenly became con-

scious that the woman had stopped and I didn't know what she said last."

In speaking of the mind of Mrs. Babcock, Miss Mahan said it was "as clear as a bell." Case, page 126, line 17.

Doctor Wagner described Mrs. Babcock as a very alert precise lady and with a very acute, keen mind, etc. Case, page 166, line 20.

Asquith's photographic mind also pictures a front room Mrs. Rice told her about which was a bedroom when Mrs. Rice was a child and Asquith weaves it into her statement and her testimony in this manner: "It was a room Mrs. Rice had told me little things that had happened in her childhood."

Mrs. Rice told Asquith a few things and "a little idea is worked into a pretty picture." When they are alleged to get to that room Asquith's photographic brain repeats Mrs. Rice saying: "Mary this is the room that used to be the big front bedroom when I was a child" and Mrs. Babcock said: "Yes, after your uncle's death I had the bed taken out." See Case, page 58, line 10 and again on page 61. See Statement, Exhibit C. 1.

"We went upstairs to Mrs. Babcock's sitting room. Mrs. Rice mentioned that the room we were in had been a bedroom when she was a child and Mrs. Babcock said her husband died in the room, after which she had the bed taken out."

Doctor Wagner who was with Mr. Babcock when he died said he died in the middle room and the front room had never been a bedroom.

Q What room was the bed in? A In the middle room on the second floor.

Q You knew the layout of the house from going there? A I did. Case, 165-166.

Mrs. Woodruff a close friend and neighbor also testified that Mr. Babcock died in that middle room.

Q You know the room of the house? A Yes.

Q In what room did Mr. Babcock die? A Mr. Babcock died in the middle room.

Q The middle room? A Mr. Babcock died in the middle room and he never was in any other room.

Q What was the front room for? A A living room.

Q Not a bedroom? A Not that I ever knew.

Q You never saw a bed in that room? A Never.

Mrs. Woodruff had been going into that house for fifteen years and never in all that time had a bed been in the front room. Case, page 178, lines 10-40.

Mary Asquith did not see glasses on Mrs. Babcock. Case, page 76, line 12.

“I didn’t happen to see any glasses.” “I didn’t notice any glasses, if the light would have caught them I would have.” Case, page 76, lines 20-30. Again at the second hearing this witness repeated: “I said I have no recollection; I haven’t any recollection of any light hitting her glasses.” Case, 155, lines 29-30.

Exhibit D. 15 which is the passport photograph of Mrs. Babcock is mute evidence ~~of~~ Asquith’s statements ~~which~~ do not ring true and Asquith’s statements are also controverted by other testimony. A person may not recall certain minor characteristics, such as wearing or not wearing glasses; but why was it necessary for Mary Asquith to speak of “any light hitting her glasses.” What help would that be to her photographic brain?

Look at Exhibit D. 15. No light strikes her glasses, yet one sees glasses distinctly upon Mrs. Babcock. She was never without them. Mrs. Woodruff never saw Mrs. Babcock without glasses even during the last illness and even when in bed. Case, page 182, line 20. Asquith had no idea of going to Elizabeth. Case, page 60, line 23. Yet she was very disappointed not seeing Katie. Case, page 158.

Asquith said she knew why Mrs. Rice was going to Elizabeth and says she promised to meet her there and yet on hearing an alleged conversation caused the only quarrel Asquith ever had with Mrs. Rice. Case, page 84, line 20. Asquith and Rice had a quarrel ^{over about} ~~on~~ hearing things she already knew ~~about~~ and that quarrel kept up all the way to Westport. Case, page 85, line 30.

Why quarrel over the things she said she had heard when she knew it was those very things Mrs. Rice was going to Elizabeth for?

Mary Asquith never saw Mrs. Julia P. Babcock at any time. I have referred to a few incidents in her testimony to indicate that it is of the same character as that of Elliott C. Smith and Nora Farrell; and all three are contradicted and contradict themselves and contradict each other and such testimony is unworthy of belief.

Glenn M. Pike, the aeronautical engineer whose wife is the breadwinner (Case, page 211), another witness of the same type as Smith and Asquith. Pike did not see glasses on Mrs. Babcock (Case, page 215) and like Mary Asquith he described the hair of Mrs. Babcock as iron gray. (Case, page 214.) Asquith: "An even gray, I mean an iron gray." Case, page 156.

Note Doctor Wagner: "She was small of stature, rather sharp cut features; very precise

in her dress; she was a rather light haired woman with very few gray hairs and very lively etc. Case, page 170.

Miss Smith was not sworn to even refer to this alleged visit of Mrs. Babcock mentioned by Pike and we have the letter which Mrs. Babcock wrote Carolyn Rice, Exhibit C. 5 in which she declined their invitation to visit, "as I never venture far away from home these days." Glenn M. Pike said that Mrs. Babcock stated to him that Miss Smith and Mrs. Rice had been very kind to her and considerate to Mrs. Babcock "in her hour of grief," (Case, pages 205-206) while none of them had been in her home since childhood or for twenty years. See testimony of Mrs. Rice, Case, pages 101-102-103. By their own statement they did not write before October or go to see Mrs. Babcock before January, 1924 and her hour of grief was early in September, 1923. See Case, pages 205-206. Brief of appellants, page 11.

Mrs. Rice testified at the hearing that she had not seen Mrs. Babcock or been in her house for twenty years prior to her luncheon visit. Case, page 101.

Again referring to the deposition, Pike testified that he heard Miss Smith speak of Mrs. Babcock, A I heard her (Smith) on different occasions speak of going to visit her (Mrs. Babcock)." Case, page 215, line 28.

The evidence of Mrs Rice at page 101 shows this evidence of Glenn M. Pike to be false.

This witness also made a statement for Rubien and gave a copy to Miss Smith (Case, page 219, lines 1-2). He was asked to make the statement by Miss Smith and on (page 222, line 20) he

denies he gave her a copy. He again denies it on page 225. "I said I never showed Miss Smith the statement."

Witness said he met Mrs. Rice and had an appointment with Mrs. Rice to meet at Rubien's office (Case, page 226) although he personally stated he met no one at Rubien's office when he went there, and was sent by Miss Smith. (Case, page 219-220). Pike is utterly unreliable and his evidence of no value.

APPELLANT'S CITATION INAPPLICABLE.

Rue v. Meirs, 43 N. J. Eq. page 377 cited by our adversaries is not in point at all. In that case the father of two grandchildren was present at the reading of the grandmother's Will and immediately after he knew its contents, expressed his dissatisfaction with its provisions and protested against its admission to probate.

The division amongst children in that case was unequal and as a result, a contract was made and reduced to writing. That is a very different case from the one under discussion.

In the Smith-Rice case the complainants are nieces of Mr. Babcock and not related to Mrs. Babcock (who only had two grand-nephews as her next of kin and heirs at law), and these nieces of Mr. Babcock filed no caveat, took no appeal and undertook no action until five months after the death of Mrs. Babcock, when they brought suit against her estate.

Laune v. Chandless, 99 N. J. Eq. 186 also cited in appellant's brief is likewise beside the mark and is not applicable. There the complainants left home and went to live with and care for the old people who made the promise. The Court re-

marked that there was powerful corroboration of the oral contract by the production of a Will which unfortunately had not been executed, in compliance with the statute.

CONCLUSION.

Mrs. Rice did not go to the Babcock house with any idea she had a right to a valid claim if she had the conversation on the day as alleged. If she had gone there with the idea of making a contract to right a legal wrong she would have seen to it that there was no possibility of failure.

The date of the alleged visit is forgotten when the alleged conversation, so important, is said to have taken place. The fact is that no such claim upon Mrs. Babcock ever existed. Witnesses would try to lead the Court to believe that because Mr. Babcock might have forgotten or omitted to remember the complainants in his Will, or had no interest in them, Mrs. Babcock would give them one half of \$400,000. It is essential to the validity of such an agreement that it shall be mutual, definite and certain both as to its terms and subject matter and such an agreement must be clearly proved.

Lings v. Urquhart, 106 N. J. Eq. 506, Vol. VIII N. J. Adv. R. 307.

These two girls are not related, by blood to Mrs. Babcock and by no means came within the objects of her bounty. Their alleged claim is so improbable and so disproportioned that it is impossible to believe a woman of Mrs. Babcock's type as described by all witnesses, could have made a contract such as described. And she never did.

Mrs. Rice wrote and sent a picture of her two children to Mrs. Babcock and Mrs. Rice got a

courteous reply (Exhibit C. 5) and then came an unexpected visit from Mrs. Rice after twenty years of silence.

That letter forms the basis of this case after the death of Mrs. Babcock and "a little idea is worked into a pretty picture," with the assistance of Rubien, the New York Theatrical lawyer.

At the midyear luncheon of the State Bar Association held in Newark, Justice McCook of the New York Supreme Court speaking of the conditions of New York stated that the bane of litigation in America was perjury.

"The situation is intolerable. Judges of both the Federal and State Courts in every part of the country, lawyers and laymen, have long been making this assertion and urging that something must be done. Federal Judge John C. Knox says that perjury has become a high art. The public is beginning to realize the seriousness of the situation, and that is the most hopeful sign of all. Some of the more optimistic believe that the matter would correct itself, because judges and juries alike would be quick to make perjury unprofitable, even when it could not be proved to the extent of obtaining a conviction, by rendering verdicts against the side which had furnished lying witnesses. All now admit that this is insufficient; first, because if cleverly prepared, the testimony often appears to be truthful when it is not; second, because of the indifference of the public and thus of our juries, verdicts are sometimes rendered even when they depend upon evidence palpably false."

To allow claims such as the complainants make, would affect property rights and result in endless litigation. Moreover it would be a dangerous precedent and there would be little use for persons making Will to be executed in accordance with the statute of Wills if Wills can be upset

so easily and by such evidence as that of Elliott C. Smith, Mary Asquith and Glenn M. Pike.

Court of New Jersey and particularly this Court is quick to discover untruthfulness, no matter how cleverly it is prepared. Claims of this character should be substantiated by clear and convincing proof.

Darling v. Gilmore, 7 N. J. Adv. Rep. No. 24, page 960.

Darling v. Gilmore has been taken up on appeal and is now before this court at this term, bearing list number 70. Vice-Chancellor heard the evidence and observed the witnesses and I respectfully submit the Decree of the Court of Chancery should be sustained.

CLARENCE D. MEYER,
Of Counsel with Defendants.

SCHEDULE L**Recapitulation of Federal Inheritance Tax
Return.**

Sched- ule	Gross estate	Value
A	Real Estate	\$ 30,000
B	Stocks and bonds (grand total of all pages of this schedule) Cash & Furniture	376,506 30
C	Mortgages, notes, cash, and in- surance	
D-1	Jointly owned property included in realest. None other.....	
D-2	Other miscellaneous property..	
E	Transfers	
F	Powers of appointment	
G	Property identified as previously taxed	\$46,735.53....
	Total Gross Estate	<u>\$406,506 30</u>

Sched- ule	DEDUCTIONS	Amount
H	Funeral expenses	\$ 680 00
	Administration expenses:	
	Executor's commissions ..	20,000 00
	Attorney's fees	15,000 00
	Miscellaneous	1,500 00
I	Debts of decedent	11,350 00
J	Unpaid mortgages	None
	Net losses during administra- tion	None
	Support of dependents	None
K-1	Property identified as previ- ously taxed (E. B. Babcock less exemption	46,735 53

K-2 Charitable, public, and similar gifts and bequests under Will Residue	
Specific exemption (resident de- cedents only)	*100,000 00
	<hr/>
Total Deductions	\$195,265 53
Total gross estate	\$
Total deductions	
	<hr/>
NET ESTATE FOR TAX	\$

*If decedent died prior to 10.25 a. m., Washington, D. C.,
time, February 26, 1926, insert \$50,000; if decedent died sub-
sequent thereto, insert \$100,000.

