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I.

NOTICE OF APPEAL

(Filed, May 25, 1926.)

NEW JERSEY PREROGATIVE COURT

In the Matter of the Appeal from a Decree of the Passaic County Orphans' Court, admitting to probate a certain paper writing purporting to be the Last Will and Testament of Franz Ulrich, deceased.

Langley J. Burchill, one of the legatees and devisees under a certain paper writing purporting to be the Last Will and Testament of Franz Ulrich, deceased, hereby appeals to the Court of Errors and Appeals in the Last Resort in All Causes, from that part of the final decree made in the above entitled caused on November 19th, 1925, which orders and decrees as follows:—

> "It is, on this nineteenth day of November, nineteen hundred and twenty-five, ordered, adjudged and decreed, that the said paper writing admitted to probate by the Orphans' Court of the County of Passaic, is not the last will and testament of Franz Ulrich, deceased, and that the same be not admitted to probate, and that the said order of the Orphans' Court of the County of Passaic, dated January 31st, nineteen

II.
Notice of Appeal

hundred and twenty-four, admitting the said paper writing to probate as the last will and testament of the said Franz Ulrich, deceased, be and the same is hereby reversed and set aside, and that the letters testamentary thereon, be and the same are hereby revoked."

Dated, May 22nd, 1926.

William B. Gourley,
Proctor for and Of Counsel with the Appellant.

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

William B. Gourley,
Of Counsel with the Appellant.

Endorsed: Service hereof acknowledged, May 22, 1926.

Edward F. Merrey,
Proctor, Caveators-Respondents.

III.
Petition of Appeal

PETITION OF APPEAL

(Filed, May 29, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS

In the Matter of the Appeal from a Decree of the New Jersey Prerogative Court, reversing and setting aside an Order of the Passaic County Orphans' Court admitting to probate a certain paper writing as the Last Will and Testament of Franz Ulrich, deceased.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Langley J. Burchill, the appellant in the above entitled matter, respectfully shows that:

1. Petitioner, as one of the legatees and devisees under a certain paper writing purporting to be the Last Will and Testament of Franz Ulrich, deceased, finds himself aggrieved by a part of the final decree made in the New Jersey Prerogative Court by His Honor, Edwin Robert Walker, Ordinary of the State of New Jersey, bearing date November 19th, 1925, in the Matter of the Appeal from a decree of the Passaic County Orphans Court admitting to probate a certain paper writing purporting to be the Last

Will and Testament of Franz Ulrich, deceased, in this respect, to wit: that the said decree of the New Jersey Prerogative Court adjudges and decrees as follows:

> "It is, on this nineteenth day of November, nineteen hundred and twenty-five, ordered, adjudged and decreed, that the said paper writing admitted to probate by the Orphans' Court of the County of Passaic, is not the last will and testament of Franz Ulrich, deceased, and that the same be not admitted to probate, and that the said order of the Orphans' Court of the County of Passaic, dated January 31st, nineteen hundred and twenty-four, admitting the said paper writing to probate as the last will and testament of the said Franz Ulrich, deceased, be and the same is hereby reversed and set aside, and that the letters testamentary thereon, be and the same are hereby revoked."

2. Petitioner appeals from that part of the decree of the Ordinary which decrees as aforesaid, upon the ground that the same is erroneous, illegal and improper.

3. Petitioner therefore prays that the said decree of the said Ordinary may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioner may have

such other relief in the premises as to this Court shall seem proper.

Dated, May 28th, 1926.

William B. Gourley,
Proctor for and Of Counsel with Appellant.

Endorsed: Service of within Petition of Appeal acknowledged June 1, 1926.

Edward F. Merrey,
Proctor of Cav. Resp'ts.

VI.

Answer to Petition of Appeal

ANSWER TO PETITION OF APPEAL
NEW JERSEY PREROGATIVE COURT
(Filed, June 26, 1926.)

In the Matter of the Appeal from a Decree of the Passaic County Orphans' Court, admitting to probate a certain paper writing purporting to be the Last Will and Testament of Franz Ulrich, deceased.

The answer of Rozina Ulrich, Frank Ulrich, Rosina Burchill, and Katherine Handwerk, to the petition of appeal of Langley J. Burchill.

(1) These respondents are advised, believe, and submit that said decree is just and in accordance with law, and deny that said decree or any part thereof is erroneous, improper or illegal, but on the contrary allege that said decree in every part thereof is legal, proper and correct.

They therefore pray that the said decree may be in all things affirmed with costs to be adjudged to these respondents.

Edward F. Merrey,
Proctor for and of Counsel with Respondents.

VII.

Statement of Caveats

STATEMENT OF CAVEATS, PETITION FOR PROBATE AND ISSUANCE OF LETTERS OF ADMINISTRATION PENDENTE LITE

On August 1, 1924, Frank Ulrich filed a Caveat with the Passaic County Surrogate protesting against the admission to probate of any paper purporting to be the last will and testament of Franz Ulrich, deceased.

On August 4, 1921, a petition for the probate of the will of the said Franz Ulrich was filed with said Surrogate of Passaic County.

On August 6, 1921, citation was duly issued by said Surrogate and was returned served on all parties in interest.

On August 9, 1921, an additional caveat was filed by Rozina Ulrich, widow and Rosina Burchill and Katherine Handwerk children of said Franz Ulrich, against the admission to probate of any paper writing purporting to be the will of said Franz Ulrich, deceased.

On August 11, 1921, an order was made by the Passaic County Orphans' Court and duly filed, appointing Langley J. Burchill, Otto Handwerk and Frank Ulrich as Administrators Pendente Lite of the Estate of Franz Ulrich and letters of such administration were thereupon issued.

ORDER GRANTING PROBATE

(Filed, January 31, 1924.)

PASSAIC COUNTY ORPANS' COURT

In the Matter of the Probate of a paper purporting to be the Last Will and Testament of Franz Ulrich, dec'd.	Order granting probate

This matter being opened to the Court by Messrs. McCran & Pomfret, proctors for proponents, and it appearing that on August 4th, 1921, Langley J. Burchill, Otto Handwerk and Frank J. Ulrich, the executors named in the Last Will and Testament of Franz Ulrich deceased, late of the County of Passaic, duly presented the said paper to the Surrogate of the County of Passaic aforesaid, for probate; and it further appearing that on August 1st and August 9th, 1921, caveats against the probate of said will were duly filed with the said Surrogate by Rozina Ulrich, widow, and by Frank Ulrich, Rosina Burchill and Katherine Handwerk, children of the said decedent, and that thereupon citations were issued to all persons in interest and returned duly served; and the matter coming on to be heard, and the Court having taken testimony and examined into the matter, and being of the opinion that the said paper writing was duly executed by the said Franz Ulrich as and for his last will and testament in the manner and form prescribed by the statute in

such case made and provided, and that the said Franz Ulrich at the time of the making of said will, was of sound and disposing mind, memory and understanding, and that said will was not the product of undue influence;

It is thereupon, on this 31st day of January, 1924, ordered, adjudged and decreed, that the aforesaid paper writing be and the same hereby is established as the last will and testament of the said Franz Ulrich, deceased, and that the same be admitted to probate; and it is further ordered, that letters testamentary thereon be issued to the said Langley J. Burchill, Otto Handwerk and Frank J. Ulrich, the executors in said will named, upon their duly qualifying as such.

And it is further ordered that a counsel fee of seventy-five hundred dollars be allowed to Messrs. McCran & Pomfret, proctors for proponents, and the Court being satisfied that the caveators herein had reasonable cause for contesting the validity of the said will, it is further ordered that a counsel fee of six thousand dollars be allowed John W. Harding and Edward F. Merrey, proctors for the caveators, the aforesaid counsel fees to be paid by the Administrators Pendente Lite out of the estate of the said testator.

Jos. A. Delaney,
Judge.

X.

Statement of Probate

STATEMENT OF PROBATE AND ISSUANCE OF LETTERS TESTAMENTARY

On February 4, 1924, a paper writing purporting to be the will of said Franz Ulrich deceased was admitted to probate by the Surrogate of Passaic County, and letters testamentary were thereupon issued to Langley J. Burchill, Otto Handwerk and Frank Ulrich, the executors therein named.

XI.

Statement

STATEMENT OF FILING NOTICE OF APPEAL, PETITION OF APPEAL AND ANSWER THERETO, ON APPEAL TO NEW JERSEY PREROGATIVE COURT

On February 21, 1924, a Notice of Appeal from that portion of the decree of the Passaic County Orphans' Court entered on January 31, 1924, which directed the admission to probate of the will of Franz Ulrich, deceased, and ordered the issuance of letters testamentary thereon to the executors therein named, to the New Jersey Prerogative Court was filed by Rozina Ulrich, Frank Ulrich, Rosina Burchill and Katherine Handwerk caveators, with the Passaic County Surrogate.

On February 27th, 1924, petition of appeal was duly filed in the Prerogative Court by the above named appellants, and answer to said petition of appeal was thereupon duly filed on February 29, 1924.

XII.

DECREE IN PREROGATIVE COURT

Decree in Prerogative Court

(Filed, November 20, 1925.)

NEW JERSEY PREROGATIVE COURT

In the Matter of the Appeal from a Decree of the Passaic County Orphans' Court, admitting to probate a certain paper writing purporting to be the Last Will and Testament of Franz Ulrich, deceased.	Decree

The appeal of Rosina Burchill, Frank Ulrich, Rosina Ulrich and Catherine Handwerk, from the order or decree of the Orphans' Court of the County of Passaic, made on the 31st day of January, Nineteen hundred and twenty-four, admitting to probate a certain paper writing purporting to be the last will and testament of Franz Ulrich, deceased, in the presence of Edward F. Merrey and John W. Harding, of counsel with the appellants, and of John Pomfret and Thomas F. McCran, of counsel with the respondents, Langley J. Burchill, Frank J. Ulrich, and Otto Handwerk, designated as executors in the said writing, and the court having read and considered the pleadings and the testimony taken in the said Orphans' Court, and having heard and considered the arguments of counsel, and being satisfied that said paper writing was the product of undue influence and was not the last will and

testament of the said Franz Ulrich, deceased, and that the said decree or order of the said Passaic County Orphans' Court is erroneous,

It is, on this nineteenth day of November, nineteen hundred and twenty-five, ordered, adjudged and decreed that the said paper writing admitted to probate by the Orphans' Court of the County of Passaic, is not the last will and testament of Franz Ulrich, deceased, and that the same be not admitted to probate, and that the said order of the Orhpans' Court of the County of Passaic, dated January 31, nineteen hundred and twenty-four admitting the said paper writing to probate as the last will and testament of the said Franz Ulrich, deceased, be and the same is hereby reversed and set aside, and that the letters testamentary thereon be and the same are hereby revoked,

And it is further ordered, that there be paid to Edward F. Merrey and John W. Harding, of counsel with the appellants, a counsel fee of $5000.00 and that there be paid to McCran and Pomfret, of counsel with the respondents, a counsel fee of $4000.00.

Respectfully advised,

Vivian M. Lewis,
V. O.
E. R. Walker,
Ordinary.

XIV.

Opinion at Prerogative Court

OPINION AT PREROGATIVE COURT

(Filed, November 7, 1925.)

NEW JERSEY PREROGATIVE COURT

In the Matter of the Appeal from a Decree of the Passaic County Orphans' Court admitting to probate a certain paper writing purporting to be the last will and testament of Franz Ulrich, deceased.	On Appeal

Mr. John W. Harding and Mr. Edward F. Merrey, for appellants.

Messrs. McCran and Pomfret, for the respondents.

Lewis, V. O.:

This is an appeal by the caveators from a decree of the Passaic County Orphans' Court, admitting to probate the last will and testament of Franz Ulrich, deceased. No written opinion has been filed in the Orphans' Court.

This will was attacked in the court below as being the product of the undue influence of one of the proponents, Langley J. Burchill, a son-in-law of the testator. At the time of his death the testator was 83 years of age. He died July 24, 1921. He left him surviving a widow, 82 years of age; one son, Frank; a daughter, Rose Burchill, wife of the proponent above-mentioned; a daughter, Catherine Handwerk; two grandchildren, children of a deceased son, Albert, and the widow of Albert, Albert died in 1919. Testator was of Swiss nationality, and had been active and aggressive in business affairs at Paterson, New Jersey, for many years, and had built up a successful establishment there. For many years his sons, Frank and Albert, worked with him in the business; and Frank seems to have been his most active aide. Another plant had been established and was operated at Allentown, Pennsylvania, which stood in the name of the two sons, Frank and Albert, until a short time before the testator's death. The two sons appear to have worked for comparatively small compensation by way of salary; but the testator gave them property and money from time to time, covering a long period of years; as he did also his two daughters, Rose and Catherine. In July, 1920, the testator, Franz Ulrich, made a will, which was marked "Exhibit C-6" in the case, by which certain bequests were made to his wife for life, and to his son Frank, and his daughters, Rose and Catherine. His wife, Rosina, his son Frank, and his sons-in-law, Langley J. Burchill and Otto Handwerk, were named as the executors of that will. It was drawn by Edward R. Weiss, an attorney-at-law of this state, in the presence of testator's wife. Burchill was not a beneficiary under that will. The mill property at Paterson, and the assets of the Paterson and Allentown plants, were given to his son Frank, subject to certain charges; the plant at Allentown having been meantime made over to the testator at the behest of

Burchill, who, a short time previously had come to work at the plant in Paterson. He had given up a position held by him in New York, and entered the employ of the testator at Paterson at a salary considerably less than he had been receiving; and he testified that he would have taken even less had the testator insisted upon it. Everything appears to have gone along smoothly with the family and the business until Burchill entered the employ of the testator. Frank was the active managing head of the business, especially in the testator's later years. The testator had relied upon Frank almost entirely in the conduct of the business, and it was his express desire that it should continue on in the Ulrich family after his death. Towards the end of the testator's life his health became very much impaired and his mental faculties deteriorated to a marked degree, so much so that he was reduced practically to a state of senility, and was physically unable to take care of his person; and at times he was personally very offensive. Doctor McBride, a medical petitioner, who stands high in this branch of his profession, testified that testator's faculties, mental as well as physical, were at a low ebb for a number of months prior to the time he made the will which is the subject of this litigation. It was drawn by Mr. Michael Dunn on March 24, 1921, on the last of four secret visits made by Burchill and testator to Mr. Dunn's office in Paterson. In Doctor McBride's opinion, during this period the testator was generally not in a fit condition to transact important business or to appreciate the nature of his property and the natural objects of his

bounty, although he thought there might have been times when testator was better than at other times; and he was not prepared to say that there could not have been a lucid interval when testator could have known and appreciated those factors. But he was positive in his opinion, that whatever may have been the testator's capacity from time to time to exercise the function of making his will during that period, his impaired physical condition unquestionably affected his mental condition to an extent that would render him preculiarly susceptible to undue influence.

Shortly after Burchill entered the employ of the testator, trouble began. Numerous instances appear in the testimony indicating that Burchill was a mischief-maker, and that he misrepresnted facts from time to time in order to influence testator's mind against his son Frank. This led eventually to the testator's requiring the transfer of the Allentown plant to him, Burchill having represented to him that Frank was really using that business as a competitor. Upon one occasion the father was misled by Burchill into believing that Frank had treated an old customer very meanly by having refused to bill an order sent in by him to the business; whereas the fact was, that nothing of the kind had taken place, but that it was another customer whose order had been refused because he was undesirable.

The testator was also led to believe that small peculations were being practiced by Frank and by Frank's son, which diminished the returns of the business; and these statements by Burchill to the testator turned out to be unfounded. Bur-

chill also assumed authority over and the right to direct the work of Frank's son, contrary to his real position, and this incident was misrepresented to the testator by Burchill. Testator took umbrage at the situation, but when called upon by Burchill to say who was boss, he at first said that he, the testator, was boss; and then, when taunted by Burchill, said that Burchill was boss.

Other instances appear in the testimony, which satisfy me that from the time Burchill entered the employ of his father-in-law, the testator, until the testator's death, he pursued a course of secret underhanded dealings intended to poison the mind of the testator against his son Frank, and prevail upon the testator to prefer Burchill to his son Frank in the disposition of his property. These difficulties referred to led Frank to withdraw from his father's business on several occasions; but the breaches were healed, and later on he would return. It was after one of these occurrences that the testator made the will of July, 1920, already referred to, which was drawn by Mr. Weiss. Notwithstanding the situation that then existed, it will be observed that he bequeathed practically the business and a large portion of his property to his son Frank by the will of July, 1920.

A few months before the death of the testator Burchill took him to Mr. Michael Dunn, an attorney-at-law of this state, on four different occasions. Mr. Dunn had not been testator's counsel generally before that, although he testified that he had done some work for him. Burchill had performed professional services for Mr.

Dunn when Mr. Dunn was the Prosecutor of the Pleas of Passaic County. Burchill testified that he did not know the nature and purpose of these visits to Dunn's office until after the fourth visit, when he said that the testator told him on his way home that he had made another will and had left it with Mr. Dunn. After the testator's death, however, Burchill declared to the other members of the family, that he had no knowledge of a will. Mr. Dunn testified that the will of July, 1920, had been destroyed in his office at the time the later will was executed but upon the trial in the Orphans' Court the prior will was produced by counsel for the caveators, it having been turned over to them by Mrs. Burchill, the wife of the proponent, who had purloined it from her husband's pocket, Burchill having obtained possession of and secreted it after the testator's death.

After a minute examination of the testimony, I am forced to the conclusion that it was most extraordinary that the testator, in his weakened mental and physical condition, could have refrained from in some way disclosing to his wife, or to some other member of his family, that he had made this new will, if he retained any recollection whatever of it. It seems very probable to me, that the old man never remembered making the last will, and forgot it as soon as it was made.

When a gift by deed or otherwise than by will is made to one who stands in a fiduciary relation to the donor, that gift is presumed to have been obtained by undue influence. However, while that is not strictly applicable to wills, still the fact of a fiduciary relationship, or a rela-

tionship of trust and confidence, coupled with other circumstances, indicating a bias or feeling hostile to the natural objects of one's bounty, usually more readily makes a case of undue influence than without the fiduciary or trust relation. Whether or not I find that a fiduciary relationship existed between the testator and Burchill is, however, not important, because Burchill unquestionably occupied a position of trust and confidence with reference to the testator. The active agency of the beneficiary of a will in procuring it to be drawn in his favor, especially in the absence of those who have at least equal claims upon the justice of the testator, and where the testator is enfeebled by old age and disease, is a circumstance strongly indicative of undue influence.

The former will, which was made in the presence of the testator's wife and prepared by Mr. Weiss, gave nothing to Burchill. This was made at a time, too, when all the circumstances adverse to Frank, urged by proponents as the reason for his disinheritance, already existed. Yet he was made the chief beneficiary under that will. Testator's disease had not then impaired his faculties. Eight months afterwards, mentally and physically weakened, he makes Burchill his most favored legatee by the will drawn by Mr. Dunn, prepared on four different occasions, with Burchill in an adjoining room part of the time and in the presence of testator and Mr. Dunn part of the time, with the whole transaction concealed from every other interested party. Now, why should Burchill be ignored, and the son Frank and Rosina, the testator's wife, favored in

the will drawn eight months before in the presence of Mr. Weiss and testator's wife? And why did he give to Burchill this large gift by sacrificing the gifts to his wife and his children, given by the will made only eight months previously?

In the former will "the use and income of the entire estate, real and personal" are given to the testator's wife during her life.

In the latter will, the only gift to the testator's wife is the income of a sum "not exceeding $10,000."

It is argued by proponents that the alleged trouble between testator and his son was the cause of the later discrimination against Frank, and in favor of Burchill, but no reason whatever appears why this testator, if of mental capacity, and free from influence, should make this great change in the gift to his widow with whom he remained cordial, in two wills made only eight months apart.

Not only did the new will change the gifts to the son and to the widow, but the widow was removed as an executrix and thus prevented from having any control of the management of the estate, which was put in the hands of Burchill, and the grandson, who might handle the same so that there might be little or no income from it.

I am entirely satisfied that this will is the product of the undue influence exercised by Burchill over the testator, actively encouraged by his wife, who worked with him until she realized that by the later will she, too, was discriminated against, and that her husband had overreached her, and then she switched over to, and became

one of the caveators. At the time the purported last will and testament was read, she was so affected by it, that she ran out of the house, partly unclothed, in a frenzy, and later on produced the former will and placed it in the hands of the counsel for the caveators, to refute the proponents' main testimony, after abstracting it from her husband's possession, who had suppressed it until that time.

I will advise a decree in accordance with these views, reversing the decree below and refusing to admit the purported will offered for probate.

Passaic County Orphans' Court

In the matter of

the

Estate of Franz Ulrich.

Before: Hon. William W. Watson, J.

Paterson, N. J., December 1, 1921.

Appearances:

Hon. Thomas F. McCran,
For the proponents.

Edward F. Merrey, Esq., and
John W. Harding, Esq.,
For the Caveators.

MICHAEL DUNN, sworn as a witness in behalf of the proponents, testifies as follows:

Direct Examination by Mr. McCran.

Q. You are a practising member of the Bar of this state? A. Yes, sir.

Q. And you have been for how long? A. Since Eighteen Hundred and Eighty-two.

Q. Practising where? A. Part of the time in Essex County and since Eighteen Hundred and Eighty-five in Passaic County, Paterson.

Q. I show you a paper writing purporting to be the last will and testament of Franz Ulrich and I ask you if you recognize the signatures on that paper? A. I do.

Q. Whose signature is appended to the paper where the seal is? A. Franz Ulrich.

Q. Whose signature follows the attestation clause? A. Michael Dunn and Michael J. Murphy.

Q. The signatures of Michael Dunn, is that yours? A. It is.

Q. The signature of Franz Ulrich, is that the signature of the man who made that paper? A. It is.

Q. The signature following the signature of that of Michael Dunn, is that of Michael J. Murphy, do you know that signature? A. Yes, sir.

Q. That is Mr. Murphy's signature? A. Yes, sir.

Q. When did Mr. Ulrich sign that paper with reference to the signatures of your own and Mr. Murphy? A. The paper was signed on the twenty-fourth of March, Nineteen Hundred and Twenty-one. Mr. Franz Ulrich signed first and afterwards Mr. Michael Dunn and Mr. Michael J. Murphy signed as witnesses.