GARRET DORSETT WALL

DIED Nov. 22, 1850 INTESATE
his wife Anna M Wall (predeceased.)
leaving

DR. HENRY PRATT

BANKER OF PHILADELPHIA

MARIA MATILDA WALL - (VROOM)

OBIT 4-3-79
her husband Peter D Vroom.

JAMES W. WALL

OBIT 6-9-72

MARRIED

SUSAN PRATT

AMANDA - PRATT

MARRIED
GRANDIN

?

?

Peter D.
(dec'd)

Garret D.W.

JUDGE, COURT APPELS
WIDOW
CHARLOTTE D
SURVIVING

Gouvernor.

(dec'd)

James W.

PETER DUMONT VROOM²
CHICAGO.

Garret Dorsett.

DIED - INFANT

Mary Rhea.

MARRIED
R.T. HOY
(no children)

JULIA PRATT WALL

BABCOCK

June 21, 1928

EDWARD B BABCOCK

OBIT
SEPT. 4th 1923

SUSAN WALL BABCOCK 2

(INFANT)
BORN - MAY 7, 1894 DIED APRIL 11, 1895.

Annie C. WALL

OBIT MAR. 6th 1926
UN-MARRIED

Amanda Pratt

MARRIED
K. S. BREWSTER
(BOTH DEC'D)
leaving

JAMES W. WALL BREWSTER²

MARRIED
MELINE AH FONG.

Garret Dorsett - JAMES W.W.

CONTESTANTS
LOS ANGELES
CAL.

Egbert H. Grandin.

FRANCES, EGBERT B., EDITH G.²

AND
JULIA
EDITH G
MARRIED
WISE

Grandin, Byrd, Sergeant.
and
Edith

Mrs G. Herscher.

N.Y.

?

Mrs. N. Dreighton.

OR (DRAYTON)
PHILA. PA.

?

FAMILY TREE ESTATE - JULIA PRATT WALL BABCOCK.

Exhibit 14

OFFICE OF
CLARENCE D. MEYER
Counsellor at Law
Elizabeth, N.J.



New Jersey Court of Errors and Appeals

Between

ELEANOR C. SMITH and CAROLYN
B. RICE,
Complainants-Appellants,

and

CLARENCE D. MEYER, individually
and as Executor under the
Last Will and Testament of
Julia Pratt Babcock, deceased,
et al.,
Defendants-Respondents.

On Bill, etc.

On Appeal from
the Court of
Chancery.

BRIEF OF ELIZABETH ORPHAN ASYLUM ASSOCIATION.

Statement.

The Elizabeth Orphan Asylum Association of Elizabeth, N. J., one of the defendants in the above entitled cause, is entitled to one-half of the residue of the estate of Julia Pratt Babcock, deceased, under the terms of her Will and Codicils.

The evidence offered by the complainants was not sufficient under the cases to establish the contract alleged to have been made between Julia Pratt Babcock, deceased, and the complainants. The proofs relied upon by the complainants are not clear and convincing and are not sufficient to establish the alleged parole agreement of this character which, because of its very nature and the relationship and situation of the parties to

it, as well as the attendant and consequent opportunities for the participation of fraud, is regarded with suspicion and subject to close scrutiny when the enforcement of such contract is sought. The testimony of the witnesses is not definite and certain as to the terms of the alleged contract and the Court justly found that the complainants had not sustained the burden of proof in establishing the said alleged contract under the evidence adduced.

Eleanor C. Smith, one of the complainants, had not seen the deceased since she was a child and it is apparent from the reading of the testimony that this action was a conspiracy on the part of the complainants and the witnesses produced to defraud the Estate of Julia Pratt Babcock of a substantial part thereof.

The evidence offered at the trial is discussed quite fully in the appellant's brief, and this defendant will answer the said brief point by point.

I.

The testimony of Elliott C. Smith is devoid of evidential value.

Mr. Elliott C. Smith, father of appellants, testified (p. 52) that Frederick C. Babcock, father of Edward P. Babcock, was indebted to him and the said Frederick C. Babcock had executed a mortgage for \$6,000.00 and a bond for \$12,000.00. The consideration for the said mortgage was the support and for money advanced by Mr. Smith to the Babcock family (not Edward P. Babcock). This mortgage was executed in 1896 (p. 51). On page 45 he testified that he kept this bond and mortgage in his desk, and, on page 46, he stated that he did *not* record the mortgage. He stated that he kept it off record about two or three years

and that he subsequently learned that another mortgage had been placed on record which would absorb the equity in the property. This was in about 1896 or 1897.

On page 48 he testified that shortly thereafter he destroyed the bond and mortgage. He did not see Mr. Edward P. Babcock between the years 1896 or 1897 and 1918 (pp. 46-7). He testified that he met Mr. Babcock on a ferry going to New York and that Mr. Babcock was repentant of his former treatment of Mr. Smith, and (on p. 48) stated that he (Babcock) felt that he had a moral obligation, that he was fond of his sister, the mother of the two daughters of Mr. Smith, the complainants, and that he would leave a very substantial amount of money to the complainants both in consideration of the moral obligation that he had for the \$6,000, and for the affection that Mr. Babcock had for his sister. He stated, in answer to questions by the Court, that Mr. Babcock did not fix a definite amount that he would leave to the complainants (p. 48).

Mr. Smith (on p. 51) did not know who drew the bond and mortgage, that he examined the mortgage after it was received by him from Frederick C. Babcock. He testified on page 53 that he held only *one* mortgage which was given to him by Mr. Frederick C. Babcock. Of this he was certain. On page 54 he stated that the mortgage was executed in and around 1893 or 1894. Counsel called to his attention a mortgage made by Caroline M. Babcock and Frederick C. Babcock, her husband, to Elliott C. Smith, dated June 11, 1895, acknowledged June 14, 1895, and recorded December 11, 1895, in Book 130 of Mortgages for Union County, on pages 496, etc. Witness stated that this mortgage may possibly be the mortgage that he had reference to. This mortgage, however, was for \$2,800.00. He did not remember this \$2,800.00 mortgage.

On page 199, witness admits the signature to Warrant for Discharge of Mortgage for \$2,800.00. Witness testified that he had no knowledge of the \$2,800.00 mortgage. Warrant for Discharge of said Mortgage is Exhibit C-9, page 276, Supplemental Case, which recites that the mortgage made by Caroline M. Babcock and Frederick C. Babcock, dated June 11, 1895, and recorded in the Union County Register's Office in Book 140 of Mortgages for Union County, on pages 496, etc., is paid and satisfied, and he thereby consented that the same be discharged of record.

This witness states that there was only one mortgage (p. 53), and that mortgage was not recorded (p. 46), and that the mortgage was for \$6,000.00 (p. 51), whereas the proofs indicate that the only mortgage that had been executed by Frederick C. Babcock to Smith was for \$2,800.00, which was recorded and which was paid and satisfied, and not destroyed without being recorded, as the witness would have the Court believe. The fraud which this witness attempted to perpetrate on the Court is apparent and no credence can be given to his testimony, and any attempt to use the said fictitious mortgage as a consideration for any subsequent promise to leave anything to his daughters, the complainants, cannot be entertained. The Trial Court was in a position to observe the witness while on the stand and gave his testimony only such evidential value as it deserved.

Mr. Smith further testified, on pages 49 and 50, that the complainants had seen Mrs. Babcock frequently and corresponded with her.

The witness, Eleanor C. Smith, was in Court, but did not take the stand.

Mrs. Rice testified (page 101) that prior to the visit which she made to Mrs. Babcock in January,

1924, she had not been in the Babcock home for over twenty years, and on page 103 she testified that she had been in the Babcock home four times since then, one of which times was at Mrs. Babcock's funeral.

The witness Pike, on page 264, testified that Mrs. Babcock stated that she had not seen her nieces since they were babies until recently.

II.

Carolyn B. Rice.

Mrs. Rice did not think the complainants were honestly entitled to any part of the Estate of Edward P. Babcock, and it was not until some time after his death that the father of the complainants suggested to the complainants that they call on Mrs. Babcock in an effort to get some part of the Babcock Estate, because of the alleged mortgage of which he was defrauded by Mr. Babcock. See Smith testimony (p. 49), and Rice testimony (p. 96).

The testimony of Mrs. Rice has no evidential value with regard to proving the alleged contract. Every attempt to offer such testimony was objected to and the objection sustained because such testimony would be in violation of Section IV of the Evidence Act.

Mrs. Rice testified (p. 98) that she went to see her aunt (Mrs. Babcock) after her conversation with her father, the other complainant was not sufficiently interested to visit Mrs. Babcock and she told Mrs. Rice that any arrangement that she made was satisfactory.

Mrs. Rice (on p. 103) testified that after Mrs. Babcock's death she had sent Christmas and Easter presents to Catherine Brady, whom she knew to be an important witness in this case.

Catherine Brady testified (p. 114) that after Mrs. Babcock's death she had received a Christmas and Easter present, and that Mrs. Rice, one of the complainants, had called on her at her home, apparently, from reading the testimony, for only one purpose, to secure her as a witness in the suit which she contemplated bringing. Complainants are nieces of Mr. Edward P. Babcock.

III.

Mary Asquith.

The witness, Mary Asquith, produced by the complainants, had been an actress for twenty-six years (p. 82). She had married, she testified, in about 1895 in a town in Wisconsin near LaCrosse (p. 86). She did not know the name of the town. Her maiden name, Mary Virginia Asquith Brown (p. 85) was never used by her since she was fifteen years of age, nor did she use the name of either of her husbands. She divorced her first husband, Richardson, in 1901 (p. 86). She doesn't remember the month. She subsequently married a man by the name of Jacobs in the State of Connecticut. She doesn't remember the name of the town in which she was married. She separated from him in 1910 (p. 87). This witness stated that she had a photographic brain and almost a phonographic memory (p. 63). She testified (p. 64) that she wrote out a statement marked "Exhibit C-1" shortly after Mrs. Babcock's death, which occurred on June 27, 1928. On page 160 she testified that the statements contained in Exhibit C-1 were true. This statement contained or is alleged to have contained a statement of what occurred in January, 1924, in the Babcock home in Elizabeth. The witness, on pages 65 and 66, stated she had not from January, 1924, discussed the episode

of her alleged visit to Elizabeth with anyone until after she had prepared the statement in 1928. There are many inconsistencies between the statement C-1 and the testimony of this witness. In the opening of this statement C-1 she states that during the early part of 1924, between January 1st and Washington's Birthday, "which is the nearest I can come to the date Mrs. Rice and I visited Mrs. Babcock". On page 56 she testified that she had visited Mrs. Babcock between possibly January 14th or 15th and the 25th, 1924. In her statement C-1, page 269, she stated "I went up the steps of Mrs. Babcock's house, before I could ring the bell Mrs. Babcock opened the door. Mrs. Rice said they had just gone to the door with a neighbor and were about to go upstairs when she heard my steps on the walk". In her testimony, on page 57, she testifies "I met Mrs. Babcock in the hall. Mrs. Rice had been waiting for me and as I turned into the place, one of them opened the door and Mrs. Rice introduced me to Mrs. Babcock just inside the door. Mrs. Rice said that she was just going to get her wraps and Mrs. Babcock said 'They are upstairs, come up.'"

On page 59 she testified while talking to Mrs. Babcock, "I thought she was talking about one sister-in-law, so I told her I had met her other sister-in-law and she is such a gracious, charming, old-fashioned gentlewoman", and she said, "Lena Bowen isn't gracious, she was a grasping, selfish, old woman. She made trouble for everyone of the family, and now she is trying to keep Nellie's daughters out of theirs".

Mrs. Babcock's Will, dated a few days after this incident, February 11, 1924, bequeathed the sum of One Hundred Dollars to Lena Bowen (see p. 14).