Q. Before Mr. Ulrich signed that paper was it read to him? A. It was.

Q. Was all of it? A. It was.

Q. Was the attestation clause read to him? A. It was.

Q. Did Mr. Ulrich sign that paper in your presence? A. He did.

Q. In Mr. Murphy's presence? A. Yes, sir.

Q. Did you sign in the presence of Mr. Ulrich and Mr. Murphy? A. Yes, sir.

Q. Did Mr. Murphy sign in the presence of Mr. Ulrich and yourself? A. He did.

Q. After Mr. Ulrich signed the paper was any part of that paper read to him? A. Before he signed that paper, the paper was read and after he signed it the attestation clause was read.

Q. Just read that part? A. Signed, sealed, published and declared by the testator, Franz Ulrich, as and being his last will and testament in our presence who at his request in his presence and in the presence of each other have hereunto subscribed our names at the same time as witnesses.

Q. The paper was read to Mr. Ulrich before he signed it? A. Yes, sir.

Q. All of it? A. Yes, sir.

Q. After he signed was any statement made by him to you before you and Mr. Murphy signed? A. Only as to his acknowledgment of this signature except for the last named declaration.

Q. You and Mr. Murphy signed in the presence of each other and in that of Mr. Ulrich? A. Yes, sir.

Q. Where was that paper signed? A. In my office in Paterson.

Q. Where? A. In the Romaine Building.

Mr. McCran—We offer the paper in evidence. Paper purporting to be the last will of Franz Ulrich admitted in evidence and marked "Exhibit P-1, for the proponent."

Cross Examination, by Mr. Harding:

Q. I understood you to say that you read the attestation clause to the testator after he had signed the will, is that right? A. What I said on that score was this, that the whole will including the attestation clause was read before it was signed. After Mr. Ulrich signed the will I then asked him whether or not he signed, sealed and delivered that as his last will and testament and wanted us to witness it as such. He said he did and then we signed it.

Q. Mr. Dunn, you don't quite get my question, I think, you did read the attestation clause to Mr. Ulrich at some time? A. Just before he signed the will.

Q. Did you read it to him after he signed it? A. Yes, sir.

Q. What was your object in reading it twice? A. Because we read it to him the first time, then I was reading the whole will, when I read it to him the last time it was after he had signed it. I always make a practise of having the party making the will acknowledge and declare it.

Q. Why was it that you read the attestation clause to him both before he signed the will and after he signed it? A. To comply with the statute, after he signed, it was not necessary to read it before he signed it but we did.

Q. Is it your conception that you should read to the testator the attestation clause both before and after he signs the will?

Mr. McCran—I don't like to object but in proving the will any conception the witness might have would not affect what occurred.

The Court—That is true, but he is probably disputing his statement that he did it or that he did it for a certain purpose. I will allow it.

A. No.

Q. Is it your conception that you have to read to the testator, under the statute, the attestation clause at all? A. No.

Q. It is simply your practise, you say, to do it? A. Yes.

Q. Still I don't see why you should deem such a thing necessary? A. I have always under the statute felt it necessary that after the testator executes the will, to have him declare that he signed the same and executed the same as his last will in our presence and wanted us to witness it as his will.

Q. Did you read the will over to the testator in the presence of Mr. Murphy? A. Yes, sir.

Q. From beginning to end? A. Yes.

Q. And just what was the order of the proceeding, at just what time was it you said anything to the testator about this being his will? A. Oh, I had been talking to the testator about it being his will before Mr. Murphy was called in the office, he was called in the room from his office.

Q. Did you ask the testator, do you mean to say, whether he declared that to be his will before Mr. Murphy came in? A. It was not necessary.

Q. I asked you, did you, I think you said you did? A. No, the will was read over to Mr. Ulrich before being signed in the presence of myself and Mr. Murphy.

Q. Then you considered that a declaration itself when you say it was not necessary? A. No, then it was signed by Mr. Ulrich and after it was signed he declared in answer to my interrogation—

Q. What was your interrogation? A. After reading the attestation clause I asked him whether he declared this to be his last will and testament in our presence and wanted us to witness it as such. After reading the attestation clause he said he did and then we signed it.

Q. I merely want to get from you the exact order, then after he signed and you signed you read the attestation clause again did you? A. After he had signed then I had him answer as I have already stated.

Q. Did you read the attestation clause to him again then? A. Not verbatim.

Q. Then when you first said you read it twice you didn't mean you read it verbatim? A. Sometimes people don't want to know what I mean.

Q. I want to ask you this simple question, did you read to him this attestation clause twice verbatim? A. I read it to him before he signed, I did not read it to him verbatim after he signed.

Q. Then you only read, verbatim, the attestation clause to him once? A. Yes.

Q. I was curious to know why you should do it twice and that is what I understood you to say. How long did you know the testator, Mr. Dunn, I mean when did you first become acquainted with him by way of introduction? A. I have known him since Eighteen Hundred and Eighty-six or Eighty-seven, shortly after I came to the city.

Q. In what sort of way, intimately or otherwise? A. Intimately.

Q. Since Eighteen Hundred and Eighty-six? A. Yes.

Q. Where did you first become acquainted with him? A. Here in Paterson.

Q. At his home or place of business or where? A. I can't say at his home, some business, something brought me in touch with him.

Q. In Eighteen Hundred and Eighty-six what

business was he engaged in? A. I can't tell you now.

Q. Do you know any business he has been engaged in? A. Reed and harness business.

Q. Do you know when he became engaged in that business? A. No.

Q. When you say you knew him in a business way since Eighteen Hundred and Eighty-six, I wish you would tell us, do you mean where you were concerned or interested with him? A. No.

Q. You never did any business for him in those days? A. Not that I recall now, I might have collected some account or something like that.

Q. You often saw him from that time on? A. I couldn't tell you.

Q. Give me a general notion? A. I met him often times in the summer season up at Greenwood Lake, probably every week.

Q. You never did any business for him as counsel in any way except this will? A. I don't recall.

Q. You don't recall having any relations with him in a business way? A. I don't recall.

Q. How old a man was Mr. Ulrich when he made this will? A. I don't recall his exact age, I think it is upwards—, I wouldn't undertake to say.

Q. What do you think he was? A. I think I could tell you exactly if I could—

Q. Suppose I said eighty-two or eighty-three? A. I think it is in that neighborhood.

Q. Were you intimate enough to know his family? A. I only knew them by sight.

Q. You had no speaking acquaintance with them? A. No intimate acquaintance.

Q. Did you know his son Frank? A. I do now.

Q. Did you know his son who died? A. Yes.

Q. What was his name? A. Alfred.

Q. Do you know if Alfred had any children? A. The only one I knew is the one mentioned in the will.

Q. What is his name? A. His name is Frank.

Q. Do you know if Mr. Ulrich had any daughters? A. Yes.

Q. Mrs. Handwerk? A. Yes.

Q. Do you know her? A. No.

Q. Do you know her husband? A. I knew her husband by sight.

Q. How long had you known him? A. I don't know as I met him until after the making of the will.

Q. Do you know Mrs. Burchill? A. Only by sight.

Q. Do you know her husband? A. Yes, sir.

Q. How well do you know him? A. I have known him about twelve or fifteen years.

Q. How well do you know him? A. Simply a business acquaintance.

Q. Did you ever do any business for him? A. Not for him.

Q. Did you ever do any for his wife? A. No.

Q. Have you ever had any relations with Mr. Burchill at all, of any kind? A. Nothing more than a friendly acquaintance.

Q. Have you ever done any business for him? A. I don't recall.

Q. Did you ever counsel him in any way? A. I don't recall.

Q. Has he ever attended your office in any way, privately or otherwise? A. Not my private office.

Q. Anywheres in your office? A. He has done some professional work while I was engaged in the prosecutor's office in connection with work there but nothing else.

Q. You have talked with him while you were prosecutor? A. Well, he would be assigned to some duty in connection with enforcing the law.

Q. Who would be? A. Mr. Langley Burchill was.

Q. What duty was he assigned to? A. Special officer for inspection purposes.

Q. When was that? A. Different times in the past ten years.

Q. How long did these relations between Mr. Burchill and yourself, which you have just spoken of, continue? A. Very shortly, during Election Day.

Q. You assigned him, did you to perform some duty? A. He would be assigned among others.

Q. When you speak of Mr. Burchill as distinguishing his being with you, or his presence in the office, between your public office as prosecutor and your private office, what do you mean, he never saw you except in your office as prosecutor? A. That was the only relation I ever had with him.

Q. The only relation? A. Yes, sir.

Q. I ask you now how long did these relations continue? A. I ceased to be prosecutor in April, Nineteen Hundred and Twenty-one.

Q. Then I infer that your relations continued down to April first, Nineteen Hundred and Twenty-one? A. No, the election prior to that. The last

would be November, Nineteen Hundred and Twenty, that would be the last time he would have any duties assigned to him, that is during my term.

Q. When you speak of your office as prosecutor and your private office, do you mean they were in the same building or different buildings? A. One at the Court House and one in the Romaine Building.

Q. You don't mean to say that Mr. Burchill didn't see you in your office in the Romaine Building? A. Not in reference to discharge of duties as prosecutor.

Q. You don't say he didn't see you in relation to other matters, you don't say he didn't see you in the Romaine Building in reference to other matters? A. Not prior to this matter.

Q. But he has seen you there in reference to this matter in the Romaine Building? A. There is where our conversations have taken place.

Q. That is to say when you saw Mr. Burchill, except in your office as prosecutor, that you saw him in your office in the Romaine Building, it was in reference to this will? A. Since the will has been in existence I didn't see him about anything prior to that time.

Q. Do you mean to say, now that your attention has been called to it, do you mean to say that Mr. Burchill has not been in your office in the Romaine Building to see you prior to the making of this will? A. He was there about the time that Mr. Ulrich came there in reference to the making of this will.

Q. How long was that before the will was actually executed? A. I think—, I cannot say how

long, possibly two or three weeks, possibly there with Mr. Ulrich before.

Mr. Mc Cran—I object to this line of cross-examination at this time and I would like to have the Court rule on it.

Objection sustained.

MICHAEL J. MURPHY, sworn as a witness in behalf of the Proponents, testfies as follows:

Direct Examination by Mr. Mc Cran:

Q. What is your business or profession? A. I am an attorney at law.

Q. Are you a member of the Bar of New Jersey? A. Yes, sir.

Q. And have been for how long? A. Twenty years.

Q. And you practise where? A. In Passaic County, this city.

Q. Where, in Paterson? A. In the Romaine Building, my office is there.

Q. I show you a paper writing purporting to be the last will and testament of Franz Ulrich and marked for identification "Exhibit P-1" and ask you if you recognize that paper? A. I do.

Q. I ask you if you recognize the signature appended to that paper beside the seal? A. Yes, sir.

Q. Whose signature is that? A. Franz Ulrich.

Q. The testator or maker of that paper? A. Yes, sir.

Q. These other two signatures at the bottom of

that paper, on page three, do you know that writing? A. I do.

Q. Whose is that? A. The first is that of Michael Dunn and next my own.

Q. Michael Dunn, the last witness on the stand in this matter? A. Yes, sir.

Q. Did you see Mr. Franz Ulrich sign that paper? A. I did.

Q. Was that paper read to him before or after or at any time?

Mr. Harding—I don't think that is proper, I think he should be asked to state facts, he should be asked to tell just what took place.

Mr. Mc Cran—Counsel would prefer to follow his method in examining his own witness.

The Court—The only thing is there should not be any question implying an answer.

Mr. Mc Cran—I withdraw the last question.

Q. You say you saw Mr. Ulrich write that, I mean sign that paper? A. I did, yes.

Q. Did you see Mr. Dunn sign that paper? A. I did.

Q. When did you and Mr. Dunn sign that paper with reference to the time Mr. Ulrich signed it? A. We signed it immediately after Mr. Ulrich signed his name.

Q. Was anything done just before Mr. Ulrich signed that paper with reference thereto? A. The will was read by Mr. Dunn in full, item by item and the attestation clause.

Q. You said the will was read? A. The whole will was read by Mr. Dunn.

Q. What was your reference to the attestation clause? A. That was also read.

Q. At the same time the other part was read the attestation clause was read? A. Yes, sir.

Q. Then what happened? A. Mr. Ulrich signed it and after his signature to it he declared it to be his last will and testament and requested us at Mr. Dunn's question to witness his signature to the will.

Q. After that what was done? A. After that Mr. Dunn asked him whether this was his last will and whether he signed, sealed, published and declared it to such and he said yes.

Q. Then what was done? A. That was all.

Q. After he was asked this question did you and Mr. Dunn sign? A. We had signed it.

Q. After Mr. Ulrich had signed the will you said he declared it to be his last will and testament? A. Yes, sir.

Q. Mr. Dunn asked him if he declared it to be his last will? A. Yes, sir.

Q. After the statement was made or before, did you sign? A. After the statement was made that that was his last will, Mr. Dunn signed and then I did.

Q. Then Mr. Dunn signed it? A. Yes, sir.

Q. And then you? A. Yes, sir.

Q. Did Mr. Dunn see you sign? A. He did, yes.

Q. Did you see Mr. Dunn sign? A. Yes.

Q. You all signed one following the other? A. Yes, sir.

Q. And in the presence of each other? A. Yes, sir.

Cross examination by Mr. Harding.

Q. Where was that signed, what office was that signed in, Mr. Murphy? A. I didn't hear the question.

Q. Where was the will executed? A. In the front office of Mr. Dunn's suite of offices.

Q. You were engaged in business with Mr. Dunn at the time? A. Yes, sir.

Q. Was anybody present other than you and Mr. Dunn in any of the offices just at that time? A. Not in that office where the will was executed.

Q. What office were you in, or, were you called? A. I was called in by Mr. Dunn.

Q. What offices were you in? A. When the will was executed?

Q. Yes. A. In the front office.

Q. Who was in that office? A. Mr. Dunn and Mr. Ulrich.

Q. Did you know Mr. Ulrich? A. Very slightly.

The Court—How long had you known him?

The Witness—Four or five years I had known him by sight.

The Court—You are quite certain of his identity?

The Witness—Yes, sir.

Q. I assume from what you have stated you didn't have any conversation with Mr. Ulrich any more that what you have spoken of on that occasion? A. A little, just casual remarks.

Q. Did you know him before that? A. Casually, not intimately, but I was acquainted with him.

At this point the hearing was adjourned until Monday, December 19th, 1921.

PASSAIC COUNTY ORPHAN'S COURT

In the matter of the probate of a paper purporting to be the last will and testament of Franz Ulrich, deceased.

Before:
Hon. Joseph A. Delaney, Judge.
Paterson, N. J., May 22nd, 1922.

Appearances:
Hon. Thomas F. McCran, and
John Pomfret, Esq.
For the proponents.

John W. Harding, Esq., and
Edward F. Merrey, Esq.
For the Caveators.

Mr. McCran—On July twenty-fourth, last year, Mr. Franz Ulrich died leaving a last will and testament which was filed in the Surrogate's Office and against the property of which caveats were filed.

On December first, last, a hearing was had before Judge Watson and the proponents put on the stand the attesting witnesses and offered the will. An adjournment was taken from time to time and in the meantime the stenographer prepared a report of the testimony taken on the first day.

The matter now comes on to be heard before Your Honor, who succeeded Judge Watson as judge of

the Orphans' Court, Judge Watson's term having expired and Your Honor having been appointed for the term fixed by the constitution.

The stenographer's report having been fully made out, I now move that Your Honor take that instead of having the witnesses recalled.

Mr. Harding—We consent to that but I have one statement I wish to make. I shall consent to it subject to some remarks I want to make after Mr. McCran gets through.

Mr. McCran—I am finished now.

Mr. Harding—At the conclusion of the testimony of Mr. Dunn, who was one of the subscribing witnesses to the will and who was the attorney who drafted the will I was proceeding along a line of examination going to show the circumstances attending the excution of the will and with reference to the presence of one of the beneficiaries of the will, Mr. Burchill, whom we claim is the favored legatee and expect to show is the one who exercised undue influence on the testator.

In the midst of that examination the record shows Mr. McCran made this objection,"I object to this line of cross examination at this time and would like to have the Court rule on it." And it is there shown that the objection is sustained. The grounds of Mr. McCran's motion, the grounds upon which I resisted it and the grounds on which the Court sustained his objection are not stated in this record at all, which I think should have been done.

I have taken this up with the stenographer and he informs me that he had the conception that he was not to take down an argument, which of course

is correct, but I submit he should have taken down at the Court's ruling, the grounds of Mr. McCran's objection and the grounds on which I answered it.

The grounds of this objection of Mr. McCran's were that on cross examination of the witness I was confined entirely to an examination only as to whether or not the will had been properly executed under the statute that is to say, signed and properly declared according to the statute, and that I had no right at all to examine this witness at all with reference to the circumstances surrounding and matters relating to the possible influence that might have been exercised, or the state of the testator's mind or anything of that kind.

The Court sustained him on these grounds and held I was confined to an examination as to the execution of the will and if I wanted to go into these other subjects I had to call Mr. Dunn as my witness.

These grounds are not at all stated and I think they should have been in this record. I state it to Your Honor because I was convinced at the time, and still am, that it was the proper practise, and so far as I know, the universal practise in will cases is to allow an examination of the subscribing witnesses on all these things on trial of the case. I regard this as a probate contest it is not...

Mr. McCran—Of course I have no objection to counsel making a statement but I don't think argument should go into the record.

The Court—Of course the argument of counsel will not go into the record.

Mr. Harding—This is a motion I am making. I was just stating that my argument to him there was that this was a proceeding to establish a re-

lationship which would fix possession of the property of the testator with respect to the beneficiary, therefore it is not a probate case not only in the first instance relating to the execution of the will, the physical execution, but whether or not the will was the product of undue influence and also a question of testamentary capacity of the testator. So when persons, subscribing witnesses are offered by the proponents to the will, it has been, in my experience and so far as I can learn when this has been done, the caveator can if he wishes examine fully all of the circumstances on cross examination, and also if there was any undue influence exerted and also the testamentary capacity of the testator.

That ruling was made by your predecessor but I question whether you ought to consider it. It is not of material weight whether I am compelled to call Mr. Dunn to examine him or not.

The Court—If not, why take up the Court's time?

Mr. Harding—I don't wish to put myself before the Court in the position of examining him in that character, and being bound in any respect by what he might say. I consider I should have had a perfect right to examine him on this question I was examining him on in cross examination and that it should be treated that way now. The only reason this motion is made to Your Honor is if I call him, whether the effect of my examination should not be the same as if on cross examination.

The Court—That is rather difficult to say without having read the evidence at the former hearing. The suggestion is that I take the testimony as submitted at that time and then determine from the testimony what the judgment should be. That is a matter for you gentlemen to determine.

Mr. Harding—The other suggestion I would make is this, that I have stated my position to Your Honor and what has happened before Your Honor came into the case, that of course we should proceed now and call Mr. Dunn and then Your Honor on subsequent reflection could consider just what should be done.

Mr. McCran—I might say that Judge Watson said that day, even though he did overrule my objection and did permit counsel to proceed, counsel would then have to proceed with the witness as his witness on matters that did not relate directly to the paper itself so counsel's position is not difficult.

Mr. Harding—I submit to Your Honor now that it comes before you that we have had a ruling and I merely suggest to you what our attitude has been and will be and therefore you should consider what the effect of that rule was, whether or not we were entitled to examine Mr. Dunn on these matters on cross examination and whether or not our attitude in calling him now would have any other effect.

Mr. McCran—Then I take it that it is stipulated by counsel for the purpose of the record that the testimony taken before Judge Watson on December first in this matter shall be accepted by Your Honor, so far as the testimony then given by witnesses, called by the proponents.

Mr. Harding—I consent to that with the added qualification I have spoken of. I would suggest that the testimony be read if the Court desires.

The Court—I don't think that will be necessary.

MICHAEL DUNN, recalled to the stand by the Caveators and testifies as follows:

Direct Examination by Mr. Harding:

Q. When were you first employed to prepare and draft this will in question? A. I was first consulted by Mr. Franz Ulrich about February seventh.

Q. What year? A. Nineteen Hundred and Twenty-one.

Q. When you say about February seventh does that come from your recollection at this time or from memoranda you may have? A. Memorandum and recollection as well.

Q. Have you got the memorandum? A. Yes, sir.

Q. With you now? A. I have my diary at the office. I have the memorandum there I took from my diary at the time, that is I had it here at the last hearing, February seventh, Nineteen Hundred and Twenty-one shows a conference with Mr. Ulrich about a will.

Q. You have that diary in your office now? A. Yes, sir.

Q. Is that in your handwriting? A. I don't think it is, I think it is in my clerk's.

Q. That diary is made in the regular course of your business? A. Every day, yes, sir.

Q. Do you recall now that you had such a conference with Mr. Ulrich? A. Yes, sir.

Q. Was that the very first intimation you had that he wanted you to make a will? A. He came

in the office that day and had a copy of the old will with him.

Q. Was that the very first? A. Yes, sir.

Q. Was that the first intimation you had had from anybody that Mr. Ulrich wanted you to make a will? A. As I recall it that is the first intimation I had.

Q. I want you to be sure? A. I have got no other recollection in reference to any previous connection with him.

Q. Do you say there had been no talk between you and another person whatsoever? A. Not that I recall.

Q. About Mr. Ulrich making the will? A. Not that I recall.

Q. How did he meet you there, by appointment? A. I think possibly he may have telephoned, I don't recall whether he just dropped in or telephoned to see when I would be in or when they could meet me.

Q. Did you ever have more than one conference? With him? A. Yes, sir. About this subject?

Q. Yes. A. Yes, I had another one on the seventeenth of February, another on March twenty-first and twenty-fourth.

Q. On March twenty-fourth? A. The date of the will.

Q. Do you remember what hour of the day it was when you had this first conference? A. No, I don't recall.

Q. Can you remember whether it was morning or afternoon? A. I don't recall.

Q. Did he come to your office on foot? Was he alone or anybody with him? A. I think Mr. Burchill brought him there, brought him over in the machine.

Q. On February seventh? A. Yes, sir.

Q. How long was he there on that occasion? A. I can't say that.

Q. Have you anything in your memory at all that permits you to give an approximation of the time he was there? A. We had a long conference over the matter. It might have been an hour, it might have been an hour and a half.

Q. An hour and a half? A. Might have been two hours.

Q. Where did the conference take place? A. In my front office.

Q. Who were present at that time? A. Mr. Ulrich and I. Mr. Burchill came in with him and after Mr. Ulrich and I started to discuss the matter, Burchill stepped out into the other room, the library.

Q. At that conference did you get all the data that was necessary for you to have to enable you to draw the will as it was finally drawn? A. No.

Q. Did you get some? A. Yes, sir.

Q. Did he leave.... Did Mr. Ulrich leave you at that conference with full instructions to draw the will or was it left between you that he should come back and give you further instructions? A. He was to return.

Q. There was some subject then that wasn't definitely determined? A. Yes, there were some details not determined.

Q. Can you tell us what these details were that were not determined? A. I cannot now.

Q. You have no notion as to what they were? A. Only generally.

Q. State as general as you can what they were? A. He wanted to look up some matters as to the advances he had made to Frank his son, and about how much was the amount of it as compared with donations which he had made to the other children, and also he wanted to get an idea of the amount he had given the other children at different times.

Q. This matter of advancements, do you mean to say was the only thing left open? A. One other thing.

Q. Do you recall what that was? A. His son Frank at this time had abandoned his father and started in business for himself.

Mr. Harding—I move to strike out the statement that Frank had abandoned his father.

The Witness—That is what his father said.

Q. You say his father said that and that is why you state it? A. I am stating what the father said.

Q. Go ahead? A. He had tried to persuade Frank not to start in business in opposition to his father and still had hopes that he might persuade him because he said Frank was starting in to take his customers and interfere with the business that he spent his life in establishing.

Q. He seemed to have a rather deep set feeling against Frank's starting in business for himself? A. He felt this way, that he had started this business and was hopeful that the name of Ulrich would be maintained in reference to it by reason of the fact that he had two sons, Alfred and Frank, and that

they were being trained in the business for the purpose of carrying on the business and they would maintain the name of Ulrich in the silk business. And he felt that Frank after he had done so much for him had abandoned him and was starting in business for himself and was going around soliciting his customers thereby seeking to depreciate the value of his business and destroying it to that extent.

Q. You say he said he had hopes of having Frank come back? A. Yes, that he could become rational and come back.

Q. He wanted him to come back even then? A. He was hopeful.

Q. He was hopeful he would come back even after the will was made? A. It was not drawn then.

Q. After that time he was still hopeful? A. He thought there might still be a chance.

Q. He clearly expressed himself to you that Frank had of his own accord left and abandoned him and set up this business for himself? A. Yes, sir.

Q. Is that right? You say yes? A. Yes, sir.

Q. That was said the very first time he went there? A. He mentioned that the first time.

Q. Did he express himself.... Did he say anything about what he intended to do for Frank if he should come back there after? A. No.

Q. He said nothing about that? A. No.

Q. Did he in any way intimate that if Frank should thereafter come back that the will he was going to make would be affected one way or the other? A. No, because he didn't make any new will then.

Q. I am talking about on this occasion when he told you he hoped still he might get Frank to come back. Whether he expressed himself in any way as to what he would do about Frank if he should come back. A. No, no further than I have stated, that he started out in business with the idea of building it up and that his sons would perpetuate the business in his name.

Q. His son Alfred died? A. Yes, sir.

Q. Did he still express the hope that the business might go on and wanted Frank to have it? A. Yes, and the grandson, the son of Alfred.

Q. He expressed a rather strong desire even then on February seventh that Frank might be prevailed upon to come back and carry on the business in the Ulrich name? A. He felt it would be more in keeping with his desires and original anticipation to have that course pursued than to have Frank go off on an independent line.

Q. These are the two things you say were left open when he saw you on the first occasion on February seventh, the matter of advancements to Frank and the matter about Frank leaving him in this way. These were the two matters left open? A. No, there were other matters left open he hadn't made up his mind then as to just what extent of the estate was he would dispose of. How much he would give to Mrs. Handwerk and how much he would give to Mrs. Burchill and how much he would give to the grandson Frank.

Q. I want to ask you this so I may get a conception of what you have in mind. Why did you consider this matter of Frank leaving which was disclosed to you by Mr. Ulrich as a matter left open? Why should that matter be left open to give you

further consideration to draw up the will? A. I am not giving you my mind but I am giving you his mind. His mind was that Frank had become unbalanced, badly advised.

Q. I asked you what matters were left open that were not fully determined upon by him so you couldn't go on and draw his will. You said one of them was about this Frank's possible coming back. I should infer from what you said, if that was left open, that he intended to do something, to find out whether Frank was coming back or not? A. That is what I anticipated.

Q. You thought it was possible if he could induce Frank to come back in the business the will would have been different? A. The will he contemplated making that day was not firmly fixed in his mind, only some details in connection with it, all of which details were predicated upon the idea that Frank's abandonment of him was going to continue, but he did not close all of the details in reference to it until he could first, himself, become familiar with the advances that had been made to the different children by him as well as to Frank, and second, whether or not there would be a change in Frank's attitude.

Q. You understood clearly from him that before he should definitely make his will he wanted to know what Frank's attitude was as to coming back in the business? A. Yes, sir.

Q. Your understanding was then, of course, that he was waiting to find out whether Frank would come back before he allowed you to make his will? A. Not exactly, he formulated a plan for a while in anticipation that Frank might not come back.

Q. He might have modified it if Frank had come back? A. It was not closed.

Q. He might modify it if Frank would come back? A. He did not close it.

Q. That is what you understood? A. I understood he wanted to look further.....

Q. Expressly you mean that Frank might come back to reason and come back? A. I could not infer what his reasons were.

Q. You did say he had hopes that Frank might come to reason and come back in the business so that the business could be carried on in the name of Ulrich? A. Yes, sir.

Q. Speaking of Frank, he spoke of him as his son? A. Yes, sir.

Q. On this occasion, I think you started to say and perhaps you were interrupted by me, he had some other will there? A. He had his will with him.

Q. The will that was then in force? A. Yes.

Q. Did he leave that with you? A. No, sir.

Q. Did he show it to you? A. Yes, sir.

Q. Do you know what ever became of it? A. It was afterwards destroyed when this will was executed.

Q. Who destroyed it? A. Mr. Ulrich tore his name off and the rest was torn up.

Q. In your presence? A. Yes, as I recall it.

Q. Do you know what the date of that will was? A. No.

Q. Can't you give it to me, about? A. No.

Q. Can't you give it to me within a year? A. No.

Q. How did you happen to see the will? A. He produced it there.

Q. Did you read the contents of it? A. I did at the time.

Q. Can you recall the contents? A. No, I cannot.

Q. Can you recall any of the contents? A. No.

Q. Did you use any part of it whatsoever in drafting your will? A. Very likely.

Q. What is your best recollection about it? A. Well, I can't say positively. Undoubtedly there are provisions in this will similar to some of those in his will.

Q. When you say undoubtedly, I want to know whether you base your notion upon what now rests in your memory or whether it is the case? A. My will was drafted after his will.

Q. You used it? A. I used it in making the draft to conform to the then existing conditions that were before me as they had been changed by the attitude of Frank.

Q. When you left him after this hour and a half did you see him go out? A. Yes, sir.

Q. Who went home with him? A. Mr. Burchill went out of the office

Q. Mr. Burchill went with him? A. Yes, sir.

Q. That was on February seventh? A. Yes.

Q. Did you have then any definite understanding when you were to meet him again or when he was to meet you and confer about the will? A. No, he was to let me know when he was coming around again.

Q. Your memorandum shows the next call as when? A. The seventeenth of February, ten days later.

Q. How long a time were you with him on that occasion, the seventeenth? A. I cannot tell you.

Q. Who came with him on that occasion? A. I think Mr. Burchill.

Q. Can you tell what took place on that occasion between you and Mr. Ulrich? A. Not in detail. All I know is that he came in to have a further conference in reference to the will.

Q. Had he found out then about the matter of advancements? A. Why, I think he had some more information on that subject than he had before.

Q. Had you taken any notes or memorandum as a basis for drafting the will on this occasion of February seventh? A. Yes, I made a rough draft of what he then wanted.

Q. How did you take them, by a stenographer? A. No, my notes and then had it extended.

Q. Have you preserved these notes? A. No.

Q How long did you preserve them? A. Until after the will was finally executed, I suppose.

Q. Then you destroyed them? A. Yes.

Q. Coming back again to the seventeenth of February, did you say then he had settled upon these matters you have referred to that were left open, namely advancements to Frank and the other children? Had he determined anything with reference to Frank coming back? A. On the seventeenth he seemed to be, as I recall it, satisfied that Frank was going to pursue an independent course.

Q. I notice just before you made your statement you glanced at a paper? A. That is nothing, it just has these dates on it.

Q. Have you anything at all in the way of memo-

randums which shows the substance of these statements made on different occasions by Mr. Ulrich? A. No.

Q. Did you have at the time? A. Whenever we had a conversation we would make little pencil notes and when the will was drawn it was destroyed.

Q. What you state now that took place on these different occasions comes from memory? A. On the seventeenth of February, my diary shows we had had a conference.

Q. Can't you give me any notion of how long this conference was between you and Mr. Ulrich? A. I would say it probably lasted an hour.

Q. Did he repeat what he had said on the first occasion or was anything new developed towards the execution of the will? A. He had new matters concerning it.

Q. Do you recall anything new that was said that prevented you from drawing the will on the seventeenth? A. Nothing special, only some details in reference to his advances and also some things he wanted to get in shape before he reached his final conclusion.

Q. After those hour or so conference he went away. Who went with him then? A. Mr. Burchill came with him.

Q. The same thing occurred? A Yes, sir.

Q. The next conference was when? A. The twenty-first of March.

Q. Do you recall how he happened to come there on that day? Had that been by prior arrangements when he left you on the seventeenth? A. I think not.

Q. You think possibly he called you up and made

an appointment? A. He probably called the office and made an appointment.

Q. He came the same way again with Mr. Burchill? A. Yes.

Q. What developed at that conference? A. That was the conference at which the will was drafted.

Q. On the twenty-first? A. Or notes taken for its draft.

Q. Then he completed all those things left for completion. He found out all this details? A. He was able to give me definite data in reference to most of the particulars.

Q. Then you wrote down the draft of the will, did you? A. Yes.

Q. In manuscript? A. I think it was.

Q. Did you dictate the will to your stenographer? A. I don't think so. I would not be sure, I have not looked it up.

Q. Will you look it up? A. Yes.

Q. It your best recollection that you wrote the will out in manuscript first? A. My notes were all written in manuscript, I don't recall whether I dictated the will to the stenographer or not. The final will was typewritten.

Q. What is your general practise whether or not you dictated it? A. I think it was dictated and typewritten.

Q. You think you dictated it? A. The final will was typewritten.

Q. I am speaking about the first one, what was done with that? A. Do you think you dictated

the draft you made on that date, on the twenty-first? A. No, not completely.

Q. Did you dictate that in Mr. Ulrich's presence? A. No.

Q. Do you think you called your stenographer in at all when you were talking to Mr. Ulrich on the twenty-first? A. I don't know, I don't think so.

Q. Can you find out about that? A. I can make inquiry.

Q. Will you do that for me? A. Yes.

Q. I take it when you say your best recollection is that you had dictated to your stenographer the rough draft of the will from the data which you had in manuscript, and you made that dictation to your stenographer on the twenty-first although you don't think it was complete? A. That is right.

Q. That is your memory? A. Yes.

Q. Can you state what the incompleteness consisted of so far as you can recall? A. The latter part of the will.

Q. You mean to say it related to the latter part of the will. Do you recall just what it was? A. No.

Q. Do you mean the last item? A. The last three or four paragraphs.

Q. On the twenty-first? A. Including the attestation clause.

Q. On the twenty-first was there anything left undecided as to how he wanted his will drawn, in any respect? A. Yes, there were some details left open.

Q. And you think that related to the last two or three paragraphs? A. Yes.

Mr. McCran—If we show you the will, will that help you to recall it?

Mr. Harding—That is a very good idea.

The Witness—It may as near as I can recall it.

Direct Examination, (continued) by Mr. Harding:—

Q. After reading the will, Mr. Dunn, can you state any more definitely what your memory is with reference to matters that were left undecided? A. As I said I think it was pertaining to the last two or three paragraphs, that would be paragraph six, seven and the last.

Q. Had he definitely determined anything with reference to Frank coming back on the twenty-first? A. That was settled.

Q. Had he definitely determined anything? A. It was settled that Frank would not come back but defied his father in every particular.

Q. You are stating now.... A. What Mr. Franz Ulrich said.

Q. You mean to say Mr. Franz Ulrich stated that to you? A. Yes, sir.

Q. He tried to get Frank to come back? A. This was the last.

Q. I understood you to say on the last day Mr. Franz Ulrich told you that he tried to get Frank back and he had defied his father and he couldn't get him back? A. He didn't put it in that form.

Q. What did he do? A. He said he couldn't do anything with Frank.

Q. About getting him back? A. About get-

ting any reconciliation at all. He was determined to go on and ruin his business.

Q. Did he say he had tried? A. Yes.

Q. Did he say he had seen him and tried to get him back? A. He didn't say he had seen him.

Q. He told you he had tried to get him back? A. He didn't go into details.

Q. Did he tell you whether Mr. Burchill tried to get him back? A. He didn't say anything about that.

Q. He left you on the twenty-first after about an hour and went away with Mr. Burchill again? A. Yes.

Q. Did he then make any definite arrangements about coming back afterwards? A. Yes, sir.

Q. Then was an appointed time fixed? A. He was to come back and execute the will.

Q. Was the time fixed when he should come back? A. I don't know that it was.

Q. You don't know whether it was understood on the twenty-first whether he was to come back on the twenty-fourth or not? A. I cannot say.

Q. On the twenty-first was everything definitely determined as to how you should draft the will? A. I said everything, practically everything was all fixed with the exception as I now recall it of paragraphs six, seven and the last one.

Q. Do you mean to say these last paragraphs you refer to were left open until he came back on the twenty-fourth? A. Not exactly left open but left in a condition where they were not finally extended.

Q. Were they drafted into the will before the testator came back. Before the testator came back there was there a complete draft of the will made?

A. I don't think that the sixth, seventh or last one were completely drafted.

Q. Were you waiting for something more definite from him that had not been settled on the twenty-first and because of that you didn't draft the will completely? A. Yes.

Do you recall the circumstances of his coming back on that last day, did he call you on the phone or how? A. No, I don't.

Q. Who came with him on that occasion? A. A. Mr. Burchill.

Q. How long was Mr. Ulrich in your presence at this conference before the will was executed? A. Probably an hour.

Q. After he executed it he went away then? A. Yes.

Q. Did he go away with Mr. Burchill then? A. Yes.

Q. After it was executed? A. Yes.

Q. That was on the twenty-fourth of March? A. Yes.

Q. Do you recall now why it was necessary for you to have a consultation with him for an hour on the twenty-fourth? A. Well, simply we were putting the final...,the will in final shape and having it executed and had a conference after it was executed.

Q. Did you spend much time talking to him about these last paragraphs of the will you referred to? A. The time was spent in conference about these final details and going over the whole will.

Q. What was there about the final details that required a consultation of about an hour? A. We went over the whole will.

Q. Did he change his mind about some of those things? A. All the other paragraphs were satisfactory after we had weighed them up.

Q. Why did it take all this time then? A. We were not like a pair of strangers, Mr. Ulrich and I.

Q. I think you said that at the time he came to you on the twenty-fourth you had already a complete draft in typewriting of this will excepting these last sections you referred to. Is that right? A. Yes.

Q. Then did you add the last three clauses on the twenty-fourth? A. They were extended at that time.

Q. You mean they were included in the draft then? A. Yes.

Q. Did you dictate them to your stenographer then? A. I would have to, to have them put in the machine.

Q. Did you dictate them to your stenographer from facts disclosed to you by Mr. Ulrich on this last conference you had with him? A. I cannot say that. I may have handed to her the paragraphs written out.

Q. You did make the changes on the twenty-fourth or on the twenty-fourth you put in new things that you didn't know about on the twenty-first? A. I put in things as they now are.

Q. There was that amount of changing from what it was on the twenty-first? A. It might have been simply recopying.

Q. What I am getting at is when you made these changes on the twenty-fourth did you write them out in manuscript, give them to your stenographer, or call her in and dictate them to her? A. I can't

say. It might have been that that sixth and seventh paragraph weren't dictated on the twenty-first and afterwards on the twenty-fourth when the will came to be finally executed, there were some changes made on these which changes were made by interlineation, by writing on the tpyewritten paper and handed to her to be recopied.

Q. Do you recall just prior to the execution of the will, just prior to the signature, that you sent out to be completed the incomplete copy of he will? A. I do.

Q. Now I am talking about the twenty-fourth when the will was executed, I ask you whether you recall just prior to the execution of that will, you had your stenographer complete what was the incomplete copy of the will? A. I had her complete the will on that day.

Q. By adding these last clauses you have spoken of? A. It might be recopying the sheet.

Q. Was anything then said to you by the testator about not being able to get Frank to come back? A. During the progress of our conversation there was.

Q. I am talking about the last conference? A. He was satisfied he wouldn't come back.

Q. He said again he was satisfied Frank wouldn't come back that he had tried to get him back and couldn't get him back? A. He said that he was satisfied he could do nothing with Frank.

Q. He said that again just before the will was executed? A. I don't know as he said it just before.

Q. Just before the will was signed on the twenty-fourth? A. That was his talk all the time.

Q. After this will was signed and witnessed what was done with it, I mean now, this will of March twenty-fourth, Nineteen Hundred and Twenty-one? A. It was put in a sealed envelope and put in my safe by his direction.

Q. How did you come to do it? A. It was put by him in a sealed envelope and the name of Mr. Franz Ulrich on the outside of it, and I put it in my box of wills.

Q. You said first off, by your direction. Did you have somebody put it in there or did you put it in yourself? A. I put it in myself, I have about a hundred in it. Mr. Ulrich told me to take care of it until he might call for it.

Q. Did you see that will at all after you sealed it and put it away in your safe until the death of Mr. Ulrich? A. I had no occasion to open it until after Mr. Ulrich's death.

Q. How did you come to open it then? A. I was notified he was dead.

Q. Who notified you? A. I seen it in the newspapers first and Mr. Burchill came down and told me he was dead and I notified all the rest of them, the rest of the family that after the funeral I would read the will at the house, and at the appointed time I went up and read the will to them.

Q. Had the envelope ever been opened before you read it, before you opened it on that occasion? A. Not that I recollect. I may have opened it and looked at it after I heard he was dead but the will wasn't out of the safe.

Q. I want you to be quite sure about that, Mr. Dunn, on account of some information I have. Wasn't that will, wasn't the envelope of that will torn

open when you appeared to read it before the heirs? A. What?

Q. Wasn't it torn open, not in their presence and before you went there? A. Yes, I said I opened it in the office and read it over.

Q. Was Mr. Burchill present? A. I think I did. I don't know whether I have them copies that night or not.

Q. You don't know whether you gave whom a copy? A. I made copies for all the parties.

Q. You are certain you opened that will in your office, tore the envelope open in your office? A. Yes.

Q. Do you know how long that was before you read the will to the heirs? A. After Mr. Ulrich's death and I read the will to them the night after his funeral at his residence.

Q. When did you open it in your office? A. When I first heard he was dead.

Q. Who was present when you opened it? A. I don't know. As soon as I hear of the death of a person whose will I have, I read the will and see what special directions there are in regards to funerals and so forth.

Q. Did Mr. Burchill see that will after you opened it until it was read by you after the funeral? A. I can't say.

Q. What is your best recollection about it? A. I cannot say.

Q. When you say you cannot say what do you mean? A. If he had called and asked to hear it I would have had no hesitancy in reading it to him or any of the other heirs.

Q. Didn't you do it? A. I went to the house.

Q. Didn't Mr. Burchill see that will in your office? A. That I cannot say.

Q. Will you swear that he didn't? A. You mean after the death of Mr. Ulrich?

Q. Yes. A. I can't say.

Q. Well, he talked to you about this will after Mr. Ulrich's death? A. Yes, sir.

Q. In your office? A. I can't say it was in the office, or whether I met him on the street or where.

Q. I just want to ask you one circumstance, as to your recollection about it. Do you remember when you brought the will to the house in the presence of the heirs? A. Yes.

Q. Do you recall when you produced the will you tore the envelope as if you were tearing the envelope open? A. I might have done so.

Q. What was the necessity for it? A. The probabilities are after I opened it in my office I put another envelope on it.

Q. Can you state now whether or not when you opened the will and tore the end of it, when you tore the end of the old envelope, that had been opened? A. I don't know.

Q. If you did do it what reason had you for doing it? A. I have to open the envelope in order to get the will out, it is a common practise with me.

The Court—The reference is to the old one.

The Witness—The common practise with me, if I have the old envelope, if I open it and read it, then I put it back in the old envelope and put it into a new envelope so that it is kept sealed.

Q. I am curious to know this. This is only from

information I have that I ask you this question. That envelope that had been already opened, left open and torn that you held your hand over the torn part and tore it again as if to take the will out. You don't remember whether you did that? A. No.

Q. If you did, you cannot give any reason why you did it? A. No, excepting the one I just mentioned. I take the will out and read it and get the information regarding any reference to funeral arrangements and put it back usually in the old envelope and put it in a new one and seal it and put it in the safe again.

Q. Was Mr. Burchill in your office between the time February seventh and the death of Mr. Ulrich? A. Not that I recall, I don't recall his being there at any time except when Mr. Ulrich was with him.

Q. You said, I think that you talked with him about this will after Mr. Ulrich's death? A. Yes.

Q. Did you read it to him? A. I read it to the family.

Q. Did you read it when you tore it open in your office to Mr. Burchill? A. I don't know whether I did or not. I don't know whether he was there at the time, between the time of his death and when I was up at the house, but I would not have hesitated to read it to him or any one of the heirs.

Q. The only question I have in mind is whether you recollect what you did about it? A. No.

Q. Who was the stenographer in your office? A. The same young lady I have there now, Miss Roscow, she has been with us five or six years.

Q. She is the tpyewriter you dictated this will to? A. Yes, sir.

Q. Who wrote this will after you drafted it? A. I think so.

Q. Have you the will now in hand, Mr. Dunn? A. I have a copy of it.

Q. Take the first paragraph of this will, the first item I will call it and which is the item providing for the payment of debts and funeral expenses was that fully determined upon when Mr. Ulrich first conferred with you on the seventh of February? A. Yes, that is one of the first clauses in his other will.

Q. You think that is the first clause in his other will? A. That is the first clause I always put in a will, I never drew one without it and I have been doing it forty-five years.

Q. Who were the witnesses to this other will? A. I don't know.

Q. Do you remember whether Mr. Weiss was one? A. I don't know.

Q. Didn't he tell you he drew it? A. The will spoke for itself.

Q. I want you to speak for yourself? A. I don't know who did and yet he may have. My impression is it was drawn up by Mr. Weiss.