In the statement (p. 271) testified that Mrs. Babcock said to Mrs. Rice, "I will take care of

you. I loved Nellie (mother of complainants) and I didn't love Lena, never loved her. I'll leave you and Eleanor (complainants) *half* if you don't fight the Will." The statement, same page, also states, "She is going to see that Nellie's girls get their half".

On page 60 she testified, repeating statement of Mrs. Babcock, "I knew what Ned wanted, half of everything for Nellie's children". Also, on the same page, "I will see that you and Eleanor get half of the estate".

The witness has attempted to change the vague statements contained in Exhibit C-1 as to what Mrs. Babcock stated she was to leave, and has attempted in her testimony to show that Mrs. Babcock meant to leave half, although there is no testimony to show whether she intended to leave half of the Estate of Edward P. Babcock or half of the Estate of Julia P. Babcock. The gross Estate of Julia P. Babcock (see Exhibit C-6) amounted to \$406,506.30, and the gross Estate of Edward P. Babcock (see Exhibits D-6 and D-7) amounted to \$102,120.43, indicating that Mrs. Babcock had an independent estate, to which was added whatever moneys she received from the estate of her deceased husband, Edward P. Babcock.

The witness, on page 161, testified that since she wrote the statement in 1928 she had had a chance to think over things quite a bit, and that if there are any inconsistencies between her testimony and the statement, the testimony was to prevail.

Her written statement was submitted to her counsel and subsequently changed in an effort to clearly prove the contract (p. 70), and it is evident that the inconsistencies between her statement and the testimony must be resolved rather in favor of the statement, because the statement was made two years before the testimony was taken,

and she would have this Court believe that her recollection at the time of the trial was better than her recollection two years previous as to what transpired. In her statement, (p. 270) she stated that she could not swear that she is quoting verbatim the words of Mrs. Babcock, but she never forgot the meaning of her words, and in many cases recalls whole sentences.

In her testimony (p. 58) she stated that Mrs. Rice said, "Mary, this is the room that used to be the big front room when I was a child", and Mrs. Babcock said "Yes, after your uncle's death I had the bed taken out." The testimony of other witnesses proved conclusively that the room indicated by Mrs. Rice was not used as a bedroom and that Mr. Babcock had not used that room. See testimony of Catherine Brady and Dr. Wagner.

On page 70, she testified that her lawyer, Mr. Rubian, had re-written the statement which was originally prepared by her, and on page 72 she stated that in his re-writing he had omitted several things. On page 75 she stated she did not see a maid in the house.

Catherine Brady, maid employed by Mrs. Babcock, stated that she was at home on the day of the alleged visit in January, 1924, and did not see Mrs. Asquith, but that Mrs. Rice was there for lunch and left about three o'clock (see p. 113).

Mrs. Asquith did not know the color of Mrs. Babcock's eyes, nor did she know whether she wore glasses (p. 155).

The testimony of Mrs. Asquith can have no evidential value in proving the alleged contract. Her statements are inconsistent, as indicated. Her statement and testimony are inconsistent and she swears that both are true. In her statement she refers to leaving the money, or half of the money, not indicating what she meant by the half,

whether half of the estate of Edward P. Babcock or half of the estate of Julia P. Babcock. In her testimony she endeavors to prove that Mrs. Babcock intended to leave one-half of her estate to the complainants. She did not discuss this matter from January, 1924, until June, 1928, when she prepared the statement, and she made no memorandum as to what transpired, and yet she would have this Court believe that she remembers what was said at that time. In fact, she improves her statement quite conclusively in favor of the complainants in her testimony before the Court in 1930, and admits making changes in her testimony which were inconsistent with the statement originally prepared by her. She is an imposter. According to the evidence of witnesses, she was not present at the Babcock home and it is a part of the fraud which the complainants are attempting to perpetrate on this Court.

IV.

Catherine Brady.

The witness, Catherine Brady, produced by the defendants. She was in the employ of the Babcock family as a maid from March, 1883, to the date of Mrs. Babcock's death, June 27, 1928. She was always at home with Mrs. Babcock. On page 111 she stated that she never saw Miss Smith, one of the complainants at the Babcock home, and she stated positively (p. 122) that Miss Smith was never in the Babcock home. She also testified that she had not seen Mrs. Rice in the Babcock home for twenty years prior to Mr. Babcock's death. On page 113, she stated that she was at home on the day in January that Mrs. Asquith was supposed to have called on Mrs. Babcock, and she testifies that Mrs. Rice left the

house at three o'clock and that Mrs. Asquith was not in the Babcock home on that date. She testified that after Mrs. Babcock's death, the complainant, Mrs. Rice, called upon her and had given her presents (p. 114) at Christmas and Easter, and when Mrs. Rice called upon Miss Brady she attempted to discuss her case with her, but Miss Brady did not discuss the matter. It is evident that she was endeavoring to buy Miss Brady with her small presents in an effort to get her to testify in her favor. If she wished the truth, this would not be necessary.

V.

Mary McAvoy, a maid in the Babcock household, testified that Mrs. Rice called to see Mrs. Babcock when she was ill, and Mrs. Babcock refused to see her (p. 123), and that after Mrs. Rice had gone Mrs. Babcock had told her that Mrs. Rice wanted to get some money, her husband was in moving pictures. She said that Mr. Rice was opening up a moving picture place and she thought that Mrs. Rice wanted to get about \$500.00, and Mrs. Babcock said "I'm not going to give money to anyone".

VI.

The witness, Miss Mahan, on page 125 stated that she had known Mrs. Babcock for many years, that she was interested in the Orphan Asylum, and Mrs. Babcock had informed her that she was going to leave money to the Orphan Asylum and the Rosary Hill Cancer Home. On page 126, Mrs. Babcock stated that she was not interested in her husband's relatives, and on page 127, stated she would leave nothing to the complainants.

VII.

Mrs. Dix testified that Mrs. Babcock informed her that she was not going to leave anything to the complainants. On page 130, she stated that Mrs. Babcock was a woman of strong character and was very honest and honorable. She stated, on page 132, that one of the Smith girls had been to see her and she thought that Mrs. Babcock should leave her something. She informed Mrs. Dix that she was not going to.

VIII.

Doctor Wagner testified, page 166, that the upstairs front room was not a bedroom, but a sitting room, and had not been used by Mr. Babcock as a bedroom, as Mrs. Asquith would have us believe. He stated that Mrs. Babcock was a very alert, precise lady with a very acute, keen mind, somewhat stubborn, he thought, and a very efficient housekeeper (p. 167). Mrs. Babcock told the Doctor that she didn't like her husband's relatives and she also told him that she had made a Will in which she asked the Doctor if he thought it was right to leave money to the Orphan Asylum and the Rosary Hill Home. On page 168, Mrs. Babcock stated that Mrs. Rice had called one day and she had refused to see her. The Doctor testified that she was capable of seeing her friends, if she wished, on that date. On page 169, he testified that Mrs. Babcock stated that she was going to leave her estate to the Orphan Asylum because her husband was very fond of children. Her own child had died of diphtheria, her husband felt very badly about it, and always asked her to remember children, and she was leaving the money to the Cancer Home because some relatives had

cancer and were taken to that Home, and she had heard so much about the Lathrop Home and the good work they were doing that she was going to leave some of her money to them, and she said she thought she was carrying out her husband's wishes.

IX.

Mrs. Woodruff, on page 178, testified that Mr. Babcock died in the middle room and not the front room, as Mrs. Asquith would have us believe. On page 179, she testified that she was very intimate with Mrs. Babcock, saw her frequently, lived across the street from her, and Mrs. Babcock had never informed her of the visit of Mrs. Asquith, although she had informed her of a visit of Mrs. Rice. She was at the Babcock home the day after Mrs. Rice called, and said that Mrs. Rice had been there the day previous and had requested a loan of \$500.00. Mrs. Babcock did not mention the fact that Mrs. Rice threatened to contest her husband's Will, nor did she say that she had made any agreement to leave any part of her estate to the complainants. On the contrary, she said she didn't intend to let them have anything (p. 179). On page 180 she testified that Mrs. Babcock was a woman of a great deal of character, very decided in her prejudices and could not be influenced.

X.

Witness, Flora Scrymser (p. 187), testified that Mrs. Babcock informed her that she didn't like any of her husband's relatives.

XI.

Mary J. Grant, witness, was a close friend of Mrs. Babcock and had been for years and visited

her frequently. Mrs. Babcock informed her (p. 189) that she was going to leave her money to the Orphan Asylum and the Cancer Home. She asked Mrs. Babcock if she did not have any close relatives she was leaving anything to. She said she was leaving nothing to anyone. She stated she had no use for her relatives.

XII.

The witness, Glenn M. Pike, produced by complainants, claims that he met Mrs. Babcock in October, 1924 (see p. 204), at his home in New York, where the complainant Eleanor C. Smith was living. Miss Smith (p. 212) introduced him by saying, "This is Mr. Pike". She did not mention Mrs. Babcock's name in the introduction. He testified that this person whom he claims to be Mrs. Babcock, although Miss Smith did not take the stand to testify that Mrs. Babcock had been in the Pike home in October, as testified to by Mr. Pike, that the girls had been very kind to her (Mrs. Babcock) when her husband died, and he felt that they would be taken care of in Mr. Babcock's Will, and Mrs. Babcock stated that she appreciated very much that, especially due to her request, they had not contested the Will and she said, "I have told the girls I am going to see that they are compensated in my Will in their consideration of me." He repeated, on page 235, that Mrs. Babcock stated that she would compensate the girls. In no place in Mr. Pike's testimony was there any statement as to the extent to which Mrs. Babcock would compensate the girls. Miss Smith was a nurse and had a room in the Pike apartment (see page 207). Mr. Pike had never seen Mrs. Babcock before the date in October, 1924 (see page 214). He testified that Mrs. Bab-

cock said that she was very much interested in the girls (p. 214) and he testified on page 264 that Mrs. Babcock had not seen her nieces since they were babies.

The witness testified, on page 217, that in August, 1929, he wrote out a statement of what had occurred in the meeting with Mrs. Babcock in October, 1924, and on page 223 he states that he had not discussed the case with anyone after the meeting in October, 1924, until after he had prepared the statement in August, 1929. On page 219 he stated that Miss Smith asked him to make a statement because they were going to contest Mrs. Babcock's Will. The witness appears to have an unusually good memory as to what transpired in October, 1924, as compared with incidents that happened subsequently. For instance, on page 227, the witness did not remember the conversation had with counsel five weeks prior to the time the testimony was taken. On page 232 he did not remember where he had placed a letter which he had had two days previously. On page 235 he testified that he had not made a memorandum at the time that Miss Babcock visited Miss Smith. He testified, on page 238, that he had other visitors who stayed for lunch. On page 239 he stated that he believed the last person who had lunch with Miss Smith and himself was her father, Mr. Smith, but he did not remember if it was in 1923, 1924, 1925 or 1926, 1927 or 1928. He had no idea as to the year, nor did the witness remember the conversation which he had with Mr. Smith on his last visit, except that he discussed business. Later in his testimony he fixed his visit as about three months after October, 1924. On page 241 he names people who visited Miss Smith and with whom he had tea. He could not recall any particular time that he had tea with any of them. He had no knowledge and he could not remember conversa-

tions had with any of the people who subsequently visited Miss Smith. Witness did not recall any of the other conversation at the meeting with Mrs. Babcock in October, 1924 (see page 244).

On page 245 the witness testified that he wrote a statement out in a half hour after a lapse of five years, during which time he had not discussed the matter with anyone. On page 266 witness testified that he could not remember the name of his stenographer who worked for him three weeks ago.

XIII.