Q. Was that your impression before I told you Mr. Weiss drew it or did you get that impression after I asked you the question? A. Well, there was some thing about it that indicated that Mr. Weiss had drawn it. I can't tell you whether it is because his name was stamped on the back of it or whether he was a witness.

Q. Wasn't there any talk between you and Mr. Ulrich when he presented that copy of the will as

to when it was drawn? A. The will spoke for itself.

Q. I want you to speak for yourself. Can't you tell me whether or not anything was said between you and Mr. Ulrich about when the will was made? A. I don't recall.

Q. Can you remember who was the other subscribing witness to the will? A. No.

Q. Do you mean to say now, Mr. Dunn, that you cannot tell me within any limits of time when that will was purported to have been drawn? I am speaking now of the will upon which Mr. Weiss's name appeared as a subscribing witness? A. I cannot tell.

Q. Can you tell whether it was a year before, two years before, three, four, five or anything about it? A. No, sir.

Q. Did Mr. Ulrich tell you whether or not he had made any wills before that? A. No, sir, I don't remember that he did.

Q. Did Mr. Ulrich tell you to make that provision in the first clause just as it is? A. I cannot say that. I put it in. I was instructed to draw a will and that is the first paragraph we always put in a will. It was read over to him before he signed it.

Q. Now I wish you would read the second clause? A. Yes. You want the second clause read so it goes into the record?

Q. I don't object but Mr. McCran is quite particular about not having the record burdened. You can go ahead and read it; I don't object. A. I give and bequeath annually from the income of my entire estate both real and personal, to my wife, Rosina Ulrich, for and during the term of her na-

tural life a sum not exceeding ten thousand dollars. The income derived therefrom in excess of the said ten thousand dollars shall be divided equally between my grandson, Frank Ulrich, son of Albert Ulrich, and my son-in-law, Langley J. Burchill.

Q. I ask you whether your recollection is now that that provision..., that you were instructed to put that provision in the will, instructed by Mr. Ulrich to put that provision in the will as it now appears? A. Yes, sir.

Q. He told you on the first occasion that he wanted that in just that way? A. What do you mean by the first occasion?

Q. On the seventh? A. I would say he did.

Q. Before you drafted the will you say that second clause as it now appears was directed just as it is by Mr. Ulrich? A. Do you mean when the will was drafted or executed?

Q. Do you remember whether that provision was just as it is when he gave you that instruction, gave it to you on the first occasion? A. He gave me instruction with reference to that.

Q. He gave it to you in substance as it is here now? A. Whether or not he changed it when he made more investigation as to his financial condition and increased or diminished it, I do not know.

Q. When he settled upon it he finally directed you to put it just the way it is now in the final will as it has been read? A. Yes, sir.

Q. Did you talk with him in the usual way that counsel does when employed to draft a will, as to what his property was. I mean the nature of his property. Did you inquire into all his property? A. Generally.

Q. Did he give it to you, state to you what it was? A. Yes, in a general way.

Q. What did he tell you his property consisted of on this first occasion, or when you drew this second clause? What did he tell you his property consisted of? A. It consisted of his mill and machinery and his business in Pennsylvania and other places where he had business. Also that he had certian securities, stocks.

Q. Did he tell you he had stocks? A. Bonds and so forth.

Q. What stocks did he tell you he had? A. I cannot recall.

Q. Do you recall whether he told you he had many stocks or not? A. I don't remember.

Q. Did he tell you what bonds he had? A. He may have. He figured out this amount of income from balances he had in banks where he had deposits and from other investments he had and the business would be entirely sufficient for the purpose of paying his wife that income.

Q. Did he tell you to say a sum not exceeding ten thousand dollars a year? A. Yes, sir.

Q. What? A. Yes.

Q. Do you know that the will that was submitted to you gave his wife all the income from the estate during her life? A. I cannot say. That will will speak for itself if you have it.

Q. I thought you said you destroyed it? A. I said, if you have it, or a copy of it, it will speak for itself.

Q. What gives you the impression that I may have it or a copy of it? A. The smile of your client, Frank.

Q. I don't see why you should make that inference? A. It is in keeping with what his father said to me about him.

Q. You seem to have a little feeling? A. Not at all, but his father said he was all the time deceiving him.

Q. And you now volunteer the statement that his smile is in keeping with that? A. Yes, when he kind of sneered at my answer.

Q. I didn't see it? A. Of course you didn't.

Q. What is your best recollection about the provision in that will? A. The old will?

Q. The will which you had in your possession, which you think was destroyed? A. I cannot tell you.

Q. Is it not your best recollection that the whole income from the estate was given to his wife, Rosina? A. I cannot say because I didn't impress myself with it.

Q. Did he seem to be at all concerned as to the certainty of this sum of money, this income of ten thousand dollars being derived from his estate? A. He hadn't any doubt about it at the time he made the bequest.

Q. You, I suppose as a rule would naturally question as to whether or not from the condition of his estate it appeared to be certain that his widow, who was an old lady about eighty years herself, would receive that? A. Yes, sir.

Q. That she would be sure to receive this sum of money, I say as counsel you would be concerned with that? A. He hadn't any doubt about it.

Q. Did you concern yourself about it? A. He seemed to be in no doubt of it.

Q. In making your provisions did you consider that the will provided so that she would get this sum of money? A. From his statements to me everything indicated that.

Q. The last clause of the will gives the executors full power to sell all this property? Generally what insurance, in case the power to sell was exercised, would there be that this estate would give an income of ten thousand dollars to support the widow? A. That says real estate, doesn't it?

Q. Yes, that includes the mill site, the interest that the testator had in the mill site where the business is located? A. Yes, a one-third interest.

Q. Nothing was said between you and the testator in case that were sold about this income, that there might not be sufficient income from this business? A. No.

Q. That didn't occur to you and nothing was said by the testator about that? A. Everything indicated that he had ample for all even without the mill site to pay her ten thousand dollars.

Q. Nothing was said by the testator or you about that? A. The conditions he presented were such that it left no room for doubt as to his ability to pay her the income of ten thousand dollars.

Q. Do you know as a matter of fact since his death she has received no such income? A. I don't know.

Q. Do you know she has received only about thirty dollars a week? A. I don't know anything about that. I suppose there is probably a reason for that that the executors pendente lite can explain.

Q. Did he state to you of his own accord without any help at all the substance contained in clause

four of the will? A. Yes, sir.

Q. With no help from you he substantially stated that in the beginning? A. Yes, that is before this will was drawn.

Q. And also clause five? A. Yes, sir.

Q. And also clause six? A. Yes, sir.

Q. And these are the clauses that were all settled before the twenty-first that I have spoken of? A. I said six and seven were the clauses I thought there was a slight modification in.

Q. You think there may have been a slight modification? A. In the sixth, seventh and last one.

Q. But the fourth clause. The clause which contains the bequests to his grandson, Frank Ulrich, son of Albert Ulrich and to my son-in-law, Langley J. Burchill, all the money and accounts due and owing to me in my business of Ulrich Company in Paterson, New Jersey, and Allentown, Pennsylvania, at the time of my wife's decease, together with all machinery, stock and fixtures appertaining or belonging thereto, and the stock and material belonging thereto now stored at the premises known as numbers eight hundred and twenty-one and eight hundred and twenty-three, Madison Avenue, Paterson, New Jersey, the same to be divided between them share and share alike. I also give them the automobile truck owned by me and used in connection with my said business. You observe by this provision practically everything connected with the two businesses, referring to the one in Paterson and the one in Allentown is given to them and in connection with that all money and accounts due him in his business. Was anything said by him as to whether or not he meant to give all that business, money and

accounts that were due to the business or to him, without deducting anything whatsoever from it for the liabilities he owed other people? A. He takes care of that in the first instance.

Q. I am asking you whether that occured to either you or Mr. Ulrich? That he was giving everything that was owed to him in that provision? A. Yes, he had ordered in the first paragraph that all his debts be paid.

Q. By that then the residuary legatees would have to stand for any customers he owed in his business? A. Not necessarily.

Q. Why not? A. Because his debts have to be paid before any legatees can get their share.

Q. You said that it had occurred to you at the time but did you consider at the time that these debts owing to the business, owing from the business to other customers would be paid in the first clause? A. The first clause is an order to pay all debts.

Q. What? A. That clause is an obligation on the executors to pay all debts.

Q. Did it occur to you and did you talk about that question as to whether or not in putting this first provision in it would include all debts of the business if there were any? A. Of course, he had money enough to pay his debts five times over at the time this will was made, yes, ten times over.

Q. Was anything said between you and Mr. Ulrich as to whether the business should continue after his death? A. Only what was said in the will.

Q. Was the question discussed as to whether or not that business should be directed to continue in order to insure an income to his wife for the remainder of her life?

Mr. McCran—I don't object but may I ask what the purpose of this examination is.

Mr. Harding—The purpose of this examination is under a well settled rule of evidence in cases of this character to show the facts that took place when this will was prepared and showing what statements were made by the testator to his counsel in preparing this will showing the nature of the estate, the objects of his bounty, all of which in the well settled cases and universally have been held to be a part of the res gestae going to show whether or not the will was a reasonable will which bears upon the testamentary capacity of the testator.

A. No.

Q. You recognize the fact that she was an old lady, you knew the fact? A. Yes, I knew it well.

Q. Did he speak to you about her age? A. No, I didn't have any discussion about her years but I knew her for twenty-five years or more.

Q. She is about eighty? A. I don't know what her age was.

Q. Was nothing whatsoever said between you and Mr. Ulrich with reference to whether or not that business should continue after his death? A. Nothing only what is here.

Q. He did tell you on one occasion he wanted it continued in his name? A. He said that having spent his life and energy in establishing the business and making it a success and having sons he trained in the business he hoped they would take pride in perpetuating the business and the name instead of tearing it down.

Q. Did you ask him who his children and descendants were and things of this kind? A. Yes, sir.

Q. What did he say? A. He told me nothing more than I have said.

Q. Whom did he mention to you? A. They are all mentioned here in the will.

Q. Are they all mentioned in the will? A. All except one.

Q. Who is that? A. The grand daughter, the daughter of Alfred, he didn't mention her in the will but he said he had spoken to Mrs. Albert Ulrich, the widow of his son and asked her if she would take care of the girlie if he would take care of the grandson, Frank, and she said she would. And he did take care of the grandson.

Q. Did he say anything about the possibility of his business continuing after his death? A. He didn't discuss that.

Q. You didn't discuss it with him? A. No.

Q. You didn't discuss with him at all or point out to him the possibility of seeing to it that his widow should receive her income during life? A. That is what he provided for.

Q. You didn't look over the different provisions of the will and see how they compared with the provisions for her income? A. From the statement of his financial condition he had an income which amounted to a surplus over and above ten thousand dollars.

Q. Did he tell you how much the business was worth? A. Generally, yes.

Q. Did he tell you the income from the business? A. No, only in a general way, not in detail.

Q. Did he say anything about Allentown? A. Yes.

Q. What did he say about that business? A. That he wanted to leave that business to Frank and Mr. Burchill at the time of his decease.

Q. Did he speak of Frank in connection with it? A. His son Frank?

Q. Yes. A. Yes, he related the instance when he made a discovery. That is his sons, Frank and Albert with Mr. Ulrich started the Allentown business and that his sons, Frank and Albert had made arrangements with the bank up there that they were the representaives of he Ulrich Company and all checks were signed by them and later he discovered that while a check was passing through the office here one day. The check came through to Ulrich and Company with instructions that it should be sent to Allentown to Frank's credit. Then he made an investigation and discovered that all his capital was invested in the business and yet he didn't have a dollar's worth of control but it was all in the name of Frank here and his brother Albert and he then insisted that they should cancel their names on deposits of that bank and put all in the name of Franz Ulrich and it was done.

Q. He told you that he required both Frank and Albert to make that cancellation and it was done? A. That is the substance.

Q. Is that what he told you? A. He required that the account be transferred to him.

Q. When did he say that took place? A. Before this will was drawn.

Q. Did he say both Frank and Albert had made that cancellation? A. He said Frank signed the

sale, he discovered that it was in the name of Ulrich and Company and he had Frank sign this bank book to show that he used to be the person who drew the checks.

Q. Did he call Albert's attention to it? A. He didn't mention him.

Q. Didn't he speak about Albert? A. Albert was dead at the time this will was drawn.

Q. You recalled after you made that statement that Albert was dead? A. I knew he was dead.

Q. Is that why you changed? A. He was telling me that he discovered it and compelled Frank to cancel it.

Q. I understood you to say he compelled Frank and Albert to sign it? A. He compelled Frank and Albert to sign this deposit slip.

Q. Did he tell you when that was that he required that? A. As soon as he discovered it, I don't know how long ago it was.

Q. Did he tell you the amounts he had on deposit in all financial institutions? A. He did at the time.

Q. Can you recall what they were? A. I have no recollection.

Q. You don't recall? A. Not as to amounts

Q. Did he tell you what land he had? A. He said he had a third interest in the mill and property there.

Q. Did he tell you he had other interests? A. He said he bought and paid for it himself and afterwards discovered it was not in his name about the time he wanted to build the mill but was in the name of his son Albert, that the deed was made to Albert and he had Albert make a deed to him and his son Frank and then he went on and built the mill and

then he put one third in his own name and one third in each of the boys' names.

Q. When he gave his interest in the mill in this will you understood he was giving a one third interest he held in the mill? A. Yes, sir.

Q. And Frank owned a third? A. Yes, sir.

Q. And Albert owned a third? A. Albert's estate.

Q. I notice in the fifth clause of the will, which you say—, I understood you to say in reference to this fifth clause that he instructed you substantially to make a provision for the fifth clause, substantially as it is, that was given to you before the twenty-first. A. That is my recollection.

Q. That is one of the original clauses he directed you to make? A. That is my recollection, it may have been given to me on the twenty-first.

Q. He gave it to you and you incorporated it in the draft of the will you had written off on the typewriter in the first instance? A. That is my recollection.

Q. I wish to call your attention to this provision. I give, devise and bequeath to my grandson, Frank Ulrich and my son-in-law Langley J. Burchill all money which is to my credit on deposit at my decease in any bank in Allentown, Pennsylvania, the same to be divided between them share and share alike, and the money on deposit in the bank devised by this item shall be a separate and distinct gift to them and not to be included as a part of the entire estate on which my wife is to receive income as mentioned above in the second item of my will. Did he volunteer of his own accord in the first instance to make that provision without any assistance from you one way or the other? A. Yes.

Q. He did? A. Yes, sir.

Q. Why was it written in this order that it is written if it was all provided for when you had your notes? Why didn't you in the second clause that provides for this income, expressly provide by taking out that bank account referred to in this clause instead of tacking on this provision in this exceptional way? A. I was drawing the will in keeping with his suggestions.

Q. What I can't understand is this, after all these things were provided for, why should you adopt the form of giving no more than ten thousand dollars of your income to the wife to be derived from all his estate in the second clause and instead of making an exception in the second clause pass along down until you get to the fifth clause and put it in that form? A. Well, I put it just as he desired it and put it in such form that there could be no trouble in construing it.

Q. It would seem to me, I don't know whether I am right or not, it would seem to me that after he had written the second clause that that must have been an after-thought? A. I don't know whether that is a fact or not. The one thing he had uppermost in his mind was to provide for Mrs. Ulrich and he went all over his investments and income and figured he had enough to do that.

Q. Can you give any reason why or was anything said between you and the testator, that after saying that Mr. Ulrich's income should come from the income of the entire estate, that you should afterwards provide this express provision that the money on deposit in any bank in Allentown should go to

these two beneficiaries at once and take it away from what she was to get her income from. Can you give any reason? A. That is the way he wanted it.

Q. Do you recall anything that was especially said to you about it? A. No.

Q. It was not your suggestion? A. It is just as he wanted to leave it.

Q. It was not your suggestion to him? A. No.

Q. His statement to you was just as you put it down? A. Yes, sir.

Q. You didn't speak to him about it or ask him why he did it? A. I put it in such a way that it would not be confused with item two.

Q. Did you point out to him in any way whether or not it would affect his wife's income? A. No, for the reason that the assets he had and claimed to have and the income which it was bringing in was more than enough to take care of Mrs. Ulrich independent of this Allentown bank account.

Q. These notes and money that was in the bank you realized would be liable to fluctuate from the time he made his will down to the time of his possible death? A. Yes.

Q. Was anything said between you and the testator as to the probability or possibility of there being a different amount in the bank or any of the banks at the time of his death? A. Only in a general way, he kept a big bank account, I mean a large cash balance on deposit in several accounts in banks in which he had great confidence.

Q. Those occurs to you at once Mr. Dunn, that these accounts which are subsequently devised in this will to Burchill and young Frank, the gradson, were subject to change. They were accounts that

belonged to the business or were really the working capital of the business? A. That is just what was spoken of.

Q. Did you and the testator discuss that fact that they were..., that these accounts were working capital? A. He rather thought...

Q. Did you talk about it? A. No, we did not have any discussion about it.

Q. Was anything said about the possibility of these accounts becoming greater or less at the time of his death? A. No.

Q. On that subject, he gave no expression as to that? A. It was not discussed, it was put down just as he wanted it. You see that fourth clause don't take effect until after her death.

Q. But I observe the fifth clause does. Do you? A. Yes, and so did he.

Q. You have observed that, have you? A. Yes.

Q. Tell me why, if you can, from any reasons he discussed with you, why you should take that income from the estate and expressly provide in the fifth clause so that these beneficiaries would get it immediately on his death? Why did you make that provision? A. I don't know only unless he thought he had plenty outside of that to take care of the obligations he was making. I think he had in some bank, fifty thousand dollars on deposit, drawing interest, at the time this will was made.

Q. Was anything said between you and he at all as to why he gave his daughters what he gave them? A. Yes, sir.

Q. Did he say or not whether he had any other money or property that was not disposed of by this will when he made the will? A. The will was sup-

posed to dispose of all his property on his decease.

Q. Are you sure of that? A. As far as I know.

Q. Did he state to you that he had stated all of his property that he owned? A. Specifically?

Q. Did he state to you that he had stated to you all the property he had owned on any of the occasions you conferred with him? A. He did not specifically.

Q. You asked him, you said, what he owned? A. Only in a general way.

Q. Did he tell you whether or not he had expressly given all the money he had in financial institutions? A. No.

Q. You did understand that everything he had was disposed of? A. That was the occasion of making this will.

Q. He told you he had money in Allentown? A. Yes, sir.

Q. And told you he had money in a certain account in the United States Trust Company? A. Yes, sir.

Q. Did he tell you he had any account other than that account in the United States Trust Company which is subsequently referred to in this will? A. He said the United States Trust Company but he didn't separate one account from another.

Q. Was it your understanding that these accounts that are referred to, let us see what they are.

Mr. McCran—Is it proper to take from this witness what his understanding was or what was said?

Mr. Harding—I think your objection is

well taken, I meant to say, of course, what was told him.

Q. I only want you to tell me what your understanding is from what the testator told you. In the fifth clause he gives as we have said, all the money which is to his credit on deposit at his death in any bank in Allentown. He told you did he, that he had money on deposit in Allentown? A. Yes, sir.

Q. By the sixth clause he gives to these two, his grandson and his son-in-law all the money which shall be on deposit in my account as Ulrich Company in the United States Trust Company in Paterson, New Jersey, at the time of my decease, after first deducting therefrom the sum of five thousand dollars which I give to my daughter, Catherine Handwerk, the balance of said moneys to be equally divided between them and to be paid on the decease of my wife. He expressly told you he had that? A. Yes, sir.

Q. Did he tell you how much it was? A. He might have done so at the time but I don't recall.

Q. Did he tell you what the Allentown account was? A. He probably did at the time.

Q. Did he tell you whether or not he had any other money in banks in any account or financial institution, or any account other than these which are provided for in the will? A. That I can't answer. He spoke in a general way on finances and these in particular. But he gave me to understand..

Q. Later, you mean? A. He said he had investments and money on deposit in banks that would enable his executors to carry out the provisions of this will.

Q. Did you understand this will was complete. That the testator intended that it was to be the final disposition of his property up to that time? A. This was to be his will.

Q. You think he meant to include everything? From his conversation you infer he meant to make a final and complete determination of everything he had on March twenty-fourth, Nineteen Hundred and Twenty-one? A. I presume he knew he was not stopped from giving a thousand dollars away if he desired.

Q. He never gave any intimation when he signed that will on that day, that he ever intended by any subsequent disposition to change the provisions of that will you drew on March twenty-fourth? A. He never said anything in my presence about changing the will.

Q. The point I am getting at is that when you finally drew the will and executed it he didn't leave you with any thought that he would change it in the future? A. No, sir.

Q. Did he ever say anything afterward? A. No.

Q. Did you see him after the will was drawn? A. Yes, sir, many times.

Q. How did you happen to see him, you are a pretty busy lawyer? A. He lived on Park Avenue and I lived on the corner of Eighteenth Street and I passed by his place and often saw him.

Q. I thought you were one of the members of the bar ,that you could afford to ride and didn't always walk by, do you mean you always walk up? A. I frequently saw him, met him, and chatted with him. Often times I seen him standing outside waiting for his conveyence to take him downtown.

Q. I think you have stated all that he said about Frank on these different occasions when you drew the will? A. I have answered your questions on that, I don't say I said all that he said.

Q. Do you remember anything else he said? A. I don't remember now just what I said.

Q. I am asking you if you recall whether he said anything more about Frank except what you have testified? Do you recall anything else he said about Frank in these different conferences he had with you? A. I don't know just what you are driving at.

Q. This is what I am driving at. It is an answer to a very simple question. Do you recall whether he said anything more about Frank than what you have already said? A. Candidly what he said was this.

Q. I don't want to burden the record. I want you to tell whether you recall whether he said anything more about Frank that what you have already stated? A. I can't recall just now.

Q. I am asking you if you recall anything more? A. I recall this, if it has not been already been said, that Frank had reached a point where he broke his father's heart...

Q. One minute? A. That is what his father said?

Mr. Harding—I object to this witness stating as a fact what occurred. I don't object to his stating what the testator told him.

Q. The point is, did the old man say that? A. Yes, sir.

Q. Hereafter just confine yourself to what the father said? A. That is what I was doing. The Court understood it that way and Mr. McCran did. He said that it was impossible to do anything with him. That he was determined to go on in his own way and leave nothing undone to wreck the business which the father had built up and that he was doing this on the strength of the donations and contributions which the father had made to him.