The testimony of Mr. Pike has no evidential value as to the proof or corroboration of the making of a definite contract. His testimony is to be doubted for his inability to remember things that happened recently, and yet he has such a clear conviction of what happened more than five years ago. Furthermore, his testimony is to be doubted because Miss Smith, one of the complainants, did not take the stand to testify that it was Mrs. Babcock who was present on a visit in October, 1924, nor did she attempt to offer any evidence to corroborate any of the statements made by Mr. Pike.

XIV.

The witness Nora Farrell was produced by the complainants. She testified (p. 275) that on the day of Mrs. Rice's visit another woman came with her, and on page 275 she was questioned as follows:

By Mr. Carey: "Do you remember speaking with Mr. Meyer?" Answer: "Yes."

Question: "Did you not tell Mr. Meyer that you know nothing whatever about the case?" Answer: "Mr. Meyer asked me to

come and testify that Mrs. Rice came to lunch."

Question: "Did you not tell Mr. Meyer that you knew nothing whatever about the case?"

(Witness hesitated and did not answer.)

Question repeated and Vice-Chancellor Buchanan demanded that she reply. Witness then declared that she had once informed counsel for the estate that she knew nothing about the case.

By the Court: "Why did you say that?"

Answer: "I thought the other side was right."

There can be no doubt that the Vice-Chancellor was of the opinion that this witness was lying and that no value can be given to her statement that another woman called with Mrs. Rice.

POINT I.

Parol contracts of this character because of its very nature, the relationship and situation of the parties to it, as well as the attendant and consequent opportunity for the perpetration of fraud, is regarded with suspicion and subjected to close scrutiny whenever its enforcement is sought. The quality of the proof relied upon to establish it, should be clear and convincing.

Lings vs. Urquhart, 106 N. J. Eq., page 507. At page 508 the Court held:

"That equity, at the instance of a party who shall have completely performed contract on his part, will specifically enforce a parol agreement of this character, if such be sufficiently proved and established, is a principle so well established by the adjudicated cases in this state, as to render the citation

of any authority in support thereof unnecessary. And rightly so, for, to hold otherwise would be to enable the parties to such agreement, declining to perform on his part, to successfully perpetrate a fraud upon him, who, relying upon and induced by said agreement, has in good faith so performed it as to have irretrievably changed his position to his disadvantage.

“However, it has also been firmly established that parol agreement of such a character, because of its very nature, the relationship and situation of the parties to it, as well as the attendant and consequent opportunity for the perpetration of fraud, is regarded with suspicion and subjected to close scrutiny whenever its enforcement is sought. It must be mutual, as well as being definite and certain in its terms and with reference to its subject-matter. The quality of the proof, relied upon to establish it, should be both clear and convincing, (*Cooper v. Carlisle*, 17 N. J. Eq. 529, and *Brown v. Brown*, 33 N. J. Eq. 657; *Clawson v. Brewer*, 67 N. J. Eq. 201) and should plainly demonstrate that those things, which are alleged and relied upon as part performance, are referable to, were done in consequence of and for the purpose of carrying the said agreement into effect.”

Brown vs. Brown, 33 N. J. Eq., page 650. At page 657 the Court held:

“A specific performance will not be decreed unless the existence and terms of the contract be clearly proved. It must be shown that a contract has been concluded. If it be reasonably doubtful whether the contract was finally closed, equity will not interfere by decreeing a specific performance. Nor will it interfere when the evidence leaves the agreement as to any of its terms in uncertainty.”

Cooper vs. Carlisle, 17 N. J. Eq., page 525. At page 530 this Court held:

“Now, to this established doctrine of the courts of equity, that part performance will take a parol contract to convey lands, out of the statute of frauds, there are certain limitations, which are as well settled as the doctrine itself. We are not willing to carry the doctrine beyond these established limitations. Among these it is established:

1. That the parol agreement must be clearly proved to the satisfaction of the court.

2. The contract proved must be clear, definite and certain, both as to its terms and subject matter.

3. That the contract and remedy in this, as in all other cases of specific performance must be mutual.”

Clawson vs. Brewer, 67 Eq., page 201. At page 208 the Court held:

“That in claims of this character the proof should be clear and conclusive.”

Darling vs. Gilmore, 146 Atl., page 364 (not officially reported), our Court of Chancery held:

“A claim of this kind involving a large amount of money should have conclusive proof to substantiate it. The uncorroborated statements of the complainant and her husband are not, in my opinion sufficient in the absence of any written agreement to establish the claim she is now making.”

McNamara vs. Bohn, 108 Atl., page 764 (not officially reported). The Court held:

“The contract proved must be clear, definite and certain both as to its terms and its subject matter.”

Drake vs. Lanning, 49 N. J. Eq., 452. At page 459 the Court held:

“Such a contract is regarded with suspicion and will not be sustained, except upon the strongest evidence that it was founded upon a valuable consideration and was the deliberate act of the decedent.”

The complainants have not offered the character of testimony required by the cases in New Jersey. Only one witness was produced by the complainants to prove the alleged contract, to wit: Mrs. Asquith. Her testimony as shown in this brief cannot be considered a compliance with the cases in New Jersey to clearly and convincingly prove the alleged contract. Her testimony as hereinbefore shown is to the effect that Mrs. Babcock agreed to leave something to the complainants. That something is vague. From her testimony the conclusion may be drawn that Mrs. Babcock intended to leave a certain sum of money or that she intended to leave half of Mr. Babcock's estate, or that she intended to leave half of her own estate. She contradicts her own testimony, and her testimony cannot be given any credence and is not the character of testimony required to prove the alleged contract.

POINT II.

The alleged contract is not based upon a valuable consideration, nor did the complainants in good faith believe that they had a right to contest the Will of Edward P. Babcock.

The complainants were nieces of Edward P. Babcock, who at the date of his death owned no real estate. See exhibits D-6 and D-7.

Edward P. Babcock left him surviving no children. See exhibit D-4, and if the will of Edward

P. Babcock were set aside, the complainants would not have participated in the estate as all of his estate would have gone to his widow, Julia P. Babcock.

There is no testimony offered by the complainants that they believed in good faith that they had a right to contest the will of Edward P. Babcock. In fact, the evidence clearly shows, on page 49, that Elliott C. Smith, father of the complainants, informed the complainants that Mr. Babcock was indebted to him for the amount due upon a certain mortgage of \$6,000, which in fact was a falsehood, because it was shown in the evidence that the only mortgage which Mr. Smith had was for \$2,800 and that it had been paid and satisfied; that he sent his daughters to Mrs. Babcock in an effort to get some of her money to pay for the said mortgage. The record clearly shows, see Exhibit D-4, that no caveat was filed against the probate of the will of Edward P. Babcock, nor was an appeal taken from the probate of said will. The burden is on the complainants to show that they, in good faith, believed that they had a right to contest Mr. Babcock's will, in order to make the alleged promise to forbear, a consideration for the alleged agreement sought to be enforced by this action. *Rue vs. Meirs*, 43 N. J. Eq. page 377, at page 380, the Court held:

“The question whether a promise to forbear suit to enforce a disputed claim or right, where the claim or right is honestly asserted under the belief that it is substantial, although it is in fact wholly unfounded, is sufficient as a consideration to support a promise to pay money, has recently been put at rest in this state, by a decision of the supreme court. That court said in *Grandin vs. Grandin*, 49 N. J. Law, page 508, ‘the compromise of a disputed claim, made *bona fide*, is a good consideration for a promise,

whether the claim be in suit or litigation has not been actually commenced, even though it should ultimately appear that the claim was wholly unfounded, the detriment to the party consenting to a compromise arising from the alteration in his position, forms the real consideration which give the validity to the promise. The only elements necessary to a valid agreement of compromise are the reality of the claim made, and the *bona fides* of the compromise.' And what I understand is meant by the phrase, 'The reality of the claim made', is that the claimant shall assert his claim in good faith, believing that it is real."

It should be noted that the complainant Eleanor C. Smith did not take the stand, although she was in Court at each day of the trial and in fact the testimony clearly shows that she did not call upon Mrs. Babcock, nor had she any knowledge of this alleged contract except from what she learned from her sister, Mrs. Rice.

The complainants have not established their *bona fides* in the belief that they had an honest claim against the Edward P. Babcock estate, and are therefore not entitled to the benefits of the rule as laid down in *Rue vs. Meirs*, 43 N. J. Eq. page 377.

POINT III.

The complainants did not produce evidence which would justify the Vice-Chancellor in sustaining the bill of complaint.

In the cases cited by counsel in his brief, the testimony of witnesses was not contradicted nor was it inconsistent. It was clear and relevant and did not bear any intrinsic evidence of improbability. In this case, however, the situation is somewhat different. We have dealt with the testimony

at length in the earlier part of this brief, because this case is a case involving a question of fact, and it is evident from the reading of the testimony that the complainants neither supplied sufficient evidence to prove their case as required, nor were the witnesses entitled to any greater credibility than given by the Vice-Chancellor. The Vice-Chancellor was present when the witnesses testified, saw and heard the witnesses and was in a position to determine the credibility of the said witnesses. It has been shown by reference to the case formerly in this brief, the witness Smith clearly perjured himself. He testified that he held a mortgage of \$6,000 and that he held only one mortgage. The defense was able to show that there was one mortgage, but that that mortgage was for \$2,800.00, and it had been satisfied by the said Smith, whereas, he claimed that the mortgage had not been paid. He offered no testimony as to the contract, nor did Mrs. Rice. The actress woman, Mrs. Asquith, told a story tainted with lies, as is particularly called to the attention of this Court in this brief. The witness Pike testified that Mrs. Babcock said she would compensate the girls for their consideration of her. Miss Smith, one of the complainants, was present. She did not take the stand to corroborate the statement of Mrs. Babcock's visit, and, in reading his testimony, there is grave doubt as to whether or not Mr. Pike even saw Mrs. Babcock. His testimony is not evidence of the contract which the complainants attempt to prove.

In the case of *Laune v. Chandless*, 99 N. J. Equity, 186, cited by counsel, the Vice-Chancellor held, "that the witnesses presented good appearances, their stories were credible on their respective faces, and while I am unmindful of the scrutiny with which such testimony is always scanned, the fact remains that contracts of this

nature are frequently entered into". In the case before the Court the witnesses did not present good appearances, their stories were incredible, as will appear from the reading of the testimony, and the Vice-Chancellor would have done a great injustice had he believed the stories of the witnesses produced by the complainants.

It is therefore respectfully submitted that the decree appealed from should be affirmed.

WHITTEMORE & McLEAN,
Solicitors of Respondent,
ELIZABETH ORPHAN ASYLUM ASSOCIATION.

Dated, October Term, 1930.

EXHIBITS.

	PAGE
C. 6. Report of proceedings to the Comptroller in the Estate of Julia Pratt Babcock	1
C. 7. Exemplified copy of Record of the report of the administrator of the Estate of Caroline Babcock.....	2
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D. 3. Certificate of Record of Death of Edward B. Babcock.....	13
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D. 8. Record of death of Susan Wall Babcock	32
D. 13. Copy of Last Will and Testament of Julia P. Babcock.....	34
D. 14. Family tree of the Estate of Julia P. Babcock.	