Q. That is to say he had established a business and had left the father because he was unable to get along with him and he was trying to build up a business of his own? A. Yes.

Q. That was another statement of the testator that he was trying to get Frank to come back if he could get him to do it? A. Yes, sir.

Q. Do you think of anything else he said now? A. I don't remember now.

Q. Do you hope you may be able to remember more things? A. I can tell you this. That the father told me that during the last few months Frank remained in the business, his attitude toward his father was such that it was unendurable and that at times it would bring the tears to his eyes, and instead of Frank listening to the pleas of his father he was threatening to take the business away from him and as a result he said he had nobody to fall back on now that Albert was dead except his grandson and two sons-in-law, one of whom he was living with.

Q. Who was that one? A. Handwerk.

Q. Did you ever know him? A. Not until this case came up.

Q. He was dependent on his grandson and two sons-in-law in what respect? A. And his daughters.

Q. In what respect? A. As to his only source of comfort.

Q. He didn't make Handwerk a beneficiary in the will? A. No he made his wife.

Q. To what extent? A. Five thousand dollars and a residuary legatee.

Q. Do you know what her interest as residuary legatee is valued at at? A. I don't know what it will amount to but I imagine it would run up pretty big.

Q. Do you think it bears any correspondence to the gifts he gave to Burchill? A. I cannot say.

Q. Did he say anything about leaving Mr. Handwerk, leaving him a legacy of any amount? A. Only what is in the will.

Q. He expressed great affection for Mr. Handwerk, great respect for him? A. He thought well of him.

Q. Did he express respect for Mr. Burchill's daughter? A. Yes, sir.

Q. And for Mrs. Handwerk? A. Yes, sir.

Q. Did he tell you that they were loving daughters and always had been? A. He said nothing but words of commendation.

Q. For Mrs. Burchill or Mrs. Handwerk? A. Yes.

Q. He said nothing but good things about his wife? A. Yes, sir, nothing but good.

Q. Did he express any particular desire to see to it that she should be provided for sufficiently? A. He felt that ten thousand dollars would take care of her.

Q. Did he say anything special, did you talk to him about it? A. He spoke about her station

of life.

Q. Did you speak to him about it? A. I knew he thought ten thousand dollars ought to take care of a lone widow when I am providing for her.

Q. Did he ever tell you about having an account in his own name in the United States Trust Company amounting to twenty-seven thousand dollars? A. I don't know whether he mentioned that amount or not, I know he said he had a large account.

Q. Did he ever mention an account aside from the one that was given in the will. Did he speak of any other account in the United States Trust Company other than the one mentioned in the will? A. I think he had a savings account, an interest bearing account and a current account.

Q. Something of that kind? A. Yes, sir.

Cross Examination by Mr. McCran:—

Q. How long had you known Mr. Ulrich? A. I had known him for twenty-six or twenty-seven years.

Q. Did you know him well? A. Intimately

Q. You often saw him? A. Yes, sir.

Q. This intimate acquaintanceship you spoke of, was that existing at the time the will was drawn? A. Yes, sir.

Q. Did it continue after the will was drawn? A. Yes, sir.

Q. You say you live around the corner from Park Avenue where Mr. Ulrich lived? A. I live on Eighteenth Street.

Q. Did you have any talks with Mr. Ulrich after the will was drawn? A. I think I saw him once

or twice after that.

Q. In the course of your acquaintanceship what would you discuss? A. Well, for instance the time the silk strike was on we met and discussed about the treatment of the strike and what would be done for the betterment of business, and again I would meet him up at Greenwood Lake and discuss the question of fishing.

Q. Did you go fishing with him? A. We would usually sit down and talk and smoke together.

Q. You knew Mrs. Ulrich also? A. Yes, sir.

Q. What kind of a man was Mr. Ulrich? A. He was a very fine type of man, a fine character.

Q. From your memory was he a positive or weak man? A. I would say a strong man.

Q. What kind of a man was Mr. Ulrich on the day he signed his will with reference to the man you had known years before? A. Perfectly normal, perfectly rational.

Q. Was he then positive or weak? A. He was a positive character, he didn't change in that respect.

Q. He was the type of character you couldn't tell what to do?

Mr. Harding—I object to the question.
Question withdrawn.

Q. When he got to your office on February seventh you say that Mr. Burchill came with him, probably in the car, what do you mean by that? A. The automobile.

Q. When you began or when Mr. Ulrich began to talk with you was Mr. Burchill in the room with you two? A. All my conversations with Mr. Ul-

rich were in my private room and Mr. Burchill was out in one of the other rooms, the library.

Q. Did he talk about Mr. Burchill to you? A. Yes, sir.

Q. What did he tell you about Mr. Burchill? A. He told me the character of the work Mr. Burchill was doing in connection with the business, and how he assisted him in the business and he said he had persuaded him to come with him at that time he wouldn't know what to do if it was not for Mr. Burchill because Frank had left him all alone, and that he was a person of balanced judgment.

Q. Did he indicate to you he knew what property he possessed from the things he said? A. Yes, sir.

Q. Did you have to suggest things to him or did he tell things to you? A. He told me what he wanted.

Q Did he speak of whether or not he had ever done anything for his children? A. He did.

Q. Tell us what he said on that subject? A. He stated what he had done for Albert as I stated a while ago, and Frank, and that he had made donations to the other children and how every year he would make a donation if he had a prosperous year to different members of the family. I never saw a father that was more interested in the success of his boys.

Mr. Harding—I object to that statement and ask that it be stricken out.

The Court—Strike it out.

Q. Did he show or say anything about the solicitude for his family or children? A. Oh, yes, that was the point of his whole talk, he was ambitious to see his family succeed and his children succeed.

Q. Did he ask you to get any memorandum for him or any information concerning any of his property? A. Yes, sir.

Q. What was it? A. At the time he bought this spot over here on Ward Street expecting to locate the mill there, he heard later that it was not in his name, and on having a conversation with him then he told me he discovered it was in the name of his son Albert and when he went to erect the mill on it he made this discovery and he called Albert and asked him about it and made him make a deed to him and his son Frank for the undivided two thirds of it and it was after that he went on and erected the mill with his money and each of the boys had a one third interest in it.

Q. What did that have to do with any memorandum you were to get? A. In order to learn all the facts concerning that, I was asked to look into it and I found... I discovered the facts as he stated them.

Q. I show you a pencil memorandum on yellow copy and ask you if you had that memorandum when he returned the next time? A. Yes, sir.

Q. Did you go over it with him? A. Yes, sir.

Q. I notice on that memorandum, in addition, reference to the will of Albert W. Ulrich, to his wife Margaret A. Ulrich? A. Yes, sir.

Q. Why did you get that? A. He wanted to know how safely she was protected.

Q. Was it then or later he told you he had spoken of Viola, his granddaughter, about Mrs. Ulrich taking care of the girl, her daughters and he would take care of Frank? A. After that.

Mr. McCran—I offer that and ask it be marked for identification.

Pencil memorandum marked Exhibit P-2 for identification.

Q. You say he discussed his children and grandchildren with you? A. Yes, his sons.

Q. And he discussed his sons-in-law? A. Yes.

Q. Did he discuss Burchill with you? A. Yes.

Q. Did he talk with you about the treatment of his son Frank to him, the father, as to how Frank had treated him? A. He spoke about that in a general way and said he was cruel and at times brutal and he couldn't understand where he ever got in his system that disposition, a disposition of that kind.

Q. Did he tell you of any specific acts of Frank's that led him to make that remark? A. I don't recall the specific acts. I do recall this. He did say that he struck him, that Frank struck him.

Q. That Frank struch his father? A. Yes, sir.

Q. In the mill? A. Yes, sir.

Q. In the presence of anyone? A. In the presence of some of the operatives.

Q. Of course you don't know whether that was so or not? A. I do not, I had no occasion to investigate it further.

Q. But the father did make that statement clearly did he? A. Yes, sir.

Q. That the son had struck him? A. Yes, sir.

Q. On the first occasion during these conferences which you had with Mr. Ulrich, was Mr. Burchill in the room where you were at any time while that conversation was going on? A. Not while we were

conversing. Mr. Burchill came into the office with Mr. Ulrich but when Mr. Ulrich and I started to have our conference, Mr. Burchill was out of the room, in the library or else in the hall.

Q. Did Mr. Burchill take part in any conversation with you and Mr. Ulrich concerning the drafting, disposition or making of the will? A. Not concerning the drafting or disposition. We might have asked him a question for information in some matter in which Mr. Ulrich was uncertain.

Q. How would you do that? A. Call him in and after getting through asking the question let him go out. After we got the information straightened out.

Q. I understand at the meeting on February seventeenth that Mr. Ulrich wanted to secure some further data in reference to the Paterson and Allentown bank accounts? A. Yes, between the seventeenth.... Well, I would say about that time.

Q. Did Mr. Ulrich bring any data to your office in his own handwriting? A. Yes, he had some there.

Q. In his own handwriting? A. Yes, sir.

Q. Did he refer to that? A. Yes, he referred to that in discussing these things.

Q. Did he show that to you? A. I don't think so.

Q. I understood you said he spoke about the donations to Frank? A. Yes, sir.

Q. Did he have or bring back to your office any memorandum in his own handwriting concerning these donations? A. I think he had a summary of them one day when he was there, when he mentioned how much they amounted to.

Q. Were these the donations about which he complained in his statement to you that Frank had been able to use in competition against him? A. These were donations, bonds, a block of stock in the Citizens Trust Company...

Q. The Citizens... A. The Franklin Trust Company.

Q. Did he speak of the Citizens or were you mistaken as to the name? A. No, it was the Franklin and the other stocks I don't recall now. My recollection is that as to the figure that Frank had had was in the neighborhood of forty-five thousand dollars or fifty. The estimated value of his interest which he had given him in the mill, one third of the value and what he had given him on the side.

Q. You say you made a rough draft, virtually of the will before the day on which the will was signed? Yes, sir.

Q. What was done with that draft, I mean by Mr. Ulrich? A. Mr. Ulrich went over it.

Q. Did he leave it with you or take it away? A. He took a copy with him and came back afterwards when the will was executed. That was just a memorandum.

Q When was that? A. That was between the seventeenth and twenty-first, along about the twenty-first, I think along about the tweny-first, he took that memorandum with him.

Q. On the twenty-fourth, that is the day the will was signed? A. Executed, yes, sir.

Q. Did he go over the subject matter of the rough draft before it went into the hands of the stenographer? A. Yes, he went over everything.

Q. Was Mr. Burchill consulted about that draft or any other draft? A. Not by me, he wasn't in the room.

Q. Was he consulted by Mr. Ulrich in your presence? A. Not in my presence.

Q. Was Mr. Ulrich in your presence from the time he came in until the time you saw him go out? A. Yes, sir.

Q. You said something about having gone out to your stenographer. Where is your stenographer's office compared to your office? A. Out through the library. The room adjoining the library.

Q. Is that the office to which you went to have the final copy made? A. Yes, sir.

Q. When was Mr. Murphy called in? A. He was called in before the will was executed.

Q. I think Mr. Murphy had some talk with Mr. Ulrich on the side? A. They had a conversation. They knew each other.

Q. Having known Mr. Ulrich for the period of years you mentioned, having seen him as you say, and talked to him on various occasions and having had four conferences with him in references to the will, is there any question about his mental capacity to make a will? A. Absolutely not.

Q. He understood the extent of his property? A. He was perfectly competent.

Q. He knew who were the natural objects of his bounty? A. He was perfectly competent.

Q. Was any mental weakness indicated to you at any of these conferences preparatory to the final signing of the will, was there any mental weakness on his part indicated to you? A. No.

Q. Did Mr. Burchill know up to the time of Mr. Ulrich's death, from the will that you had drawn, or from you, what were the contents of that paper?

Mr. Harding—I object to the question.
Mr. McCran—I will withdraw it.

Q. Did Mr. Burchill know at any time until the death of Mr. Ulrich what were the contents of Mr. Ulrich's will? A. No, not from me.

Q. The will you took out of the safe? A. Yes.

Q. Who put it there? A. I did.

Q. Was it undisturbed at the time you took it out after the time of Mr. Ulrich's death? A. It was.

Re Direct Examination by Mr. Harding:—

Q. I am a little concerned about this last question and your answer to it and just the way it was put. The question put to you was, "Did Mr. Burchill know from you what the contents of the will were after it was put in the safe?" and you answered it, "Not from me." I previously asked you several times on your direct examination whether or not you remembered whether Mr. Burchill had read that will, had had that will opened and read while in your office? A. Prior to his death?

Q. Do you mean to say then up to the time of the testator's death you are certain that you didn't disclose to Mr. Burchill the contents of this will? Is that what you meant to say? A. Yes, sir.

Q. After his death you think it is likely you may have? A. I don't know just when. I know I went to the house, notified them I had the will and made an appointment to meet the family at the house the night of the funeral, after the funeral. I may have given some information to anybody who asked me

after Mr. Ulrich's death after I had opened the will, I don't know.

Q. You have testified about getting a memorandum with reference to the property that Mr. Ulrich had an interest in on Ward Street on which the mill was erected. I don't clearly get from you what the object of that memorandum was? A. Mr. Ulrich had decided to build a mill and he bought a piece of land down here on Ward Street, I have forgotton what the price was, and supposed he owned it and when he went to erect the mill....

Q. You are stating something Mr. Ulrich told you? A. Yes, sir.

Q. I understood you to say that in these conferences with Mr. Ulrich he told you about this circumstance of having the mill on Ward Street. In these conferences he told you of this fact? A. He wanted to be positive just what the situation was up there before he made his will.

Q. He told it to you for the first time during this conference on the fifth of February? A. On the seventh of February.

Q. Then I understand you to say he stated these facts to you for the purpose of preparing his will? A. Yes, he regarded he had made a donation to Frank of about fifty thousand dollars.

Q. So then before he drew this will, on February seventh he gave you specific instructions to go and find out how the record was about that Ward Street property? A. He stated it in such a way that he made it necessary in order to form a correct judgment, to determine what the status of Franz Ulrich was...

Q. You say he made it necessary, how could he make it necessary? A. He was going to make a will. The question was whether he was the sole owner or only owner of one third. He wasn't satisfied as to just what his interest was stated in the deed.

Q. Listen to my question and respond to me, yes or no, or answer the question if you can. Did he or not specifically instruct you when he was there on February seventh to go to the records and find out the facts with reference to this property? A. Not in that form but he told me,...

Q. You took it upon yourself to go up and find out these facts? A. To get the information for him.

Q. I understood you to say to Mr. McCran that the testator told you Mr. Burchill had helped him in the business and that he had persuaded Mr. Burchill to come to him because Frank had left him? A. No.

Q. What did you say? A. He persuaded him to come to him because he needed him. That he had to have somebody with him that he could depend upon.

Q. Did he tell you when Mr. Burchill went with him? A. No, but it was before the making of the will, he was with him at that time.

Q. He didn't tell you when? A. He didn't tell me how long it had been before.

Q. Did he tell when it was with respect to the trouble he had had with Frank? A. I told you about that. No.

Q. Is there any objection to telling about it again? A. Mr. Burchill was working for him at

the time these troubles arose with Frank and had been.

Q. You said that he said that Frank struck him in the mill on one occasion? A. Yes, sir.

Q. Did he tell you when that occasion was? A. He said they had some argument and Frank struck him in the presence of some of the office staff.

Q. Did he tell you when it was that occurred? A. In the day time.

Q. What date did he give you in connection with it? When it was? A. None.

Q. He didn't tell you that it was ten years ago. A. Not so long ago.

Q. You have no decided memory about that? A. The only thing impressed me was—

Q. The fact? A. The fact, exactly.

Q. He didn't tell you when it was? A. No.

Q. You don't remember within years when he said it occurred? A. Not long before the separation.

Q. How do you know that? A. Because, in connection with things that were said.

Q. What arises in your mind that enables you to give us any notion at all when he said this occurred? A. It was after Mr. Burchill had come with him.

Q. How do you know he said that to you? A. It was about that time.

Q. How do you remember now he said that to you? A. When he said it to me? You are asking me when it occurred. I say I don't know.

Q. You don't know when the testator said it occurred? A. No.

Q. You don't know so far as you remember whether he said it occurred two years ago or ten

years ago? A. There are others here who can tell and describe the scene.

Q. I want to know when the testator told you? A. He told me that incident one time when he was talking to me.

Q. Can you give me any notion when he said it was? A. No.

Q. Who were the others? A. I don't know.

Q. You say there are others here who can tell about it. Who are they? A. I don't know.

Q. Why do you make that statement that they are here? A. Because I know they are here.

Q. You know they are here? A. Yes, and you will know it too.

Q. I don't like to get in any argument with you but you know you have no right to make that statement on the stand to me. Now I don't know at all and I am expressly asking you for information.

Mr. McCran—You have no right to ask. You have no right to know who they are.

The Court—Proceed with the examination.

Q. Do you say you know there are witnesses here and you point your finger to them who know of the fact that Frank Ulrich struck his father in the mill? A. I so understand.

Q. You do so understand? A. Yes, sir.

Q. Are you acting in an advisory way at all to Mr. Burchill in this case? A. I am counsel for the proponents of this will.

Q. When you say you are counsel for the proponents what does that mean, you are assisting Mr. McCran or Mr. Mc Cran is assisting you? A. I think

if you put us both on the same level you will have us about right.

Q. You have been retained by Mr. Burchill as a lawyer? A. No, not retained.

Q Whom are your retained by? A. I was requested to act—

Q. As a lawyer? A. Yes, sir.

Q. For who and by who? A. By the executors.

Q. You don't mean to say Mr. Handwerk asked you? A. No.

Q. Did he ever give you any instructions to act for him as a lawyer? A. No.

Q. Did Mr. Burchill? A. No.

Q. Who is the other executor? A. Frank, the grandson.

Q. You are acting as you understand for the executors in the case? A. Yes, sir.

Q. Were you the principal one first employed? A. I can't tell you when the caveat was filed. Of course I presented the will and there was a caveat.

Q. Is the reason now why you are not taking part actively in this case is the fact that you are a witness. Otherwise you would have taken an active interest as counsel in this case? A. Yes, sir.

Q. And you expect to be paid for your services? A. I hope to be.

Re-Cross Examination by Mr. McCran:

Q. This Ward Street property. You stated if I understood you correctly that at the time Mr. Ulrich was about to erect the mill, he found or learned that title to the property was not in his name and he sent for Albert and took certain steps at that

time. What did he tell you was done? A. A deed was made by Albert conveying to him and Frank a two thirds interest in the mill.

Q. Did he tell you he understood his interest in the mill property to be one third? A. Yes, sir.

Q. This you verified by the records as to whether that was so or not? A. Yes.

Mr. McCran—Of course I may recall Mr. Dunn later.

(At this point a recess was taken until two o'clock.)

(After Recess)

FRANK ULRICH sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Harding:

Q. Are you the son of Franz Ulrich, deceased? A. Yes, sir.

Q. He is the testator in the will offered in evidence in this case. The paper offered in this case as the last will and testament of Franz Ulrich? A. Yes, sir.

Q. How old are you? A. Forty-one.

Q. Where do you live? A. Eight hundred and twenty-one Madison Avenue.

Q. Paterson? A. Yes, sir.

Q. Have you lived in Paterson, all your life? A. Yes, sir.

Q. How old was your father when he died? A. About eighty-four.

Q. Is your mother living? A. Yes, sir.

Q. How old is she? A. About eighty-four.

Q. What children did your father leave? A. Well, there was two sisters and myself.

Q. What are their names? A. One Rosina and the other Catherine.

Q. Rosina, what is her name? A. Now it is Burchill and Catherine Handwerk.

Q. Did you have a brother? A. Yes, sir, I did have one.

Q. What was his name? A. Albert.

Q. Did he die? A. Yes, sir.

Q. When did he die? A. About February ninth, Nineteen Hundred and Nineteen.

Q. Do you remember when your father died? A. Yes, sir.

Q. What was the date of his death? A. July twenty-fourth, Nineteen Hundred and Twenty-one.

Q. Did your brother Albert leave any children? A. Yes, sir.

Q. Your brother Albert? A. Yes, sir.

Q. Whom did he leave? A. He left a daughter Viola Kearns and Frank J. Ulrich.

Q. How old is the daughter? A. Around about I should judge, about twenty-seven or twenty-eight.

Q. Is she married? A. Yes, sir.

Q. When did she marry? A. I believe shortly after her father died.

Q. Was it the same year her father died do you think she married? A. I believe it was to the best of my recollection I believe it was.

Q. Did your brother leave a widow? A. Yes, sir.

Q. Is she still living? A. Yes, sir.

Q. Where does she live? A. Eight hundred and twenty-eight Madison Avenue.

Q. Do you know what real estate your father died seized and possessed of? A. Well, I guess I do.

Q. You do? A. Yes, sir.

Q. Would you just state what it was? A. Well, he had a one third interest in the building number one fifty-eight and one sixty Ward Street, corner of Dale Avenue and then there was the machinery in that building corner of Ward Street and Dale Avenue, and the other business in Allentown.

Q. Had the business in Allentown been transferred from you to your father before his death? A. Yes.

Q. Under a certain arrangement between you and him? A. Yes, sir.

Q. Which I am going to ask you about later on, not now. A. Yes, sir.

Q. You will just state what other real estate he had? A. He had lots on the corner of Park Avenue and Thirty-second Street and had lots—

Q. How many lots? A. Two lots.

Q. Were these improved, did they have buildings on? A. No, sir, just vacant lots.

Q. What others? A. Then I believe four or five vacant lots on Crooks Avenue near Trenton Avenue.

Q. What else? A. A house known as ten hundred and twenty-two Main Street running through to Sussex Street.

Q. Was that unimproved property too? I am asking you what he owned when he died. A. He had sold the Main Street house previous to his death.

Q. Do you know about when it was he sold the Main Street property? A. Around May thirty-first, Nineteen Hundred and Twenty-one.

Q. Is there any other real estate he owned that you know of? A. No, sir, he didn't own it at the time of his death.

Q. Did he own any house or houses where he lived? A. No, he had transferred them to the girls quite a while before he died. Two houses on Park Avenue.

Q. He transferred two houses to his daughters before he died? A. Yes, sir.

Q. Did he transfer one to each? A. Yes, sir.

Q. Can you tell when these transfers were made? A. I can't exactly. About a year or a year and a half before he died.

Q. The property you have already stated was so far as you now recall the only real estate he died seized and possessed of? A. Yes, sir.

Q. Can you tell what personal, what other property he had besides real estate when he died? A. Well he had some Liberty Bonds.