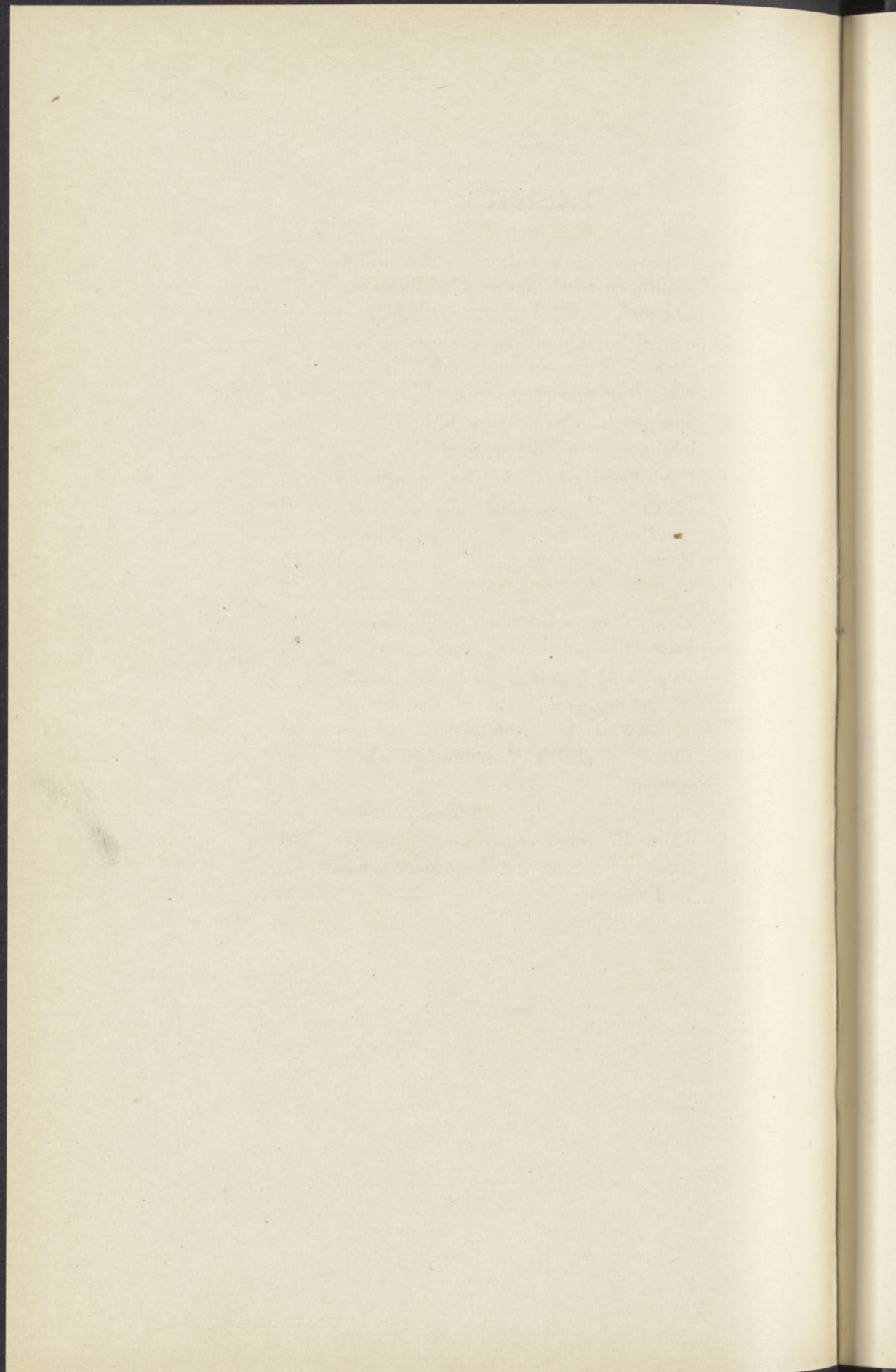


EXHIBIT C. 6.

**Report of proceedings to the Comptroller in the
Estate of Julia Pratt Babcock.**

STATE OF NEW JERSEY

Department of the Comptroller of the Treasury **10**
Transfer Inheritance Tax Bureau
Trenton

RESIDENT DECEDENT.

*In the matter of the estate of
JULIA PRATT BABCOCK, late of
Elizabeth, Union County* } *Affidavit of
Executor.*

20

SCHEDULE "A"

Real property in New Jersey, with Statement of
Liens and Encumbrances upon each parcel at
death of decedent.

Real Estate	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity	
124 West Jersey Street, Elizabeth, N. J.				
2,600 Land, 5,000 Buildings.....	\$7,600	\$25,000	\$25,000	30
5 acres meadow along Pennsyl- vania Railroad, Hamilton Town- ship, near Trenton, N. J.—				
Plot No. 4, Pages 13 & 14, Section No. 5 Basin Road (rear), Hamil- ton Township, Mercer County, N. J.		500	500	

40

Exhibit C. 7.

SCHEDULE "B"

PERSONAL PROPERTY

Stocks & Bonds Listed and Cash in Bank
Estimated
Market Value
* * *

10

Gross value\$376,506.30

EXHIBIT C. 7.

Exemplified copy of Record of the report of the
administrator of the Estate of Caroline
Babcock.

20

IN THE ORPHANS' COURT OF
MONTGOMERY COUNTY

* * * * *

Estate of CAROLINE H. BABCOCK, late of the
Borough of Trappe, deceased.

* * * * *

30

The first and final account of Edward B. Bab-
cock, executor, after due publication in accord-
ance with law and the rules of Court, was called
for audit December 20, 1904, and after proceed-
ing therein was closed.

APPEARANCE:—LOUIS M. CHILDS, Esq., for
the accountant.

The decedent, who resided in the Borough of
Trappe, died on the 10th day of April, 1903, a
widow and testate, leaving surviving issue, chil-
dren and grand-children.

40

Her last will and testament is dated the 10th
day of February, 1902, and was admitted to pro-

Exhibit C. 7.

bate by the Register of Wills of this County on the 14th day of April, 1903, and letters testamentary issued to the said Edward B. Babcock, who is named as executor.

After directing the payment of her debts and funeral expenses, the testatrix makes sundry bequests of articles of household goods, silverware, pictures, ornaments, &c. These bequests are contained in the second, third, fourth, fifth and sixth items of the will, and are to her sons, George H. Babcock, Edward B. Babcock, and F. A. Babcock, Jr., and her daughter Lena B. Bowen; and to her grand-children, Ellen, Elizabeth and Ezra Bowen, children of her said daughter Lena. 10

The house and lot of land belonging to the testatrix situate in Elizabeth, New Jersey, the executor is ordered and directed to sell, and the proceeds of the sale she distributes as follows: To her daughter, Lena, \$2000; and to her son, F. A. Babcock, Jr., \$2000 absolutely. She bequeaths to her son, Edward B. Babcock, \$2000 in trust, to pay the income annually to Mary, the wife of George H. Babcock of Phillipsburg, Montana during life, and at her death to divide the principal sum equally among her children. The testatrix then bequeaths to Ellen Bowen, one of her grand-children, out of the proceeds of the sale of said real estate \$500, providing said proceeds should be sufficient to pay the bequest. If the proceeds amount to more than what the testatrix has disposed of, she bequeaths the balance thereof to the children of her daughter, Lena in equal shares. 20 30

There was no inventory and appraisement of the estate filed of record. But the testatrix was possessed of a lot of furniture, &c. other than what she specifically bequeathed, and this 40

Exhibit C. 7.

was sold at auction in Elizabeth, and realized \$132. The vendue list was offered at the audit, and is attached to the petition for distribution.

10 The real estate in Elizabeth was sold for \$5000, and this, together with what was realized from the sale of the household goods and the conversion of some stock, and the amount received for a piano, comprise the estate accounted for by the executor.

20 The articles of furniture, silverware, pictures, &c., specifically bequeathed to the children of the testatrix have been delivered to them. There was produced at the audit their receipts for the same. These are attached to the adjudication. George received his articles May 30, 1904; Edward on April 4, 1904; Mrs. Bowen, March 30, 1904, and F. A. Babcock, Jr., March 31, 1904.

The articles specifically bequeathed to the children of Mrs. Bowen are still in the custody of the executor. These children are in their minority, and live with their mother. We, therefore, direct that the executor deliver the articles to the mother, to be safely kept by her for the children until they attain the age of twenty-one.

30 The account before the Court was filed in the office of the Register of Wills on the 19th day of November, 1904, to which there are no exceptions, and the adjudication costs are paid.

40 The accounting of the proceeds of the personal estate and of the real estate is kept separate. The accountant charges himself with the amount realized by the sale of goods, \$132; sale of Hocking Valley Railroad stock, \$281.62, and with \$7 received from a piano. He takes credit for the payment of sundry bills for funeral expenses, tombstones, administration expenses, amounting in the whole to more than what was

Exhibit C. 7.

realized out of the personal estate. But he accounts for rents received from the Elizabeth house to the amount of \$550, and after deducting expenses, &c., he shows a balance of \$309.34 in his hands. This amount is transferred to and charged in the debit side of the account of the personal estate, with the result of a balance of \$207.44 of personalty being shown. 10

After deducting certain expenses and commissions from the purchase money of the sale of the Elizabeth house, there is a balance of \$4739.20. The whole fund in the accountant's hands as shown by the account for distribution is \$4946.66.

Edward B. Babcock, the executor, declined to act as trustee under the will for the fund bequeathed in trust during the life of Mary Babcock, and upon petition we appointed the Montgomery Trust Company as trustee of the fund on the 30th day of March, 1904. 20

This fact does not appear in the petition for distribution, as it should, and we were obliged to go to the records for the information.

Before the filing of the account, there was a distribution made of the fund. There was not enough realized from the sale of the real estate to pay in full the amounts bequeathed thereout. There has been paid to the Montgomery Trust Company as trustee by the agreement of the other legatees \$2000 the full amount of the legacy, and Mrs. Bowen and F. A. Babcock, Jr., have each received \$1500. They each received somewhat more than the balance permitted, but the executor has made no complaint. The Trust Company was paid March 30, 1904; Mrs. Bowen was paid May 25, 1903, and F. A. Babcock, Jr. March 30, 1904. Both of them have executed re- 30

Exhibit C. 7.

leases in accord, satisfaction and full discharge of their legacies. These releases and the receipt of the Montgomery Trust Company were produced at the audit, and are attached to the adjudication.

10 The estate has been distributed, so that nothing is left for the Court but to confirm the account.

The certified copy of the account, copy of will, and petition for distribution are hereto attached, and it is ordered and decreed that the account be confirmed.

—————AND NOW, December 24, 1904, this adjudication is confirmed NISI

BY THE COURT

20

Wm. F. Solly
AUDITING JUDGE

1904 12/24 Notice of the filing of adjudication mailed to counsel of record.

ATTEST: A. L. SAXTON Asst. Clerk.

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Exhibit C. 8.

EXHIBIT C. 8.

**Mortgage—Caroline M. Babcock and husband to
Elliott C. Smith.**

CAROLINE M. BABCOCK & hus.

To

ELLIOTT C. SMITH.

\$2800

10

Cancelled of Record by discharge of Mortgage No. 492 recorded this 12 day of July A. D. 1904 in Book 6 of Discharge of Mortgages for Union County on page 178.

WILLIAM HOWARD

Clerk

20

THIS INDENTURE made the eleventh day of June in the year of our Lord one thousand eight hundred and ninety five between Caroline M. Babcock and Frederick A. Babcock her husband of the City of Elizabeth in the County of Union and State of New Jersey of the first part: AND Elliott C. Smith of the City of Elizabeth in the County of Union and State of New Jersey of the second part.

WITNESSETH that the said party of the first part for and in consideration of the sum of two thousand eight hundred dollars 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, enfeoffed, conveyed and confirmed and by these

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Exhibit C. 8.

presents do give, grant, bargain, sell, alien enfeoff, convey and confirm, to the said party of the second part and to him, his heirs and assigns, forever,

10 ALL that tract or parcel of land and premises, situate, lying and being in the City of Elizabeth in the County of Union and State of New Jersey, beginning in the southerly line of Jersey Street at the northeasterly corner of a plot late of Cornelius L. King; thence running easterly along said line of said street fifty seven and one half feet ($57\frac{1}{2}$) to the line of land of G. U. Milligan, thence in course at right angles to said street along said Milligan's land two hundred and ninety four and one half ($294\frac{1}{2}$) feet to land of the estate of John Chetwood deceased, thence 20 westerly in a straight line to the southeasterly corner of a lot late of said King fifty seven and one half ($57\frac{1}{2}$) feet more or less; thence along the said line of the said Kings lot at right angles to said line of said street two hundred and ninety five and one half ($295\frac{1}{2}$) feet to the place of beginning.

The said premises having been conveyed to the parties of the first part by Edward Van Solingen and wife by deed recorded in book 19 of Deeds p. 399 &c. in the Office of the County Clerk, Union County New Jersey. 30

TOGETHER with all and singular the profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining.

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof.

To HAVE AND TO HOLD, all and singular the above described tract or lot of land and premises

Exhibit C. 8.

with the appurtenances unto the said party of the second part his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever.

PROVIDED ALWAYS and it is agreed by and between the parties to these presents, that if the said Caroline M. Babcock and Frederick A. Babcock their heirs, executors or administrators do and shall well and truly pay or cause to be paid to the said party of the second part or to his certain attorney or attorneys, heirs, executors, administrators or assigns the sum of two thousand eight hundred dollars in one year from the date hereof with lawful interest for the same at the rate of six per centum per annum, payable semi-annually according to the condition of a certain bond bearing even date herewith, without any deduction or defalcation for taxes, assessments or any other imposition whatsoever then and from thenceforth, these presents and said obligation, and everything herein and therein contained shall cease and be void anything herein and therein contained to the contrary in anywise notwithstanding; and the said Caroline M. Babcock and Frederick A. Babcock the parties of the first part their heirs, executors and administrators do covenant and grant to and with the said party of the second part his heirs and assigns, that the said party of the second part his heirs and assigns shall and may from time to time and at all times after default shall be made in the performance of the proviso or condition herein contained peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises with the appurtenances, with-

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Exhibit C. 8.

out the let, suit, trouble, hindrance or denial of the said Caroline M. Babcock and Frederick A. Babcock, their heirs and assigns or of any other person or persons whatsoever and it is agreed by and between the parties to these presents, that the said party of the first part shall and

10 will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire in some safe and responsible Insurance Company or Companies to an amount not less than two thousand eight hundred dollars and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid and in default thereof, it shall be lawful for the said party of the

20 second part to effect such insurance and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises added to the amount of the said bond or obligation and secured by these presents and payable on demand with legal interest.

IN WITNESS WHEREOF the said party of the first part have hereunto set their hands and seals the day and year first above written.

30 Caroline M. Babcock (L. S.)
Frederick A. Babcock (L. S.)

Signed, sealed and delivered
in the presence of

F. F. McCORMICK as to
CAROLINE M. BABCOCK
WILLIAM H. CLARKSON as to
FREDERICK A. BABCOCK.

Exhibit C. 8.

STATE OF NEW JERSEY }
 COUNTY OF UNION } ss.

BE IT REMEMBERED that on this fourteenth day of June in the year of our Lord one thousand eight hundred and ninety five before me, a Master in Chancery of New Jersey personally appeared Caroline M. Babcock who I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed. And the said Caroline M. Babcock being by me privately examined separate and apart from her husband, did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, FREELY without any fear, threats or compulsion of her said husband.

10

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T. F. McCormick
 Master in Chancery of New Jersey.

STATE OF NEW YORK }
 COUNTY OF NEW YORK } ss.

BE IT REMEMBERED that on this seventeenth day of June in the year of our Lord one thousand eight hundred and ninety five before me William H. Clarkson, a Commissioner of the State of New Jersey to take the acknowledgment and proof of deeds, personally appeared Frederick A. Babcock who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered

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Exhibit C. 8.

the same as his voluntary act and deed, for the uses and purposes therein expressed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official this 17th day of June 1895.

10

William H. Clarkson (SEAL)
Commissioner for the State of
New Jersey in New York.

Rec'd. in Office Dec. 11, 1895
at 9:40 A. M. No. 1760

UNION COUNTY REGISTER'S OFFICE

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

20

I, EDWARD BAUER, Register of the County of Union, do hereby certify that the foregoing is a true and correct copy of the record of a certain Mortgage made by Caroline M. Bacock & hus. to Elliott C. Smith and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 130 of Mortgages for said County on Pages 496 &c

30 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 28th day of January A. D. 1930.

Edward Bauer
Register.

(SEAL)

HWH/MKK.

Exhibit D. 3.

UNION COUNTY
 REGISTER OF DEEDS
 CERTIFIED COPY
 of Mortgage
 Caroline M. Babcock & hus. 10
 TO
 Elliott C. Smith
 RECORDED
 in
 Book 130 Page 496 &c
 of Mortgages

EXHIBIT D. 3.

Certificate of Record of Death of **Edward B. Babcock.** 20

CITY OF ELIZABETH
 UNION COUNTY, STATE OF NEW JERSEY
 UNITED STATES OF AMERICA

I, THEO. W. BROKAW, City Clerk of the City of Elizabeth, Union County, State of New Jersey, do hereby certify that the following is a true and correct transcript from the Records of Deaths in my office. 30

Name of deceased
 Edward B. Babcock.

Date of Death
 September 6, 1923.

Sex of deceased
 Male.

Married or single
 Married. 40

Exhibit D. 4.

Age

69 years, 4 months, 10 days.

Occupation

Ret. Broker.

Medical attendant

Otto Wagner, M. D.

10 Place of Death

124 W. Jersey street.

Place of birth

Brooklyn.

Name of parents

Frederick and Caroline.

Cause of death

Cirrhosis of liver.

Place of burial

Evergreen Cemetery.

20 Name of undertaker

F. C. & H. C. Odgen.

IN WITNESS WHEREOF, I have here-
unto set my hand and affixed the Seal
(SEAL) of the City of Elizabeth on this 20th
day of January, A. D. 1930.

THEO. W. BROKAW

City Clerk.

30

EXHIBIT D. 4.

**Application for Probate of Will of Edward B.
Babcock.**

To the Surrogate of the County of Union

JULIA P. BABCOCK, the Executrix named in
the last Will and Testament of EDWARD B.
BABCOCK, late of the City of Elizabeth, in the
County of Union, and State of New Jersey, de-

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Exhibit D. 4.

ceased, hereby applies for the probate of the said last Will and Testament and shows that the deceased died September 6, 1923, and that the widow and the next of kin and heirs at law of the said deceased together with their respective residences or post office addresses, so far as the same are known or this applicant has been able to ascertain, are as follows: 10

(Decedent's former home was in Hunterdon County, this State)

This applicant the widow of decedent of 124 West Jersey St. Elizabeth, N. J.

Decedent left no children or issue of deceased children.

Lena B. Bowen, a sister, of Waterbury, Connecticut.

Frederick A. Babcock, George E. Babcock, of Philipsburg, Montana; and Marie (whose late married name is unknown to this applicant) of Seattle, Washington, only children of George H. Babcock, a deceased brother of the testator. 20

Eleanor Smith, of New York City, N. Y., and Caroline Rice, of ——— only children of Nellie Smith, a deceased sister of testator.

JULIA P. BABCOCK.

UNION COUNTY, ss. 30

Julia P. Babcock, above named, being duly sworn on her oath, says that the statements in the foregoing application for probate of Will made are true.

JULIA P. BABCOCK.

Sworn before me Sept. 17, 1923.

ROSABEL ALLIN,
Special Deputy Surrogate. 40

Exhibit D. 4.

IN THE NAME OF GOD, AMEN.

I, EDWARD B. BABCOCK, residing at Lebanon, Hunterdon County, New Jersey, being mindful of the uncertainties of human life and of sound mind, memory and understanding do
 10 make, publish and declare this my Last Will and Testament hereby revoking any and all former Wills by me made.

First, I order all my just debts and funeral expenses to be paid as soon as conveniently can be done after my decease.

Secondly, All my estate real personal and mixed and wheresoever situated I give bequeath and devised unto my beloved wife Julia P. Babcock, her heirs and assigns forever.

20 Lastly, I hereby appoint my said wife sole executrix of this my Will and she shall not be required to give bond in any place where I have property.

In witness whereof, I have hereunto set my hand and seal this twenty eighth day of October in the year of Our Lord, One thousand nine hundred and twenty-two.

EDWARD B. BABCOCK (SEAL)

30 Signed, sealed, published and declared by the said Edward B. Babcock to be his last Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of said Testator in his presence.

Clarence D. Meyer,
 85 Broad Street, Elizabeth, N. J.

Mary J. Cameron,
 11 Stewart Place, Elizabeth, N. J.

Exhibit D. 4.

STATE OF NEW JERSEY,

COUNTY OF UNION.

I, CHARLES N. CODDING, Surrogate of the County of Union, do certify the annexed to be a true copy of the last will and testament of EDWARD B. BABCOCK, late of the County of Union deceased and that JULIA P. BABCOCK of 124 West Jersey St., Elizabeth, N. J., the Executrix therein named, proved the same before me, and is duly authorized to take upon herself the administration of the estate of said testator agreeably to said will.

10

WITNESS, my hand and seal of Office the Seventeenth day of September in the year of our Lord One thousand nine hundred and twenty-three.

CHARLES N. CODDING,

20

(SEAL)

Surrogate.

STATE OF NEW JERSEY

UNION COUNTY SURROGATE'S COURT

I, GEORGE H. JOHNSTON, Surrogate and Clerk of the Surrogate's Court of the said County of Union, do hereby certify that I have compared the annexed copy of the Last Will and Testament of EDWARD B. BABCOCK, late of the County and State aforesaid, deceased, of the Application for Probate of said Will, and of the Letters Testamentary issued and granted thereon, with the record thereof in Book P, No. 2 of Wills, Page 586 &c., now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record, and I further Certify that No Caveat was filed

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Exhibit D. 5.

the date of this order; and if any Creditor shall neglect to exhibit his or her debt, demand or claim, within the said period of six months, public notice being given as aforesaid, such Creditor shall be forever barred of his or her action therefor against the said Executor.

George H. Johnston
Surrogate.

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Exhibit D. 5.

UNION COUNTY SURROGATE'S OFFICE.

10	<p>478</p> <p>In the matter of the estate of JULIA P. BABCOCK, Deceased.</p>	}	<p><i>Decree Barring Creditors.</i></p>
----	---	---	---

20 It appearing that the Surrogate of said County of Union on the 20th day of July Nineteen Hundred and twenty-eight made an order limiting the creditors of the above named decedent to six months to bring in their claims and demands against the estate of said deceased, and it further appearing by due proofs and to my satisfaction that the Executor of said deceased has given the notice prescribed by law, to said creditors to bring in their claims and demands within the time and in the manner directed and limited in said order, and that said notice has been posted, advertised and published according to law and as directed in said order: It is on this

30 twenty-fifth day of January Nineteen Hundred and twenty-nine ordered and decreed that all creditors of said decedent who have neglected to bring in their claims and demands against said estate, within the time so limited be, and they are hereby forever barred from their action therefor against the said Executor.

GEORGE H. JOHNSTON,
 Surrogate.

Exhibit D. 5.

STATE OF NEW JERSEY
UNION COUNTY SURROGATE'S COURT

(SEAL)

I, GEORGE H. JOHNSTON, Surrogate and Clerk of the Surrogate's Court of the said County of Union, do hereby certify that I have compared the annexed copy of the Surrogate's Order to Limit Creditors and Decree Barring Creditors in the matter of the estate of JULIA P. BABCOCK, late of the County and State aforesaid deceased, with the records thereof in Book I of Surrogate's Orders to Limit Creditors No. 110 and in Book D of Decrees Barring Creditors, No. 478 now remaining in this office, and have found the same to be a correct transcript thereof, and of the whole of such record. 10

WITNESS my hand and seal of office, this twenty-first day of January, in the year of our Lord one thousand nine hundred and thirty. 20

(SEAL) George N. Johnston
Surrogate and Clerk of the
Surrogate's Court.