Q. How many do you know? A. Well, as near as I can judge he had about three thousand dollars, something in that neighborhood.

Q. Did he have any money deposited in banks that you know of? A. Yes, sir, he had money deposited in the Allentown National Bank and in the United States Trust Company, the U. S. Trust Company.

Q. Do you know of his having anything in the Second National Bank? A. No, sir, not my father.

Q. Anything in the Franklin Trust Company? A. No.

Q. You have already spoken of machinery and stock and about accounts in the general course of his business both in Paterson and Allentown? A. Yes, sir.

Q. Did you go to school in your youth? A. Yes.

Q. When did you quit school? A. When I was about sixteen.

Q. What had been your father's business since you can recollect? A. Reed and harness manufacturer.

Q. What was his business before that? A. Hotel business.

Q. Hotel? Where was that? A. Ramapo Avenue, number seven Ramapo Avenue.

Q. That was run by your father? A. Yes, sir.

Q. Was it merely a hotel or a saloon? A. A saloon and hotel combined, it was a hotel.

Q. Who ran that? A. Well, father and mother ran it.

Q. Who was the principal person? A. Father and mother.

Q. What did they have to do with running it? A. They took care of patrons and cooked and saw that the rooms were taken care of and all that.

Q. When was that business given up? A. I should say about thirty years ago.

Q. How long ago? A. About thirty years.

Q. Then did he go into the reed and harness about thirty years ago? A. No, he had started the reed and harness business before he stopped the saloon business.

Q. Where was he first engaged in the reed and harness business? A. On Railroad Avenue.

Q. The same place he was in now? A. The same block but not the same place.

Q. He leased that property? A. Yes, sir.

Q. How long did he continue there? A. To the best of my knowledge at least twenty years.

Q. About when was it he went to his present place of business? A. About eighteen, nineteen years, something like that.

Q. That was where? A. Corner of Ward Street and Dale Avenue.

Q. That is where the business has been conducted ever since and is conducted now? A. Yes, sir.

Q. Did your father take you in the business with him in any capacity in your youth? A. Yes, I always worked there, I never worked anywhere else.

Q. How old were you when you went to work in the business with him? A. About sixteen.

Q. What did you do when you first went there? A. I went in different departments to learn the business. The harness department, the block department and worked generally through the mill.

Q. You boarded at home? A. Yes, sir.

Q. Was your brother Albert also employed by your father at that time? A. Yes, sir.

Q. In what capacity was he employed? A. Well, generally as salesman and manager and such stuff as that kind.

Q. Did you change your position as the years went on while you were in the business? A. I worked in the office when I went through the mill, first as shipping clerk, then I got to working on the books, acting as assistant and later on, in later years

when I was older went on the road selling as a salesman.

Q. Did you also take any part in the manufacturing side of it? A. Yes, sir.

Q. What did you do there? A. I seen that the orders got out, made out mostly all of the checks to pay bills coming in, and I did at least seventy-five or eighty percent of the buying when brother was alive.

Q. What did your brother Albert do before his death? A. Helped supervise the mill, make out harness dispositions, make prices, help on the books, and done a little selling.

Q. State generally what salary were you receiving, what wages or salary you received, from the time you went with your father until you left him? A. Just what do you want, I didn't get that.

Q. What salary did you receive or what wages did you receive from your father when you first went there, and how was it changed so long as you were there? A. When I first went to work he gave me three dollars a week and it went on for about a year and he gave me five dollars and up until I was twenty-one years old he gave it to me and after I got married he gave me twelve.

Q. When did you get married? A. Nineteen or twenty years ago.

Q. Have you any children? A. Yes, sir.

Q. Is your wife living? A. Yes, sir.

Q. What children have you? A. A boy, Melvin and a girl Helen.

Q. How old is Melvin? A. Going on about nineteen.

Q. Has he also been employed by your father?

A. Yes, sir.

Q. What was the salary you were receiving when you were last with him? A. Fifty dollars a week.

Q. How long had that continued? A. I should judge about two years.

Q. What had been your brother Albert's salary during the last few years of his life? A. The past three or four had been the same as I got, for the past three years or four years.

Q. Did you and your brother engage in business for yourselves during your father's life? A. Yes, sir, we did.

Q. When? A. It will be five years this December, Mr. Harding.

Q. Where did you engage in that business? A. Allentown, Pennsylvania.

Q. What had your father to do with that, anything? A. He had nothing, Mr. Harding.

Q. Will you relate the circumstance concerning your going into that business? A. I think it was, well, Nineteen Hundred and seventeen that we started the Allentown Mill.

Q. Will you state how you did it and what your father knew about it? A. We were very busy at the Paterson Mill and I suggested and both Brother suggested that help was scarce, we couldn't get help, and so we couldn't get the work out and thus we were afraid of losing customers and Brother and I suggested that something ought to be done to relieve the situation. I went up to Pennsylvania and looked around to see if there was any desirable places we could rent and went to the Chamber of Commerce and asked them if they knew any place. Then I went to Eleven hundred and thirty-three

Maple Street, Allentown, Pennsylvania. I came back and told brother I had found this place and the rent was very reasonable and what should we do. Then Brother and I spoke to Father and asked him, "Now, Papa, do you want to go in on this too," and he says, "No, I am too old. I am going to turn the business over to you boys and stay home. The business is you boys anyhow so I don't want anything to do with it, you boys go ahead the best as you see fit."

Q. As a result of that talk did you engage in business? A. We rented the building, my brother and I.

Q. What, if anything, did you do in reference to manufacturing? A. We bought machinery and Father gave us some machinery.

Q. Tell us just what your father gave you? A. He gave us some harness machines and gave us another machine for reed shaping.

Q. About what were they worth? A. All told I should judge about eighteen hundred dollars, something like that.

Q. Did he give you any money? A. Yes, he gave at one time two thousand dollars and my brother and I put that in with the Allentown mill, that is a while after, that is not at the time being.

Q. What name was the lease taken in for that property in Allentown? A. Ulrich Company, Albert and Frank Ulrich trading as Ulrich Company.

Q. Did the company, Albert and Frank Ulrich trade with your father's company here in Paterson? A. Yes, sir.

Q. How long? A. Up until I gave it to my father, I signed the place over to my father.

Q. We will speak about that later? A. Yes, sir.

Q. How much business did you do with your father, about? A. It wouldn't amount to much. You see we could buy but perhaps we couldn't buy in large enough quantities for that size mill and Papa would buy it and give us some of them and then we would turn that much money in.

Q. Did you as a partnership, Frank and Albert Ulrich buy from your father's concern certain goods? A. Yes, many a time.

Q. How were the checks made out? A. From Albert and Frank Ulrich.

Q. How long did that continue? You said it continued until the time you gave the business back to your father, you have spoken about how long that was. A. I guess at least three years.

Q. Did you keep all your books of account at Allentown as separate and distinct property of your own? A. Yes, sir.

Q. Did you have accounts in the Allentown Bank in the same way? A. Yes sir.

Q. Did you adopt this trade name pursuant to the laws of Pennsylvania? A. Yes, sir.

Q. Did you go on doing business there? A. Yes.

Q. Did you have accounts payable and accounts receivable in that name of that partnership? A. Yes.

Q. Was this all done with your father's knowledge? A. Yes, sir.

Q. And approval? A. Yes, sir.

Q. Did that continue until the time of Albert's death? A. Yes, sir.

Q. Which I think you said was in February, February ninth, Nineteen Hundred and Nineteen? A. Yes, sir.

Q. In the course of running that business up there did you at times go to Allentown? A. Yes, sir.

Q. And you still stayed with your father tending to his business for him in Paterson? A. Yes.

Q. And done it with your father's knowledge? A. Yes, sir.

Q. And his approval? A. Yes, sir.

Q. When your brother Albert died in February Nineteen Hundred and nineteen was there any change made in that business? A. Yes, in June, I believe, Father said to me one day—

Q. Before you come to that I want to find out whether you had made any change with reference to your brother's interest? A. Why after my brother died I was speaking to my sister-in-law, Margaret Ulrich and we got speaking about the Allentown Mill, so I asked her then what did she want to do, did she want to continue it as it was and she said she didn't have enough money to continue that business there, and I said to her, we call her Maggie, I said, "Maggie, there is twenty-six or twenty-seven hundred dollars in the bank—"

Mr. McCran—I object to it unless when we come to our side of the case, counsel is not going to object to Maggie.

Mr. Harding—I will meet any objection counsel wants to make. This is perfectly proper examination and if he had anything in the same class it will not be objected to.

Mr. McCran—I object to it on the grounds that it is a conversation with a third party.

Objection sustained by the Court.

Q. Well, you had a conversation with your sister-in-law and as a result of it did you buy out her interest? A. Yes, sir.

Q. Did she make a proposition to you? A. Yes.

Q. And you accepted it? A. Yes, sir.

Q. And you bought out her interest? A. Yes.

Q. About when was it you bought her interest? A. About May, Nineteen Hundred and Nineteen.

Q. Did you tell your father about buying out her interest? A. Yes, sir.

Q. Did he have any objection to that? A. None whatever.

Q. After that time, after you bought out his interest you continued doing business at Allentown? A. Yes, sir.

Q. With your father's approval? A. Yes, sir.

Q. Then shortly afterwards did you have a conversation with your father with reference to that business? A. Yes, sir.

Q. State to the Court just what that conversation was? A. Father and I was sitting in the office and happened naturally to speak about the Allentown Mill, how was business up there and all this and father finally said, "Frank, why don't you turn that business over to me, it is all going to be yours afterwards," and I said, "Well, if that is the way it is going to be, Father, and if you wish it, I will turn it over."

Q. How did you turn it over? A. I went to

Lawyer Henry Smith and got him to make out a sort of bill of sale.

Q. Smith of Paterson? A. Yes, sir.

Q. You got him to make a paper transferring it over to your father? A. Yes, sir.

Mr. Harding—My associate suggests that we call upon you to produce that bill of sale.

(Bill of sale produced by proponents.)

Q. I show you a document which purports to be signed by Frank Ulrich and purports to be a bill of sale of machinery etc. to Franz Ulrich of Paterson. That was your father? A. Yes, sir.

Q. Is that the bill of sale which you have referred to? A. Yes, sir.

Q. Look at it? A. Yes, sir, that is the paper.

Q. You say Mr. Smith made that paper out. I see it has a stamp on the back of it, "Law offices of Henry Smith" is that correct? A. Yes, sir.

Q. I see it seems to have been witnessed by Burdette M. Zeitlinger? A. The bookkeeper who used to be at the Ulrich Company.

Q. Did you give this bill of sale to your father? A. Yes, sir.

Q. At his request? A. Yes, sir.

Mr. Harding—I offer the Bill of sale in evidence.

Bill of sale admitted and marked Exhibit C-1 for the caveators.

Q. Now, after that bill of sale was delivered—I see it is dated the tenth day of May, Nineteen Hundred and Nineteen? A. Yes, sir.

Q. Was it delivered about that same time to your father? A. Yes, sir, about that same time.

Q. After that you kept on with your father for sometime with his business in Paterson? A. Yes, sir.

Q. Did you have any further conversations with your father? A. About that time?

Q. I mean as to how you were to have all that property. Did he disclose to you subsequently what he was going to do when you turned over that bill of sale to him? A. Father said he would will everything, that is the business and the money in the banks both in Allentown and Paterson, that was all to be mine after his death.

Q. Prior to Albert's death did he ever tell you how he was going to dispose of his business here? A. Yes, he was to give it to Albert and I on his death.

Q. When was it he told that to you, while Albert was alive? Was it in Albert's presence or your presence alone? A. He told it to us many a time, Mr. Harding, that he was going to leave the property to us.

Q. After Albert's death he told you he was going to leave it to you alone? A. Yes, sir.

Q. Did he express to you any peculiar ideas of his own about having the business go down in the name of the sons or surviving son? A. Yes, sir, he said to me many a time and I heard him say it to my sisters, he didn't want anybody else to own Ulrich Company but an Ulrich. That Al and I were to own it, he said at all times and then when Albert died he said it was for Frank.

Q. Up to this time when you delivered this bill of sale to your father what had been the relations between your father and yourself and your brother Albert during your brother's life? A. The best of relations, he was a very good father to both my brother and I, a very good father.

Q. Had you ever had any serious difference or trouble with him any more than the ordinary things occurring between sons and fathers up to that time? A. No, sir, none whatever.

Q. Can you state whether or not he put trust in you and your brother Albert up to this time? A. Yes, sir, he put trust in us always. I was executor of the bank account, really he never had that changed until his death, I signed checks I guess a week before he died.

Q. Did he ever express his opinion to you as to your business judgment in the business? A. He thought we were the two best in the country in that line of business.

Q. So that friendly relation and trust and confidence continued so far as you know up to the tenth of May when you made this bill of sale? A. Yes, sir.

Q. Can you recall when Mr. Burchill married, your sister, when it was? A. I should judge about eighteen or nineteen years ago, something like that.

Q. Nineteen years ago? A. Yes, as near as I can recollect.

Q. Up to the time of Albert's death had Mr. Burchill ever had anything to do with your father's business? A. No, sir.

Q. What had Mr. Burchill's business been up to that time? A. One time I believed he worked for

the Lackawanna Railroad and before he came to Ulrich Company he worked for the American Thread Company if I am informed right.

Q. Where did Mr. Burchill live up to the time of your brother Albert's' death? A. That was my father's house up to the last few years or so until he signed it over to my sister.

Q. Had your relations between yourself and your brother and sisters and Mr. Burchill and yourself been friendly up to the time you made this assignment you speak of? A. Yes, sir.

Q. Had you been very friendly with Mr. Burchill up to that time? A. Yes, sir.

Q. Can you state who if anybody was the cause of Mr. Burchill coming in your father's business? A. I believe Mr. Burchill suggested it, he first asked my father.

Mr. McCran—I ask that that be stricken out.

Mr. Harding—I agree to it. It was not my purpose to get any such answer.

Q. What I wanted to get when I asked that last question is whether or not you yourself was desirous of having Mr. Burchill come there to help? A. Yes, I was.

Q. Did you have a conversation with your father about that? A. Yes, we did.

Q. He consulted you about that? A. Yes, sir.

Q. I wish you would state what took place? A. After my brother Albert died, father and I was talking and I said, "Papa, it is too much for you alone to handle this, you will have to have somebody in here

to help you." Then he suggested Mr. Burchill and sent Mr. Burchill over to my house that night and we had a talk. I had no objection to Mr. Burchill coming down, none whatever.

Q. You were perfectly friendly with him? A. Yes.

Q. It seemed to you a good suggestion? A. Yes, very good because I figured one of the family could look after it better than an outsider.

Q. When did Mr. Burchill come into the business? A. About April, Nineteen Hundred and Nineteen.

Q. What did he do when he first came? A. He came as a salesman.

Q. Did you continue there with him for some time? A. Yes, sir.

Q. What did you continue to do? A. I went out selling and looked after the general supervision of the business.

Q. Was your son there with you at the time? A. My son came about January, Nineteen Hundred and Nineteen.

Q. What did he do? A. He acted as shipping clerk and drove his grandfather around when he wanted to go out in the machine.

Q. How old was your son? A. Just past sixteen.

Q. What is his name? A. Melvin.

Q. Did he continue there for some time too? A. Yes, sir.

Q. After Mr. Burchill went there and you continued there did your relations continue pleasant for a time? A. Yes, sir.

Q. Was there a change in these relations finally?

A. Finally there was, yes.

Q. As near as you can recall it when did that change occur? A. Around in Nineteen Hundred and Twenty, the first part of Nineteen Hundred and Twenty, around that time.

Q. What happened then? A. One night I went over to see my mother and my father was sitting there, they were both sitting in the kitchen and I sat down and started to talk to mother and father. Mother excused herself to go to the bathroom and father was talking and all of a sudden he got very violent and accused me of not taking all the orders from his customers. He said, "There is the Bethlehem Ribbon Company who have been customers for years and you told them you won't take any business from them," I says, "Father, who told you that, that is not so."

I says, "Father, who told you that," and he says, "Lang." I said, "I never did that, it wasn't them that asked for it, it was the Miesch Manufacturing Company," and we were so very busy at the time and short of help and the harness foreman had left us and we only had what you might call a substitute and these were very small harness and quite complicated and I figured for the best of the business not to take them.

Q. Did you explain that fact to your father? A. Yes, I explained it to him.

Q. Did you tell him the reasons why you should have not taken the Miesch order? A. Yes, sir.

Q. Did you tell your father it was not true that you had refused the Bethlehem Ribbon Company? A. Yes, sir.

Q. Did you tell your father there was any other reasons why you should not have taken the Miesch order, that they were not a good customer?

Objected to by Mr. McCran as leading.
Question withdrawn.

Q. Was anything said about why should not take the Miesch order? A. I told him, my brother Albert had had a little trouble with some people running the Miesch Manufacturing Company, they wanted to deduct from a bill and brother Albert wouldn't stand for it, and had had quite a little trouble, for that reason I didn't want to take their business and leave our good customers..., leave their work stand while getting out this other work.

Q. Did you or not after this explanation to your father satisfy him as to your attitude in the matter?

Objected to by Mr. McCran as leading.
Question withdrawn.

Q. What was the result after you made this explanation of his state of mind and attitude to you? A. Well, not very good for a while and then he began to say such and such a thing was the case and then the subject dropped and there was nothing to it.

Q. Did he express himself on it to you after you made this explanation to him, did he say whether he was satisfied or otherwise? A. He did.

Q. First what was his attitude toward you? A. Very violent.

Q. After you explained it to him what was it? A. Then he started to become himself.

Q. And that all passed over? A. Yes, sir.

Q. After that for a time did things go smoothly? A. Yes, sir, things went along smooothly again until I should judge about September, Nineteen Hundred and Twenty.

Q. What happened then? A. Then father kept hollering the gasoline bills were too big, that we couldn't pay them and after that it seemed he acted very peculiar and I said, "Father, what is the matter with the gasoline bills," and he got very violent again, very, and carried on something awful, he said, "Your boy has got the car out every night using the gasoline," and I says, "No, father, my boy doesn't take the car out, he only had it out twice and that is with your permission." and he was carrying on and I said, "Father, tell me who told you this," and he says, "Lang," and I said, "Do you mean to tell me Lang lied to you that way, accusing Melvin of taking that car out every night when he had it out a good many times himself," and he says, "Yes, Lang told me."

Q. Did you tell him, your father, that Lang himself had taken it out? A. Yes, sir.

Q. State what you said? A. I said, "Father, Lang uses that car at night and if the gasoline is used I think he uses more than the others, Melvin used the car twice, but Rose and Lang go out often," the car would stand on the corner of Market and East Eighteenth Street so father wouldn't see the car was going out.

Q. You told your father that? A. Yes, sir.

Q. What was his general attitude of mind to you, did he seem to be angry? A. Very angry and very violent.

Q. Were you able to satisfy him after this talk? A. This here I couldn't seem to satisfy him on, he seemed to have that gasoline bill on his mind, and seemed to be very violent, I tried my best to talk sense to him on it but I couldn't.

Q. Had you noticed a difference in his treatment toward you before this occasion? Did you then or did you before he spoke to you about this gasoline, see any difference? A. He never go as violent, you could reason with him but this time you couldn't reason with him at all.

Q. Still you continued on there after this conversation about the gasoline? A. Yes, sir.

Q. Tell us what happened after that? A. He changed places from the Triangle Service Station to what was called The Oil Store, Lendrim's. Of course I don't believe the bills got any smaller and he kept on about these gasoline bills and I tried to reason with him and the more I tried to reason with him the more violent he got.

Q. He kept on talking about gasoline from this time, in September for sometime after that? A. Yes, sir.

Q. How long? A. I guess for at least two months after.

Q. Did you speak to him about it and try to explain about it? A. Yes, sir.

Q. More than once? A. Yes, sir.

Q. Did he have a conversation with your son about it? A. Yes, he did.

Q. When was that? A. Along in October.

Q. Were you present at that conversation? A. I don't believe I was.

Q. Did you hear of the conversation between him and your son Melvin? A. Yes, sir, I did.

Q. Without stating at all what it was, did your son Melvin report it to you? A. Yes, sir.

Q. What that conversation was? A. Yes, sir.

Q. Can you tell when it was your son made this report to you about the conversation about gasoline? A. Sometime in October, Nineteen Hundred and Twenty.

Q. As a result of that conversation your son Melvin reported to you, did you see your father about what had taken place between your father and Melvin? A. Yes, sir.

Q. Where was it you saw him? A. I saw him home, at his house, and at the mill.

Q. Tell us what was said between you and your father about his conversation with your son about the gasoline? A. As much as I understood, my father accused....

Q. State what you said to your father about this conversation he had with Melvin and where it was? A. It was home in the house when Melvin spoke of having father speak to...

Q. Where was it you spoke to your father about the conversation he had with Melvin? A. At the mill, at the office.

Q. What did you say to your father about it? A. I said, it wasn't right for father to accuse Melvin that he wasn't a bad boy and he was so young we wouldn't let him go out every night with the car and that I didn't think it was right.

Q. Did you have a conversation with your father about the same subject in his house? A. Yes.

Q. When was that? A. About the middle of the month of October.

Q. Tell us what took place? A. In the meantime another gasoline bill came in and I goes over to father to talk about it and...

Q. Describe what you said to him and what he said to you? A. He said, "Did you see the gasoline bill," and I said "Yes," and he started right in and flew into a rage and carried on, I couldn't seem to talk to him. I tried my best to pacify him but it was no use, I just couldn't have a conversation. I said again I didn't think it was right because Melvin wasn't doing it and he says, "You go to hell and get the hell out, and I don't want you in the mill any more, get the hell out of here and stay the hell out of here."

Q. Was anything said in that conversation about Burchill? A. I asked again who was telling them lies about the gasoline and who was putting them up to that stuff, I said, "Tell me who put you up to that stuff, you know it is a lie, who told you," I says, "Didn't Lang tell you," and he says, "Yes, Lang has a right to tell me, he is in the family."

Q. Did you leave on that occasion for a time? A. Yes, sir.

Q. Did you leave of your own accord or leave because he told you? A. Because he ordered me, he says, "You get out, I don't want you down here."

Q. Did you also hear something around about that time about his making remarks about you outside to other persons? A. Well, yes, he has told different people...

Mr. McCran—I object to it and ask that that be stricken out of the record

The Court—Strike it out.