30

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Exhibit D. 6.

EXHIBIT D. 6.

Federal tax return of the Estate of Edward B. Babcock.

RETURN FOR FEDERAL ESTATE TAX.

- 10 An Itemized Inventory by Schedule of the Gross Estate of the Decedent, with Legal Deductions.

Decedent's name—Edward B. Babcock.

Date of death—September 6, 1923.

Residence at time of death—124 West Jersey St., Elizabeth, N. J.

SCHEDULE L.

RECAPITULATION.

20	Schedule	Gross estate	Value
	A Real estate		\$ none
	B Stocks and bonds—approximately 152,917.00		152,917.00
	accrued income bonds 625.48		
	C Mortgages, notes, cash, and insurance		9,642.24
	D Jointly owned and other miscellaneous property		none
	E Transfers		none
	F Powers of appointment		none
	G Property identified as taxed within five years		none
30		Total Gross Estate.....	\$162,559.24

Exhibit D. 6.

DEDUCTIONS.

Schedule		Value	
H	Funeral expenses—nurse and doctors.	\$ 750.00	
	Administration expenses: Headstone	250.00	
	Executors' commissions	2,700.00	
	Attorneys' fees	2,500.00	
	Miscellaneous—accrued interest on debt 60.38		10
I	Debts of decedent (note broker's loan)	60,438.81	
J	Unpaid mortgages	none	
	Net losses during settlement.....	none	
	Support of dependents	none	
K	Property identified as taxed within five years	none	
	Charitable, public, and similar bequests	none	
	Specific exemption (resident decedents only)	*\$50,000.00	20
	Total Deductions	116,638.81	
	Total gross estate	162,559.24	
	Total deductions	116,638.81	
	Net Estate for Tax.....	\$ 45,920.43	

For recapitulation, deductions and net estate for non-resident estates see Schedule M.

* If nonresident strike this out.

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Exhibit D. 7.

EXHIBIT D. 7.

**Report of proceedings in the matter of the
appraisement of the Estate of Edward B.
Babcock.**

10 A true copy of the Will is annexed.

STATE OF NEW JERSEY

Department of the Comptroller of the Treasury
Transfer Inheritance Tax Bureau
Trenton

Resident decedent.

20	In the Matter of the Estate of Edward B. Babcock, late of 124 West Jersey St., Eliza- beth.	}	<i>Affidavit of Executor Ad- ministrator</i>
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COUNTY OF UNION, }
STATE OF NEW JERSEY. } ss.

30 JULIA PRATT BABCOCK Executor Ad-
ministrato of the estate of the above-named
decedent being duly sworn, depose and say :
Decedent Died testate September 6 1923, leaving
a last Will, copy of which is hereto attached.

Name and address of attorney or other rep-
resentative to whom all correspondence should
be mailed.

Clarence D. Meyer 85 Broad Street, Eliza-
beth, N. J.

That the decedent died possessed of an interest in
the following described real property located in
the State of New Jersey:

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Exhibit D. 7.

SCHEDULE "A"

The real property located in the State of New Jersey	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity	Caution (Do not write in this space)
none	.....	.....	.....	.....
.....
.....
Total,	none	none	none	

That the decedent died possessed of an interest in the following described personal property:

SCHEDULE "B"

Cash in Hand and on Deposit, Bonds and Mortgages, Promissory Notes, Claims, Insurance, Corporate Bonds and Stocks and All Other Personal Property Wherever Situate.	Estimated Market Value	Caution (Do not write in this space)
20M Chic. Mil. & St. Paul Gen. 4½ 1989—79%	\$ 15,975.00	.....
402 Southern Pacific R. R.—88	35,376.00	.....
200 Reading Co. Common—75	15,000.00	.....
303 Pacific Oil Co.—35	10,605.00	.....
10 Anaconda Copper Co.—40	400.00	.....
500 Miss. Kansas & Texas R. R. Com—11½	5,750.00	.....
\$ 8,800 " " " " " " " pl. 6% ser. C.—94½	8,316.00	.....
\$12,500 " " " " " " " 5% " A.—77%	9,703.13	.....
\$12,500 " " " " " " " 4% " B.—63%	7,921.87	.....
\$ 7,400 " " " " " " " adj. 5%—53½	3,959.00	.....
359 " " " " " " " pfd. A.—29	10,411.00	.....

SPECIAL ACCOUNT

200 Pacific Oil Co.—35	7,000.00	.....
300 Reading Co. Common—75	22,500.00	.....
	\$152,917.00	
Special cash with Wilcox & Co. \$6,470 credit in agent \$3,172.24	9,642.24	
Total	\$162,569.24	

Exhibit D. 7.

SCHEDULE "C"

All property transferred by the decedent within two years prior to the date of death without having received an adequate, valuable consideration.

All property transferred by the decedent in contemplation of death or intended to take effect in enjoyment at or after death.

All property passing by decedent's exercise of any power of appointment vested in him under the will, deed or other instrument of another.
None

That the debts chargeable against the estate of the decedent are as follows:

SCHEDULE "D"

If notes, brokerage accounts or other claims are secured by collateral, describe the collateral pledged, with its value as of the date of death of the decedent and state whether or not said collateral is included among the assets disclosed in Schedule "B." If collateral is not pledged, state after each loan "no collateral pledged."

Debt or Claim of	Nature of Same	Amount	Caution (Do not write in this space)
.....	Funeral expenses, nurse and doctor.....	\$ 750.00	.....
.....	Administration expenses (estimated) .....		.....
.....	Counsel Fees	2,500.00	.....
.....	Executors or Administrator's Commissions....	2,700.00	.....
(Detail Other Debts)	(Commissions must not be estimated and claimed unless a final account is to be filed with the Surrogate.)		
.....	Note on loan with Wilcox & Co.....	60,438.81	.....
.....	Federal Estate Tax	461.70	.....
	Total,		

That the following named beneficiaries are entitled to share in the estate of the decedent:

SCHEDULE "E"

Beneficiaries State full names of all who have an interest, vested, contingent or otherwise, in estate.	Relationship	Survived Decedent State Yes or No	Age of Life Tenants or Annuitants at Death of Decedent	Interest of Beneficiary in Estate
Julia Pratt Babcock	wife	yes	√	All

Deponent further says that all the above-named beneficiaries are still living with the exception of:

Names	Date of Death	Residence
.....
.....
.....

Exhibit D. 7.

That as such administrator executor deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions thereof.

That the decedent at the time of his death had no safe deposit box except none 10

That *Schedule A* attached hereto and made part hereof sets forth fully and in detail all the real property in the State of New Jersey of which decedent died seized and possessed, or in which.....he had any right, title or interest at the time of his death. It also sets forth a statement of the liens and encumbrances upon each parcel of real estate at the date of death, giving in the case of mortgages the amount, date, place, liber and page of record thereof. It also sets forth in the marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof as of the date of death of said decedent, and in the third marginal column the value of the decedent's equity in said property. 20

That *Schedule B* attached hereto and made part hereof sets forth fully and in detail all the personal property wheresoever situated owned by the decedent or in which said decedent had any right, title or interest at the time of his death. It also sets forth all of the moneys left by the decedent at the time of his death, whether in his immediate possession, standing to h..... credit or in which.... he had any right, title or interest, in banks of deposit, saving banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest 40

Exhibit D. 7.

thereon, if any, down to the last interest day prior to decedent's death in the case of savings banks, and down to the date of decedent's death in all other cases. It also sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature left by decedent, together with the fairly estimated market value thereof. It also sets forth a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of his death, and of all the promissory notes or other instruments in writing for the payment of money of whichhe died possessed, of whatever nature, with interest thereon, if any, giving the face values and estimated fair market values thereof, and if such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. It also sets forth a statement of any and all moneys payable to the estate from life insurance policies carried by decedent. It also sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of his death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities, giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stock, the dividends paid, and any other facts which may be pertinent affecting the value of said securities. It also sets forth the interest of decedent at the time of his death in any co-partnership or business, stating the nature and

Exhibit D. 7.

location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and good will thereof. It also sets forth in itemized form, together with the fair market value thereof, any other property owned or left by the decedent at the time of his death. 10

That *Schedule C* attached hereto and made part hereof sets forth all the property, real and personal, of which the decedent made any deed, grant, bargain, sale or gift in contemplation of his death or intended to take effect in possession or enjoyment at or after his death, or by reason thereof fell into or became part of the assets of this estate, by reversion, remainder or otherwise. 20
It also sets forth the property, real and personal, of which the decedent made any deed, grant, bargain, sale or gift within two years prior to the date of his death and without an adequate valuable consideration. It also sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by his of any power of appointment vested in his by the Will, Deed or instrument of another, together with the fair market value of each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which Will, Deed or other instrument are submitted herewith. It also sets forth all sums by way of commissions properly and legally chargeable against such property. 30

That *Schedule D* attached hereto and made part hereof sets forth the valid debts due and owing by decedent at the time of his death and allowed 40

Exhibit D. 7.

as just and fair by the Administrator Executor, together with any and all items claimed by the Administrator Executor as proper deductions herein. It does not include any claims as enter into the computation of decedent's interest in any copartnership or business. It also sets forth the
10 funeral expenses, administration expenses, counsel fees paid or estimated.

That *Schedule E* attached hereto and made part hereof sets forth the names and addresses of all persons beneficially interested in this estate, at the time of decedent's death, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's Will,
20 if any. It also contains a statement showing which of the beneficiaries named in decedent's Will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

That the deponent has made due and diligent search for property of every kind, nature and description left by the decedent and has been able to discover only that set forth in the schedules attached hereto and made part hereof, and that
30 no information of any other property of the decedent has come to his knowledge, and that she verily believes that decedent left no property except herein set forth. That all the sums claimed as deductions in the schedules hereto attached and made part hereof are lawful, just and fair. Deponent further says that wherever in any of the schedules the word "none" has been written in or wherever such schedule has been left blank, such word or omission is to be taken equivalent
40 to an affirmative allegation by deponent that the

Exhibit D. 7.

decedent left no property of the kind to which said schedule relates.

Julia P. Babcock

Subscribed and sworn to before me this 20th
November 1923

10

Clarence D. Meyer,
Master in Chancery of New Jersey.

NOTICE—This page is for Departmental use only.

REPORT OF DISTRICT SUPERVISOR
AND APPRAISER

*To the Comptroller of the Treasury,
Trenton, New Jersey:*

20

I,, who was by a Certificate of Appointment of the Comptroller of the Treasury of the State of New Jersey appointed an employee and appraiser, and designated District Supervisor of Transfer Inheritance Tax and Appraiser, in pursuance of the laws in relation to Transfer Inheritance Tax, do respectfully report as follows:

30

Name of Decedent EDWARD B. BABCOCK
Late of Elizabeth, *County of* Union, *New Jersey*
Date of Death September 6 1923

40

Exhibit D. 8.

File No.

IN THE
MATTER OF THE APPRAISEMENT
of the

10

ESTATE OF
Edward B. Babcock Deceased
Late of Elizabeth
County of Union
State of New Jersey

REPORT AND PROCEEDINGS

EXHIBIT D. 8.

20

Record of death of Susan Wall Babcock.

CITY OF ELIZABETH
UNION COUNTY, STATE OF NEW JERSEY
UNITED STATES OF AMERICA

30

I, THEO. W. BROKAW, City Clerk of the
City of Elizabeth, Union County, State of New
Jersey, do hereby certify that the following is a
true and correct transcript from the Records
of Deaths in my office.

Name of deceased
Susan Wall Babcock.

Date of Death
May 7, 1895.

Sex of deceased
Female.

Married or single
Single

40

Exhibit D. 8.

Age

— years, 10 months, 22 days.

Occupation
—

Medical attendant

L. R. Brown.

10

Place of Death

98 W. Jersey street.

Place of birth

Elizabeth, N. J.

Name of parents

Ed. B. Julia P.

Cause of death

Membranous Croup.

Place of burial

Evergreen Cemetery.

20

Name of undertaker

Jas. C. Ogden.

(SEAL) IN WITNESS WHEREOF, I have here-
unto set my hand and affixed the Seal
of the City of Elizabeth on this 20th
day of January, A. D. 1930.

THEO. W. BROKAW,
City Clerk.

30

40

Exhibit D. 13.

EXHIBIT D. 13.

**Probate Copy of the Last Will and Testament
of Julia P. Babcock.**

10 *In the name of the Father and of the Son and
of the Holy Ghost Amen.*

I, *Julia Pratt Babcock* residing at 124 West Jersey Street in the City of Elizabeth New Jersey, widow of Edward B. Babcock, mindful of the uncertainties of human life and being of sound and disposing mind, memory and understanding, do make publish and declare this my last Will and Testament, and I hereby revoke any and all former Wills by me made.

J. P. B.

20 *First:* I order all my just debts and funeral expenses to be paid as soon as conveniently can be done after my decease and I include perpetual care of my burial plot if such care has not been arranged during my life time.

30 *Secondly:* Should my sister Annie C. Wall survive me, then I direct my Executor and Trustee to accumulate my estate and pay the income, or so much as is necessary for the comfort maintenance and support of my sister and she shall have the use of my home and contents so long as she shall live.

If, however, it becomes best or advisable to discontinue such residence, my Executor, who shall also act as Guardian for Annie C. Wall, shall exercise his judgment as to the ultimate disposition of my home, leaving him to see that she, who is an invalid, receives proper care and treatment and made comfortable.

Exhibit D. 13.

J. P. B.

Third: My sister Amanda Pratt Wall having predeceased me, I make no provisions for her children, or grandchildren and it is unnecessary that I should.

Fourth: After the termination of the life estate, unless my Trustee deems it wise to sooner distribute the fund for specific legacies; I give and bequeath unto my friend and Pastor, the Reverend Littleton E. *Hubard*, D. D., Rector of St. John's Church, Elizabeth New Jersey the sum of Five Thousand Dollars

10

Unto Mr. Job W. Angus of Elizabeth New Jersey

a close friend of Mr E. B. Babcock, I give and bequeath the sum of Five Thousand Dollars; and unto Catharine A. Brady, my faithful maid, I give and bequeath the sum of Five

20

codicil II

Thousand Dollars.

Fifth: I give and bequeath the use and income of Five Thousand Dollars, payable upon like condition as set forth in the preceding paragraph unto my friend Alice Babcock Pries for

J. P. B.

30

whom I was chosen a God parent and the principal sum of money shall be paid to said child when she becomes of age.

Unto my sister in law, Mrs. Lena B. Bowen of Easton Pennsylvania, I give and bequeath the sum of one hundred dollars.

Sixth: I give and bequeath unto Otto Wagner, M. D. of Elizabeth New Jersey, the sum of Five Thousand Dollars as a remembrance and in appreciation of his devoted care and kind

40

Exhibit D. 13.

treatment to my husband and the sympathy shown during his illness.

10 *Seventh:* I wish to allow and the residuary legatees will permit my Executor, Trustee and Guardian under this Will, whom I request to accept full compensation for his services as attorney and counsel. He shall also be permitted to receive his commissions to the *utmost*,

J. P. B.

5% allowed by law and the amounts fixed and stated in his accountings shall be permitted upon the final settlement of my estate.

20 *Eighth:* All the rest, residue and remainder of my estate, wheresoever situated, I give bequeath and devise in equal parts unto The Elizabeth Orphan Asylum of Elizabeth New Jersey: and Madam Alphonsa Lathrop Rosary Hill Home, situated at Hawthorne, New York, for treatment and care and comfort of patients suffering incurable cancerous disease.

J. P. B.

30 Lastly I hereby appoint my friend and attorney Clarence D. Meyer of Elizabeth Executor and Trustee, also Guardian for Annie C. Wall, under this my Will, I also request that he arrange with the Evergreen Cemetery Association to have suitable flowers placed annually upon the graves in our plot, which is known as the lot of Susan T. Wall my beloved mother

My Executor and Trustee shall not be required to give Bonds.

In Witness Whereof I have hereunto set my hand and seal this first day of October Nineteen Hundred and twenty three.

Julia P. Babcock (SEAL)

*Exhibit D. 13.**Signed, Sealed Published and Declared*

by the said Julia Pratt Babcock to be her last Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of said Testatrix in her presence.

10

Stephen T. Quinn Elizabeth N. J.

Mary J. Cameron Elizabeth N. J.

Clarence D Meyer

Elizabeth N. J.

A. Codicil.

I, *Julia Pratt Babcock* add this codicil to my Will which bears date October 1 1923 and I alter and amend my Will as follows:

20

In the fourth item I have given several bequests to various people and I now change and cancel the legacy to Mr Job W. Angus, because I have given him various articles. In place and in stead of such legacy to Mr Angus, I give and bequeath unto my friend *Mr Harry C.*

Codicil

Sheehy, in the employ of my bankers Wilcox and Company New York City, the sum of Five Thousand Dollars

30

In all other respects I reaffirm my said Will

All family portraits I give unto my executor for the purpose of destruction in compliance with my expressed wishes, with the exception of the portraits of my mother and my sister Mary B. Hoy which he shall give unto my faithful maid Catharine Brady.

40

Exhibit D. 13.

I give my executor power to sell real estate.
In witness whereof I have hereunto set my hand and seal this eleventh day of February in the year of Our Lord One Thousand Nine hundred and twenty four.

10 Julia P. Babcock (SEAL)

Signed, Sealed Published and Declared
 by the said *Julia Pratt Babcock* to be a codicil to her Will and her last Will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of the said testatrix in her presence.

20 John F. Newcomb
 68 Broad Street
 Elizabeth, N. J.

Walter H Wetton
 113 Madison Ave
 Elizabeth, N. J.

Clarence D. Meyer Elizabeth N J

30 I, *Julia Pratt Babcock* hereby add a second codicil to my Will and cancel the bequest to Catharine A. Brady therein set forth.

I give and bequeath unto Nora Farrell the five shares of stock in Elizabethport Mutual Building and Loan Association, provided she the said Nora Farrell is in my employ at the time of my death.

I reaffirm all other matters in my Will and first codicil contained not in conflict herewith.

Signed and Sealed June 2 1924

40 Julia P. Babcock (SEAL)

Exhibit D. 13.

Published and Declared by the said Julia Pratt Babcock to be a second codicil to her Will *and her Will* and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at the request of said Testatrix in her presence.

10

Clarence D. Meyer
85 Broad St Elizabeth—

Lena Isakson
96 Rahway Av Elizabeth—

J. P. B.

~~I, Julia Pratt Babcock hereby cancel and revoke the bequest of Five Thousand Dollars to Mr Harry C. Sheehy in the first codicil to my Will for the reason that I have paid him that sum of money in cash April 15 1925 to enable him to become interested in the firm of Wilcox and Company~~

20

J. P. B.

I, Julia Pratt Babcock hereby make publish and declare a *Third Codicil* to my last Will and Testament in manner following.

In my Original Will, bearing date October 1, 1923, I have made provision for my beloved sister, Annie Campbell Wall, who has since departed this life, as there is no necessity for conserving my estate for her use or benefit, I therefore direct my Executor and Trustee to pay all Inheritance Taxes upon the legacy of any beneficiary in the Will or any Codicil made by me, out of the corpus or residue of my estate so the persons mentioned shall receive the amount stated and given them without tax or deduction whatsoever

30

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Exhibit D. 13.

10 *Item 2. I hereby cancel and revoke the bequest of Five Thousand Dollars given to my friend Mr Harry C. Sheehy in the first codicil to my Will for the reason I have already paid him that sum of money in cash April 15 1925 to enable him to become interested in the firm of Wilcox and Company Bankers in New York City in which firm my husband was formerly connected.*

20 *Item 3. I have given Catharine A. Brady a legacy in the fourth item of my Will and afterwards cancelled and revoked it by a provision in the second codicil of my Will. It is my wish and I hereby give and bequeath unto my faithful maid, Catherine A. Brady the sum of Five Thousand Dollars, as a small token in remembrance of her kindness and attention to me and faithfulness extending over a long period of years.*

Item 4. In all other respects I reaffirm my Will and codicils thereto and my Executor and Trustee shall be given ample time in which to sell or dispose of my estate real personal or mixed, including the stocks and bonds for the best interest of the estate to enable him to comply with my wishes the same as if I were acting therein.

30 *In Witness Whereof I have hereunto set my hand and seal this fifth day of November in the year of our Lord One Thousand Nine hundred twenty six.*

Julia P. Babcock (Seal)

*Exhibit D. 13.**Signed Sealed Published and Declared*

by the said Julia Pratt Babcock to be a third codicil and her last will and Testament in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and in the presence of the said *Testatrix* at her request.

10

Clarence D. Meyer
85 Broad Street
Elizabeth N. J.

Dorothy Henriques
535 Elizabeth Avenue
Elizabeth N. J.

I, *Julia Pratt Babcock* hereby make publish and declare this my *fourth codicil* to my last Will and Testament and added to make certain my friend Clarence D. Meyer shall receive whatever household furniture, including the Duncan-Phyfe chairs, and other chattels he wishes to select in remembrance of me.

20

In all other respects my Will and codicils are affirmed.

In Witness Whereof I have hereunto set my hand and seal this seventeenth day of January in the year of our Lord One Thousand nine hundred twenty seven.

30

Julia P. Babcock (Seal)

Signed, Sealed Published

and *Declared* by the said *Julia Pratt Babcock* to be her last Will and Testament and a codicil thereto in the presence of us who were present at the same time and signed our names hereto as witnesses in the presence of each other and at

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Exhibit D. 13.

the request of the said Testatrix in her presence.

Charles J. Meyer
625 Westminister Av
Elizabeth N. J.

10 Dorothy Henriques
535 Elizabeth Ave
Elizabeth N. J.

STATE OF NEW JERSEY,
COUNTY OF UNION.

I, GEORGE H. JOHNSTON, Surrogate of the County of Union, do certify the annexed to be a true copy of the last will and testament of and codicils thereto of Julia P. Babcock, late of the County of Union deceased and that Clarence D. Meyer, of 85 Broad St., Elizabeth, N. J., the Executor therein named, proved the same before me, and is duly authorized to take upon himself the administration of the estate of said testatrix agreeably to said will and codicils.

WITNESS, my hand and seal of Office
the Tenth day of July in the year of
(SEAL) our Lord One thousand nine hundred
and twenty-eight.

30

GEORGE H. JOHNSTON
Surrogate.

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Exhibit D. 13.

Inventory.

The following duties are prescribed by the Orphans' Court Act, as Revised, P. L. 1898, Page 715, &c.

Sec. 58 requires every executor and administrator to file an inventory with the Surrogate within three months from his appointment; if he fails to do so it becomes the duty of the Surrogate to report such neglect to the Orphans' Court, and if the court so direct, to issue citation compelling the filing of such inventory; and in case of continued default the court shall revoke the letters issued. **10**

Account.

Secs. 114 and 116 direct the filing of an account by every executor and administrator within one year after appointment. **20**

Sec. 117. If any executor or administrator neglects to render an account for the space of two years it becomes the duty of the Surrogate to report such neglect to the Orphans' Court, and, under the direction of the court, to issue citation compelling an accounting; and in case of continued default the court shall remove such executor or administrator from office, and he shall pay the costs out of his private estate and forfeit his commission. **30**

EXHIBIT D. 14.

Family tree of the Estate of Julia P. Babcock.

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