Q. Did you hear of his talk about you at this time to other persons? A. Yes, sir.

Q. I don't want you to state what you heard but as a result of what you heard did you ask your father about it sometime before this gasoline question came up, before this last conversation you had in his home? A. I didn't quite get that question.

Q. Before this last conversation in which you testified he told you to get out which you say was in the middle of October, did you sometime before hear of his talking about you to a third person? A. Yes, he did.

Q. Did you as a result of hearing that, ask him about the subject? A. I did.

Q. Tell us what you said to him on that occasion? A. I said, "Father, I think it was a shame to go out and talk about me to people the way you did."

Q. Did you tell him what you heard? A. Yes.

Q. State what you told him you heard? A. I heard he said that I was driving him to the poor house, that I was robbing him, that he didn't have any more money and I was sending him to the poorhouse.

Q. Did you tell him where you heard of him saying that? A. Yes, sir.

Q. Did you say where? A. Yes, I was to see a party one night and this party said to me...

Mr. McCran—I object to what he said.
Objection sustained by the Court.

Q. Tell us what you said to your father? A. I said to my father the next morning, "Father, why do you go out and talk that way," and he says,

"Talk that way," and I told him what he had said.

Q. What was it you heard he had said? A. He said I was robbing him and sending him to the poor-house.

Q. Did you tell him where you heard he had said it? A. Yes, in Sell's saloon.

Q. You told him you had heard he said that up in Sell's? A. Yes, sir.

Q. Where is it? A. The corner of Fenner Avenue and Valley Road.

Q. You told your father you had heard he said this at Sell's saloon? A. Yes, sir.

Q. Who was present when you said this? A. Mr. Burchill and after I went in he went out, I didn't know where he was going at the time and I was telling my father and he said, "It is a damn lie, I didn't say anything, it is a damn lie, I didn't say anything."

Q. He didn't say anything? A. No, sir.

Q. Did you accuse Burchill? A. No, sir.

Q. You say he left the presence of your father and yourself when you told your father what he had said? A. Yes, sir.

Q. Did he say where he had gone? A. He went up to see Mr. Camphausen and he came back and said Mr. Camphausen said it was a lie, he had never said it when Mr. Camphausen had told me.

Q. Did you or not state to your father you had got this information from Mr. Camphausen? A. Yes, I told him that.

Q. That is the reason Burchill went and left you and came back and said he had seen Camphausen and said you had lied? A. Yes, sir.

Q. You left then sometime in October after your father said to you to get out and leave? A. Yes.

Q. How long were you away from his mill when you left in October? A. Six or seven weeks.

Q. Did you have any business of your own then at all? A. No, sir, none, whatever.

Q. You had given up the Allentown business to your father as you said? A. Yes, sir.

Q. Did you and your father have a mutual friend by the name of Crutchlow? A. Yes, sir.

Q. What is his first name? A. William.

Q. He was a very intimate friend of your father? A. Yes, sir.

Q. Had he done business with your father? A. Yes, sir.

Q. He had known you for a good many years? A. Yes, sir.

Q. He was with whom? A. A. & W. Price.

Q. Had he done business and purchased materials from your father? A. Yes, sir.

Q. For years? A. Yes, sir, for years.

Q. Did you finally go back to your father's place of business after you left in October? A. Yes, sir, I did.

Q. When did you go back? A. It was a few days after the holidays, after New Year's Day.

Q. What year? A. Nineteen Hundred and Twenty-one.

Q. I don't want you to give any conversation, only this fact. Had it been reported to you that Mr. Crutchlow had taken it upon himself to intercede to get you to go back to your father? A. Yes, sir.

Q. He got your father to consent to you going back with him as a mutual friend? A. Yes, sir.

Q. Did Mr. Crutchlow state to you that he had had a certain conversation when he had learned you had left your father's business, that he had had a conversation with Mr. Burchill about it? A. Yes, sir.

Q. And also had a conversation with your father about it? A. Yes, sir.

Q. And that the result of that conversation was that your father was willing that you should come back? Is that right? A. Yes, sir.

Q. As a result of that report that was made to you by Mr. Crutchlow, did you go to visit your father around about New Year's, in the early part of January, the beginning of Nineteen Hundred and Twenty-one? A. Yes, sir.

Q. Did you tell your father what Mr. Crutchlow had said to you about it? A. Yes, sir, I did.

Q. Where was this conversation? A. In the parlor of my father's home.

Q. Tell us as near as you can the substance of what you told your father that Crutchlow had said? A. I said to father that Mr. Crutchlow had spoken to me that he would like to have me come back and I said I would like to come back, that there was no use of us going on that way with me out of work and him doing all of it and he said, "You come back, that is where you belong back in there," and I went back the next morning and he was very nice to me when I went back.

Q. Did you express a desire to Mr. Crutchlow to get back with your father? A. Yes, sir.

Q. You were very anxious to get back? A. Yes.

Q. You were always anxious? A. Yes, sir, always.

Q. While he was alive? A. Yes, sir.

Q. When you went back how did he greet you? A. When I walked into the office he said, "Frank, we have to have some wire and we don't know where to get it." and I said to Mr. Burchill to call up, I am most sure it was George Mash and Company in New York that he would have the wire and Mr. Burchill called him up and he came in and says to me, "Yes, they have got the wire," and the wire was sent to us.

Q. Now before you went back the last time which you say was the early part of January, Nineteen Hundred and Twenty-one, did you know of the incident in which your son Melvin had gone to see his grandfather, that he had a conversation with your father about him using the gasoline? A. Yes, sir.

Q. Were you present at the conversation? A. I wasn't present at that conversation.

Q. When did that conversation occur between Melvin and your father? A. It must have been in December, as near as I can judge.

Q. December, Nineteen Hundred and Twenty? A. Yes, sir.

Q. Before the reconciliation took place? A. Yes, sir.

Q. It is not proper to state what Melvin told you about it but he did tell you of the occurrence? A. Yes, sir.

Q. As a result of his telling you about the conversation between him and your father, did you see your father about that and talk to him? A. About the gasoline question?

Q. About what he said to Melvin? A. Yes, sir.

Q. What was it you said to your father about

that? A. I says, "Did you tell Melvin you wanted him back," he says, "Yes," I said, "All right, he will be back to-morrow morning."

Q. You went back after Mr. Crutchlow had interceded for you? A. Yes, sir.

Q. Before the reconciliation took place, Melvin had reported to you the conversation he had had between his grandfather and himself when he had the conversation? A. Melvin came home and reported to me.

Q. I don't want you to give the substance but did he come home and report to you the incident that took place between himself, and his grandfather and Mr. Burchill? A. Yes, sir.

Q. And as a result of what he said..... Do you know when he reported that to you? A. If I am not mistaken I think it was December.

Q. You think it was December? A. Yes, around December.

Q. You yourself don't know anything about that conversation? A. No, sir, I wasn't present.

Q. It was just reported to you? A. I wasn't present.

Q. After you went back in January, Nineteen Hundred and Twenty-one, what was your father's attitude toward you? A. Well, it was never really the same, Mr. Harding, as it was before, he was very irritable.

Q. After you went back? A. After I went back.

Q. How long did you stay? A. About three weeks I think.

Q. During that time how had his conduct been towards you? A. It had been very bad, he would fly into a rage and carry on and you couldn't seem

to reason with him, he couldn't talk. He didn't seem to know what he was doing any more.

Mr. McCran—That is a conclusion.

Mr. Harding—It is perfectly proper for him to characterize the attitude of his father.

Mr. McCran—Undoubtedly, but not what he thought the effect of it is.

Q. Did you see a change apparently in his mental condition to what it was before?

Mr. McCran—I object to it unless he says what he did.

The Court—Certainly we want the facts on which he bases it.

Mr. Harding—First I think I have a right to ask him if there was a change.

Q. Did you notice a change? A. Yes, an entire change in father.

Q. Tell the Court just what this change consisted of and how he changed, describe it to the Court. A. Well, in that three weeks I made out some checks and handed them to father to sign, I am not positive as to just what amount it was but it was around twenty or twenty-five dollars and he picks up the check and starts to go around the office and says, "You're robbing me, you are robbing me, you are putting me in the poorhouse," and carried on something awful, after I said, "What about this check, it is only a small check and he asked me what it was for, he didn't seem to know, he thought the check was considerably larger than it really was.

Q. He didn't seem to have any conception of the matter? A. No, he did not.

Mr. McCran—I object to the conclusions of this witness;

The Court—State what you know.

Q. Did you point the check and ask him to read it and see what it was? A. Yes, but he didn't seem to know. I told him the check was a small amount and there wasn't anyone who was going to the poorhouse. And afterwards, father went home and walking out in the other office, Mr. Burchill and Mr. Coogan was there and he was going on continuously all day about going to the poorhouse and I said to Mr. Burchill, "Lang, I can't stand this much longer the way father is going on, he is going on something awful," and he said, "What would you think of any man that had the money your father has got and the money he is making and talking that way and carrying on that way," and I said, "I would think he was crazy," and he said, "So would everybody else think so."

Q. What had been yor father's ability a year or so before that with reference to orders in his business, and with relation to the business in general? A. Father was grown up in that business, he had been a weaver all his life, and a well learned man on reeds and harness, a very well learned man.

Q. Up to this time when you went back had you ever seen on the part of your father anything to indicate his lack of comprehension you have spoken of? A. Yes, during the last when I was there he would urinate on the floor.

Q. My question was if you had ever seen these things before the last three weeks? A. Very rarely.

Q. During the last three weeks what would he do? A. He would have himself exposed, his trousers open and he would stand right up in his place and urinate so it would run right out of his clothes.

Q. Was he careless or not about his appearance, would he have his clothes not buttoned up? A. Yes, sir.

Q. Was a lady stenographer there at the time? A. Yes, sir.

Q. Was that the subject of remark between you and Burchill, what he did? A. Mr. Burchill knew it, yes.

Q. Was anything said between you and Mr. Burchill? A. No, sir, I don't think so.

Q. During the last time when you came back there, have you ever heard any customers speak to your father about buying some materials or shuttles or whatever you call them? A. Yes, sir, Mr. Crutchlow and Mr. Flannigan.

Q. During the last three weeks? A. Yes, sir.

Q. Did you notice any change in your father's apparent mental condition with references to the sale of these shuttles to customers? A. Father, Mr. Harding, was not in condition, he didn't know any more really the difference between a shuttle and a quill or between a reed or a harness, he didn't know after I went back, he didn't know the difference.

Q. Do you know about your father having paralytic strokes? A. Yes, sir, I knew of him having strokes.

Q. I expect to prove these things by the doctor but I can ask this witness what he knows is general. When did he have the first one? A. I believe about eighteen years ago.

Q. Do you remember what effect that had on... A. I don't remember that one so much as the one nine or ten years ago, somewhere in that neighborhood.

Q. That was the second one? A. Yes, sir.

Q. What effect did that have on him? A. To the best of my knowledge he was up at Greenwood Lake fishing and when he came home we all noticed his hands, and his face was all twisted.

Q. Do you know of another stroke he had shortly before you went back to last time for three weeks, the falling or something of that kind? A. Yes, sir, he fell on numerous occasions.

Q. I am talking about a specific occasion before you went back, some short time before you went back, did you hear of something? A. Yes, sir.

Q. Do you know of it personally? A. No, I don't know of it of my own knowledge.

Mr. McCran—I don't think the Judge is going to be affected by this but you must remember we are making a record now.

Mr. Harding—I am doing my best not to bring in anything that I don't think is admissible evidence. It is perfectly proper to ask whether he knew of it. I afterwards intend to prove it as part of the case, there is no question about that in my mind.

Q. You continued there for about three weeks, did you? A. Yes, sir.

Q. You said that you told Burchill it was exceedingly difficult for you to get on, the way your father was acting? A. Yes, sir.

Q. Did you leave at the end of three weeks? A. I didn't leave, I was discharged.

Q. By whom? A. By my father.

Q. I wish you would tell The Court the circumstances of that discharge? A. It was in, I believe in the first part of February. I had one of these Eversharp pencils and I don't know, it seemed to jam or something but I couldn't use it and I called the stenographer and dictated a letter to the manufacturers of the pencil asking them would they kindly put this pencil in condition and what the charge might be I would send them. Then I went to my son and said to him, "Here you, wrap up...

Mr. McCran—I object to what he said.

Q. You said something to your son and then what? A. I went to my son and told him to wrap up this pencil.

Q. You said something to your son? A. Yes, I said something to my son.

Q. Was it in connection with your son taking the pencil? A. Yes, sir, to mail it.

Q. With other goods that were to be sent in the mail that afternoon? A. Yes, sir.

Q. What time did that occur? A. About half past four in the afternoon.

Q. Who was present when you gave certain instructions? A. The young lady stenographer, Mr. Coogan and my son and I.

Q. Was Burchill present? A. No, sir.

Q. After giving these instructions to your son, did you leave your place of business? A. Yes, sir.

Q. It was about quitting time? A. Yes, sir, shortly before.

Q. After that did your son report something that had taken place between himself and Burchill? A. Yes, he came to me and told me...

Q. He told you something had taken place over the pencil you gave him? A. Yes, sir.

Q. As a result of what your son told you did you go to your father about anything? A. I went over to father's house and spoke to him and said what was the matter and told him the circumstances.

Q. Did you tell your father what your son had reported to you? A. Yes, sir.

Q. Tell us what it was that your son reported to you that you reported to your father? A. I told my father my son had said that Mr. Burchill came in and ordered him to take that stuff to the Post Office and my son told Mr. Burchill that he had instructions to wait until this pencil and letter was ready.

Q. What pencil? A. This pencil of mine, the packages of reeds and harnesses was there and my boy told Mr. Burchill about this package and then Mr. Burchill said, "If you don't want to do as I tell you we can get somebody for what we pay you anytime."

Q. Did you tell your father that Burchill had said that to your son? A. Yes, sir.

Q. Did you explain to your father why your son was waiting to take the pencil? A. Yes, sir.

Q. What did you tell him? A. I told him it was not delaying the packages that by the time I had this wrapped up it would all have gone into the Post Office before five o'clock.

Q. How long would it have delayed your son with the packages? A. Not over nine or ten minutes.

Q. How did your father express himself? A. He got violent, he got very violent.

Q. Tell us as near as you can what he said? A. I asked him why he was carrying on like that and he said that Mr. Burchill told him I was holding up the shipments and that I was really holding down the business and trying to ruin the business by trying to hold shipments up so they wouldn't get to customers and I says, "Did Lang. tell you that," and he says, "Yes," and I says, "He did?" and he said, "Yes, he did."

Q. When was this conversation you have just now related? A. In the early part of February. That was the night he told me he didn't want me in the factory any more, get out and stay out.

Q. What year was that? A. Nineteen Hundred and Twenty-one.

Q. Where did he tell you this, in your own house? A. Yes, sir.

Q. What was your attitude toward your father? A. The best, I always thought a lot of my father, I always did.

Q. What was your treatment, your conduct, your demeanor? A. My treatment was very good, the same as any son's would be to his father.

Q. Did you ever try to do any more than convince him you were right? A. Yes, that is all, I tried to convince him I was right.

Q. After calling his attention to this he told you to get out? A. Yes, sir.

Q. Tell us what he said about that? A. "Get the hell out and stay the hell out, I don't want you in

the place any more," and I says, "Father, do you mean that?" and he said, "Yes, get the hell out and don't come in there any more," and I said, "All right, father, if you mean that I will come down to-morrow and get my belongings, and the minute I got in the door before he spoke to me, he had a large envelope in his hand and he hits me with it.

Q. You heard Mr. Dunn's testimony this morning? A. Yes, sir.

Q. Did you hear him refer to the fact that your father said you struck your father? A. Yes, sir.

Q. Did you ever strike your father? A. No, sir, I swear I didn't, I never even raised a hand to my father.

Q. Did you also hear Mr. Dunn make the remark that I probably knew about the occasion? A. Yes, sir, I did.

Q. Are you able to state the occasion which you probably think Mr. Dunn referred to? A. Yes, sir. I walked into the office and father stood in there...

Q. This was the next morning after he told you to leave and you said you were going back? A. Yes, to get my belongings. I walked into the office and he had that envelope in his hand and I said, "Father why don't you get Lang. and Coogan and the girl in here in front of me and ask them whose fault this is, get them in here," and he says, "You only done it to make trouble, that is what you done it for." Then I walked over to the desk where I always occupied and stooped over to the bottom drawer where I had communications and some things and he comes over and grabs me by the throat and starts choking me and I turned around that way and as I did his heel must have struck the stenographer's desk and he slipped down on the floor and I went over and I and my son went to pick him up...

Q. Was your son present? A. No, he was out in the other room.

Q. And when he heard the noise he came in? A. Yes, sir. Then he started calling us all the dirty names and curse names he could call the pair of us and then he hollered, "Bookkeeper, bookkeeper," and the bookkeeper came in and helped pick him up, but, Mr. Harding, I swear, I never raised a hand to my father, and anybody says so, lies.

Q. Before this trouble arose between you and your father, or these different incidents of trouble arose between you and your father what had been your attitude toward your mother with reference to his business and his plan of disposing of his property? Had you been present where there were any family consultations between your sisters, yourself and your father? A. Yes, more than once.

Q. What was said? A. It is hard to fix the time, I have heard this so often. In Nineteen Hundred and Nineteen he said that when he died that mother ought to have the income from the estate until she died, for her life she ought to have the income of the estate.

Q. Before these troubles you have spoken of, did he say anything before your mother and the rest of you about what he intended to do with his property after his death? A. The entire family knew that Albert and I were to get the business.

Q. Would he or not talk freely to you, between you and your father and sisters and mother as to what he was going to do? A. Yes, sir.

Q. Were you ever present when he made any will? A. I wasn't present.

Q. Did you ever hear him state he made a will? A. Yes, sir, I did.

Q. When did you hear him state that? A. I wouldn't say for certain but I think in Nineteen Hundred and Twenty. I wouldn't say positive but I think that was in Nineteen Hundred and Twenty.

Q. Do you recall, as near as you can, what he said about having made a will? A. He said he was going to make a will and that I was to get the business and the girls was to get so much, he didn't state how much, and get the property, of course this was after mother's death.

Q. Do you know of his ever making a will when your mother was present? A. Yes, sir.

Q. Do you know when it was? A. I believe in Nineteen Hundred and Twenty.

Q. You wasn't there? A. No, sir.

Q. Do you remember on one occasion of your father calling in Henry Smith to make a disposition of his property and real estate? A. Yes, sir.

Q. Do you recall about when that was? A. That was . . ., let me see.

Q. When was it as near as you can recall with reference to your giving the bill of sale to your father, was it before or after? A. It was after.

Q. You think it was after? A. Yes, sir, it was after that.

Q. Will you just state the circumstance relating to that transaction? A. Father told Mr. Coogan to call up Henry Smith, the lawyer, and tell him he wanted to transfer the business over to me and Mr. Smith came.

Q. Did he tell you how he intended to transfer it? A. He intended to deed it over to me.

Q. To deed it, not to will it? A. No, to deed it at that time. Henry Smith came and I says, "Hello, Mr. Smith," and he said, "Hello," and then he went in and greeted father, and I walked out, I didn't want to be present and I went to the mill to see if I could get some orders.

Q. Then did you come back? A. Yes, sir.

Q. You left Mr. Smith there? A. Yes, sir.

Q As a matter of fact did anything ever come of that? There was no transaction about that? A. No, sir.

Q. Afterward did Mr. Smith tell you about that? A. Yes, sir.

Q. As a matter of fact he didn't deed it to you? A. No, sir.

Q. The grandson, Frank Ulrich, was the son of your brother Albert? A. Yes, sir.

Q. How old is he? A. About thirty years.

Q. Has he been employed by your father before your father's death? A. Yes, sir.

Q. How long? A. Oh, I should judge about twelve years, something like that.

Q. In what capacity was he employed there? A. He worked up in the harness department.

Q. Do you know what salary he was getting? A. Well, most of the time he was on piece work.

Q. Who was immediately over him, who was his supervisor, or foreman? A. The foreman up there was Jacob Shad.

Q. Have you ever heard your father express his opinion as to his grandson, Frank Ulrich? A. Yes, sir, many times.

Q. State what it was? A. He would come in at nine, and half past nine in the morning, sometimes he wouldn't come in at all. He was very irregular at work...

Q. What did your father say about it? A. He used to call him right to his face, a bum, and used to call him down that he wasn't attending to work and he wasn't worth half what he was getting, he told him that many times.

Q. Did he ever express to you what in general his opinion was? A. He did very much about Frank drinking.

Q. What did he say? A. He said he was a bum and always drunk and he wouldn't give him anything.

Q. How many times as near as you can recall has he talked that way about his grandson, Franz? A. I guess at least three or four times.

Q. As near as you can recall did he say that when last you quit in October, Nineteen Hundred and Twenty? A. That is when I heard it the last time.

Q. You went back and stayed three weeks. When did you hear this talk about Frank as near as you can recall before? A. It was in the summer of Nineteen Hundred and Twenty I heard him speak that way.

Q. Did you ever hear him speak that way on previous occasions? A. Not as much as I did then but he did say it at other times.

Q. Did he ever express himself as to his grand-daughter? A. I never heard him say much about his grand-daughter.

Q. Did he ever say anything that would indicate

he didn't have love for her? A. No, sir, he didn't; he always spoke well of Viola.

Q. Whom did she marry? A. A young man by the name of Oscar Kearns, of Allenhurst, L. I.

Q. Do you know what his financial condition is? A. No.

Q. Is he working there? A. He has a garage.

Q. Did you ever hear your father say during his life that he had at some time made a will giving you and your brother Albert the business while Albert was alive? A. Yes, sir.

Q. When was it as near as you can recall that you heard him state he made such a will? A. I believe it was in Nineteen Hundred and Seventeen or Eighteen, Mr. Harding, when he said that.

Cross Examination by Mr. McCran:

Q. Frank, you are forty-one years of age, I understand? A. Yes, sir.

Q. You said your father was a very good man and a very good father to his children. That is true, isn't it? A. Yes, sir, more to us boys than anybody, to Al and I, he was very good to us.

Q. He sent you to school? A. Yes, sir.

Q. Sent you away to Madison? A. Yes, sir.

Q. Sent you to Seton Hall College? A. Yes, sir.

Q. If you had cared to, you could have remained at college until you graduated? A. I suppose so.

Q. You know so? A. That is something I don't know.

Q. You left college voluntarily, didn't you? A. I don't know as I did.

Q. You went to work of your own volition at sixteen? A. Well, father asked me to come down.

Mr. Harding—There is one question I overlooked, I would like to ask.

By Mr. Harding:

Q. When did you actually start in business here for yourself, in Paterson, after you left your father the last time? A. Up to that I didn't have a machine in my place.

Mr. McCran—He asked you when you started in business? A. In May.

Mr. Harding:

Q. Nineteen Hundred and what? A. Nineteen Hundred and Twenty-two.

Q. When you first started in business for yourself? A. Yes, sir.

Q. Did you ever tell your father that you intended to start in business for yourself? A. No, sir.

Q. So far as you know, did your father ever know you were going into business until you went into it? A. No, sir, he didn't.

Q. Did you ever in March or previous to March, Nineteen Hundred and Twenty-one, ever indicate to your father that you were going into business for yourself? A. I didn't see father to indicate it.

Q. Did you ever tell him? A. No.

Cross Examination, (continued) by Mr. McCran.

Q. When did you begin to get ready to go into business? A. In May.

Q. You began in May? A. That is, I began to get ready, I didn't have the machines until May.

Q. When did you begin to go about to get customers for your business? A. In May.

Q. That is the first time? A. Yes, sir.

Q. You are sure you didn't speak to a prospective customer until May? A. I may have said I was going into business.

Q. When did you first say it? A. To the best of my knowledge, in May, I might have said it before but I don't know.

Q. When did you begin to solicit orders for your business? A. I couldn't solicit business before I had machines.

Q. When did you? A. Not until the first part of May.

Q. Not until then? A. I don't think so.

Q. You don't think so? A. No, sir.

Q. Just think a minute and see if you can tell us? A. I don't believe I did.

Q. Do you want me to understand you that you didn't make an announcement that you were going in business right after you left your father's place? A. I didn't make any announcement that I intended to go into business.

Q. I ask you when did you make it known that you were going into the same business that your father was engaged in, when did you first make it known to anybody? A. Sometine in the later part of March.

Q. Are you sure now? A. Yes, sir.

Q. Who did you first speak to about it? A. A fellow that had the papers that your call your trade name, certificate of trade names.

Q. What did you speak to him about it? A. I asked him would he have a trade name recorded.

Q. The trade name of your company? A. My firm.

Q. How long before that was it you knew you were going into the same business as your father? A. Somewhere around the middle of March.

Q. What was the date you left your father's business? A. I didn't leave. Father put me out about the first of February.

Q. You didn't know immediately after you left your father's business that you were going into business for yourself? A. No, sir, I did not. I had no intentions because I thought I could go back with father again.

Q. You thought you could, did you? A. Yes, I thought he would take me back again.

Q. Because he had done it several times before? A. Not several times, but on one occasion.

Q. Let us get back again to where we started. While you were working for your father and until you got married where did you live? A. On Park Avenue.

Q. With whom? A. I lived with mother and father, I guess, for a month or two months.

Q. When you went to work at sixteen years of age and until you got married where did you live? A. With father and mother.

Q. Did you pay any board? A. No, sir, I could not pay board on three dollars a week.

Q. Answer my question and don't argue with me? A. I am answering you.

Q. You could have paid board on eight dollars a week? A. Not very much, Mr. McCran, you know that.

Q. You say your father was very good to his sons, that means yourself and Albert? A. Yes, sir.

Q. What did he give you, Frank? A. He gave Albert and I a house on Madison Avenue.

Q. What is that house worth? A. It costs about ten thousand.

Q. What is that house worth? A. I am not a real estate man, Mr. McCran, I don't know. Mr. Burchill has been trying to sell it to bring up this same question.

Q. It cost ten thousand when? A. Ten thousand, five hundred.

Q. When? A. About eighteen years ago.

Q. The house is in good condition? A. Yes, sir.

Q. It is worth to-day about twenty-five thousand? A. I don't think so.

Q. What do you think it is worth? A. That is hard to say.

Q .What would you sell it for? A. It is not for sale.

Q. What would you sell it for? We could get along more quickly if you would answer my questions. What was the sale price when you had that notice of sale on your house? What was your sale price? A. Oh, about Nineteen Thousand dollars.

Q. Is that what you wanted for it? A. Well, I thought I would take that.

Q. Would you have taken it? A. That is a question, nobody offered it to me.

(At this point an adjournment was taken until 10 A. M., May twenty-third, Nineteen Hundred and twenty-two.

Second Day. May 23, 1922.

FRANK ULRICH, recalled to the stand and testifies as follows:

Cross Examination, (continued) by Mr. McCran.

Q. What are the numbers of your home? A. Eight hundred and nineteen, eight hundred and twenty-one and twenty-three.

Q. What is on these properties? A. A two-family dwelling and a garage.

Q. What kind of a garage? A. A converted garage, it used to be a stable for horses and made it over into a garage.

Q. Who used the garage? A. Father.

Q. Did you use it? A. Well, towards the last I did when I got an automobile.

Q. When did you get an automobile? A. To the best of my knowledge, six and a half, well six or seven years ago.

Q. You mean Nineteen Hundred and Sixteen? A. Somewhere in that neighborhood.

Q. In other words you had an automobile for five years before your father died? A. About that time.

Q. That was your own automobile? A. Yes, sir.

Q. Used by you for your own purposes? A. No.

Q. Your family used it? A. The business used it ninety per cent. of the time.

Q. Your family used it? A. About ten per cent of the time.

Q. Your family did use it? Q. When I went out with them.

Q. Didn't your son use the automobile? A. Not at that time, no, sir.

Q. When did your son first use your automobile? A. About two years ago.

Q. Just stop and be sure when did your son first begin to drive your automobile? A. As near as I can recollect about two or two and a half years ago.

Q. He began to drive your automobile in Nineteen hundred and twenty? A. No, before that, in Nineteen hundred and nineteen.

Q. In Nineteen Hundred and Nineteen your boy began to drive your automobile? A. Yes, sir.

Q. He drove it on Sunday? A. Yes, occasionally.

Q. With the family? A. Yes and with business people.

Mr. McCran—If The Court please I would ask that the witness be instructed to answer my questions and nothing else. I ask that that be stricken out as not responsive to my question.

Mr. Harding—The question implied by counsel is whether it wasn't used exclusively by the family.

The Court—The witness will answer counsel's questions.

Mr. McCran—The reason I rise at this time is the witness on many occasions injected many things not responsive to my question and I ask that he be directed not to do it

Q. In the summertime you went out almost every Sunday in your automobile? A. Well, a good many times.

Q. Almost every Sunday? A. I wouldn't say every Sunday.

Q. You went off for trips, didn't you with the family? A. At times, yes, sir.

Q. Your son used the automobile when you didn't use it? A. Very seldom when we wasn't with him.

Q. He did use it when you were not in it? A. On a few occasions when he would ask me for it.

Q. Didn't he take his mother out? A. Very rarely.

Q. He did take his mother out? A. He might have done it, my wife went out in the machine when I did most of the time.

Q. Your wife went out in the machine with your son when you didn't go out? A. Very rarely.

Q. She did? A. She might have on an occasion or two.

Q. What other children have you? A. I have a daughter.

Q. How old? A. Going on seventeen.

Q. Did your boy take his sister out when you were not out in the car? A. No, sir, not lately.

Q. Well, when? A. The only time I can recollect is a time or two when the circus was here.

Q. Is that the only time? A. All that I can remember.

Q. Then you don't know? A. I am not positive.

Q. Where did you buy your gasoline? Where did you get your gasoline for the car? A. The Triangle Service Station.

Q. Who paid for it?. A. Father.

Q. Father paid for the gasoline that went into your car? A. Yes sir, because he used it.

Mr. McCran—I shall have to ask again that the witness be directed to answer my questions and make no remarks.

Q. Your father did pay for the gasoline that was used in your own car? A. Yes, sir.

Q. Who paid for the oil used in your car? A. Father.

Q. Who paid for repairs made on your car? A. I believe Father paid once or twice.

Q. Who paid for tires used on your car? A. A couple of times father and sometimes I did.

Q. Who bought the car? A. I did.

Q. Your father did speak to you about the amount of gasoline that was being charged to his business; he said it was too large? A. Not on my car.

Q. I am asking you to answer my question. A. I want to know what question you are asking.

Mr. Harding—The witness cannot be confined to answering yes or no to the questions put by counsel. The witness is entitled to his answer and it is perfectly responsive to the questions with qualifications or modifications that express the truth so long as he does not go out of the subject that was asked. He is asking the questions time and time again pinning the witness down to a categorical answer of yes or no. I submit that when a question is put to this witness he has a right

to respond so as to answer the question with any qualification so as to state the truth.

Mr. McCran—When I ask a categorical question I am entitled to a categorical answer of yes or no.

The Court—Proceed with the examination.

Q. Did your father ever complain that the gasoline bills from the Triangle Garage were in his opinion too large? A. Well, I—

Q. Did he or didn't he? A. He did.

Q. Do you know whether or not your son gave to Ulrich Company, your father's company a bill for gasoline that someone else had gotten at the Triangle Garage? A. No, sir.

Q. You don't know that? A. No, sir.

Q. Other than the house and garage on the property on Madison Avenue to which you referred a few moments ago, were there any other buildings? A. Not that my father gave me.

Q. I am asking you to answer my question. If you don't understand my question, tell me or don't answer it if you don't. On the property on Madison Avenue to which you referred, given you by your father, are there any other buildings except the house and garage? A. That he gave me?

Q. Are there on that property any buildings other than the house and garage? A. No, sir.

Q. What kind of a house is this? A. A two family flat.

Q. Which floor do you live on? A. The second floor.

Q. And rent out the first floor? A. Yes, sir.

Q. What do you get on that floor for rent? A. Sixty dollars.

Q. Do you rent out any part of the garage? A. Yes, sir.

Q. What part of the garage? A. Two spaces.

Q. What do you receive for that? A. Six and seven dollars.

Q. What a month? A. Yes, sir.

Q. When did you first rent out the garage? A. I should judge around September, I should judge Nineteen Hundred and Twenty-one.

Q Might it have been before that? A. It might have been but as near as I can recall it was at that time.

Q. Who paid the taxes on this home of yours? A. I did the most of the time.

Q. You did the most of the time? A. Yes, sir.

Q. Who did the other part that wasn't the most? A. Father.

Q. Father paid the taxes on your property? A. Once or twice as near as I can recollect.

Q. It is your property, you ought to know? A. Yes, sir.

Q. How many times did your father pay the taxes on your home property that he had given to you? A. As near as I can think now, two or three times.

Q. You made out the checks, didn't you? A. Yes.

Q. Did you make them out for yourself before you left? A. Not all the checks, no, sir.

Q. How many checks did you make out for taxes to the City of Paterson that included your home property? A. Perhaps two or three.

Q. Perhaps more? A. No, sir, I don't think so.

Q. Who paid the water bill for your home? A. Father paid for the garage.

Q. The home. I am asking you to answer my question? A. Father might have paid two or three times.

Q. Not any more than that? A. Not that I can recollect.

Q. He might have paid more than two or three times? A. He might have but I doubt it.

Q. Who paid for the repairs to your home? A. I paid most of them.

Q. I asked you who? A. I paid most of them.

Q. I asked you who paid them; you paid most, somebody else paid some, who? A. Father paid some too.

Q. Who paid for the telephone in your home? A. Father did, that was a business phone.

Q. Used also by the family? A. Well, naturally.

Q. Your father paid for the telephone in your home? A. Yes, sir.

Q. Who paid for your coal? A. Father some of it.

Q. That wasn't business coal? A. Well, he agreed to buy brother's and mine.

Q. That wasn't business coal? A. No, sir.

Q. That was to heat your own home? A. Yes, and he did the same thing for brother—

Mr. McCran—I ask that that be stricken out.

The Court—Strike it out.

Q. Who paid for the gas and electricity in your home? A. I did.

Q. Did your father pay any of it? A. No, sir, I don't believe so.

Q. Just think now? A. The only thing I recollect is he paid the gas in the garage because he had his horse in the stable.

Q. Who paid for the electric light in your home? A. I did, unless there has been an error in those bills.

Q. You made the error? A. I might have.

Q. You are the man who drew the check? A. I don't know what check you are referring to.

Q. Could you have made an error if you drew the check and had written in the stub of the check book that it was for your own place, could you have made a mistake about that? A. Yes, sir.

Q. Did your father see the stub before he signed it? A. Yes, sir, and saw the check.

Q. Did you tell him? A. Father knew every check that was made out because he knew what every check was made out for.

Q. Did he go and look at the stub of every check when you presented a check for signature? A. He had the book with the check attached.

Q. Always? A. Almost ninety-nine times out of a hundred.

Q. Might it have been one of the ninety-nine out of a hundred when you paid for the electric in your home? A. I don't see why it should be.

Q. Did your father pay any of your club dues? A. Occasionally.

Q. Did your father pay any of your doctor's bills? A. I don't believe he did.

Q. You don't believe he did? A. Not that I can recollect.

Q. You are not sure he didn't? A. No, I wouldn't swear he didn't but as much as my belief is he did not.

Q. Your father evidently was very good to you? A. To both of us.

Q. I asked you, Mr. Ulrich, if your father was very good to you? A. Yes, sir.

Q. Why do you inject the other things all the time? A. The reason I do is because what father done for me he done for brother most every time, he gave to me and he gave to Albert.

Q. You understand the Court warned you to answer me without injecting other things? A. Yes, sir, I do.

Q. So as I understand he gave you the home on Madison Avenue, the property first and then paid for the erection of a home? A. Yes, sir, he gave it to brother and I.

Q. On Madison Avenue? A. Yes, sir.

Q. When did you get title to it? A. It was made out to Albert and Frank Ulrich.

Q. And Albert made it over to you? A. After his house was built it was made over to you.

Q. Your father paid for the home you got? A. Yes, sir.

Q. Then when Albert turned over that home and property to you, your father had given Albert another home? A. Yes, sir.

Q. What number and street? A. It is known as Eight hundred and twenty-eight Madison Avenue.

Q. Right near your place, across the street? A. Almost across the street.

Q. At the time when you severed connections with Ulrich Company, you say you were getting fifty dollars a week? A. Yes, sir.

How long have you been getting fifty dollars a week? A. As near as I can recollect it would be about two or two and a half years.

Q. Before you severed your connection with your father? A. Before I was fired.

Q. How much were you getting before you got fifty dollars a week? A. I am not sure I think somewheres around thirty.

Q. It might have been more? A. No, I don't think so.

Q. What for three years before you severed connection with the Ulrich Company did your father pay you out of the business in addition to the fifty dollars a week?

Mr. Harding—I object to that question as relating to something not in the case. Counsel has repeated twice, "up to the time he severed connections with his father's business," the witness corrected this and said, "Until I was fired." The testimony of the witness is he never severed the connections but his father severed the connections.

I object to the question which assumes that this witness severed his relations with the father, he said he didn't, his father caused the severance of relations by discharging him.

The Court—The Court has the testimony. I recall the testimony as to how he left the place.

Q. For three years prior to the severance of your connections with the business of your father what did he give you out of the business in addition to the fifty dollars a week you were getting at the time of the severance? A. To the best of my recollection it is about in the neighborhood of seven thousand dollars.

Q. How did you get the seven thousand dollars from your father and when and what for? A. Father gave brother and I each a bonus of five thousand dollars.

Q. When? A. I believe in Nineteen Hundred and Nineteen if I am not mistaken.

Q. What time of the year did you get that? A. I think in the fall of Nineteen Hundred and nineteen.

Q. Was that a bonus? A. Yes, sir.

Q. The other two thousand dollars when did you get that? A. Nineteen Hundred and eighteen.

Q. Didn't you say yesterday he gave you two thousand dollars when you went to Allentown, you have forgotten that? A. Yes, but that wasn't in the three years, that was previous to it.

Q. Well, we will make it four years then, four years? A. Then he gave brother and I two thousand.

Q. Apiece? A. No, sir, I believe most positively it was two thousand between us.

Q. Your father didn't give you so much you have forgotten what he gave you? A. I believe it was two thousand dollars to the best of my knowledge.

Q. When was that? A. I think in Nineteen hundred and seventeen.

Q. When did you open the Allentown business? A. Five years in December.

Q. When did he give you the two thousand dollars with reference to December, you and your brother? A. In Nineteen Hundred and seventeen.

Q. What time in Nineteen Hundred and Seventeen with reference to the opening of the Allentown business? A. I believe he gave it to us somewhere in the middle of Nineteen Hundred and Seventeen.

Q. The middle of it, what do you mean? A. Say around June, July or August.

Q. June, July and August? A. It might have been at that time.

Q. When did you get ready to open the Allentown business? A. In December.

Q. When did you talk to your father about it? A. Shortly before that.

Q. You weren't getting ready before you spoke to him? A. No, sir, father knew we were going to start.

Q. When was that? A. Shortly before we started.

Q. Shortly before what month? A. Father must have known it somewheres around in September, perhaps, August, we didn't do this in haste, we talked this over.

Q. When did you first speak to your father, you or Al, about you and Albert opening the place in Allentown? A. I spoke to father and I believe Albert spoke to father.

Q. When? A. Around August or September.

Q. When was it he gave you two thousand dollars, after or before you spoke to him? A. After.

Q. How did he give it to you? A. In check.

Q. To whose order? A. That I couldn't say, I am not positive.

Q. Was it to your order? A. I wouldn't say positive.

Q. To Albert's order? A. I Icannot say.

Q. Or both orders? A. I cannot recall.

Q. It was a check? A. I beleve so.

Q. Are you even sure about that? A. I think he gave it by my check but I am not quite clear, I can't memorize just how he gave this, whether he gave a check or not, I don't think he gave it in cash, it must have been by check.

Q. Are you sure now, Mr. Ulrich, whether he gave it to you? A. My recollection is I think he gave it, yes.

Q. In Nineteen Hundred and Seventeen he gave you and Al two thousand dollars with regard to the Allentown place? A. Yes, sir.

Q. That was to be your money and Al's money? A. Yes, sir.

Q. Absolutely ?A. Yes, sir.

Q. And absolute gift from your father? A. Yes.

Q. What else did he give you in Nineteen Hundred and seventeen, if anything? A. He gave us a few machines.

A. I mean in the way of money, just in the way of money first? A. Nothing that I recollect.

Q. If I showed you a check or stub would that help your recollection? A. I would like to see the check.

Q. I will show you the stub first? A. Well, I want to see the check.

Q. Have you got any of these checks? A. No, sir.

Q. None of them? A. No, sir.

Q. I ask you to look at that book and tell me what it is? A. It looks like a check book.

Q. Look at it and tell me what it is? A. A check book.

Q. Whose check book? A. I don't know, there is no name on it.

Q. Open it, Mr. Ulrich, and look at it? A. I did open it.

Q. You say you don't know what that book is? A. It looks like a check book.

Q. Whose check book? A I believe of the Ulrich Company, father's check book.

Q. Let me open it haphazardly. It shows stubs on June sixth, and numbered 16826, 16827, and 16828. Look at that and see if that will help your memory? Look at the writing, whose writing is that? A. That is my writing.

Q. Is the entire book made up in your writing up to the last page? A. My writing? Yes.

Q. Look at that book and tell me what it is? A. The check book, I believe.

Q. Look at that book. I ask you if that is not the stub of the check book you used in making out checks for your father to sign? A. I believe it is.

Q. Why did you hesitate so much about it? A. I wanted to be sure.

Q. Weren't you sure when you saw your handwriting? A. I didn't glance at it properly.

Q. You did glance at it when I made you? A. I didn't' know you made me.

Q. I ask you to look at two stubs of checks here in May, Nineteen Hundred and Seventeen. First I ask that this book be marked for identification.

Stub of check book marked Exhibit P-3 for identification.

Q. I ask you to look in this book Exhibit P-3 at stub number 16669 under date of May third, Nineteen Hundred and Seventeen and I ask you what that was for? A. Father gave that to Albert and I.

Q. I am asking you if he did not give you stub 16669? A. He gave us both a check at the same time.

Q. For two thousand dollars? A. Yes, sir.

Q. In May, Nineteen Hundred and Seventeen? A. Yes, sir.

Q. Why didn't you tell us that? A. I did not recall it.

Q. That means, don't it, that your father gave you a great deal of money you cannot recall? A. Yes, sir.

Q. That check was for two thousand dollars to you? A. Yes, and two thousand dollars to Albert.

Q. Written out by you? In your handwriting? A. Yes, sir.

Q. Signed by your father? A. Yes, sir.

Q. Dated on May third, Nineteen Hundred and Seventeen? A. Yes, sir.

Q. Tell us prior to Nineteen Hundred and Seventeen, go back to Nineteen Hundred and Ten and tell us what moneys your father gave you? A. I cannot recall now.

Q. None? A. No, sir, I cannot recall.

Q. Is it because he didn't give any to you? A. I cannot say.

Q. What did your father give you that check in May, Nineteen Hundred and Seventeen for? A.

He wanted to start to pay my brother and I rent for the mill.

Q. He was paying you and your brother Al four thousand dollars a year rent? A. He did that one year.

Q. At the rate of two thousand dollars a year? A. He was going to start in to pay us rent.

Q. Did he pay any rent in Nineteen Hundred and Eighteen? A. No, sir.

Q. Why? A. I don't know why.

Q. Nineteen Hundred and Nineteen? A. No, sir.

Q. Nineteen Hundred and Twenty? A. No, sir.

Q. Nineteen Hundren and Twenty-one? A. No, sir.

Q. You can't recall any other moneys your father gave you in Nineteen Hundred and Seventeen other than the two thousand dollars and the two thousand dollars he gave you on the Allentown property? A. Whatever he gave, he gave us both.

Q. What did he give you? A. I cannot memorize any more that I just told you.

Q. Do you know what he gave you in Nineteen Hundred and Sixteen? A. No, sir.

Q. Have you any idea? A. I don't know as he gave me any.

Q. Nineteen Hundred and Fifteen? A. I don't remember.

Q. Nineteen Hundred and Fourteen? A. I don't remember.

Q. Nineteen Hundred and Thirteen? A. I don't remember.

Q. Nineteen Hundred and Twelve? A. I don't remember.

Q. Do you mean to say you have forgotton or can't recall? A. I don't suppose I have forgotten. I suppose I could recall if there had been such a thing.

Q. Your father gave you quite a large sum of money at different times? A. Not very.

Q. How much did your father give you in his lifetime, altogether? A. What do you mean?

Q. How much did your father give you by way of presents in his life time, can you tell me how much that was about? A. I should judge about seven or eight thousand dollars, somewhere in that neighborhood.

Q. Why, three items alone made eight thousand. This five thousand dollars as a bonus? A. Yes, sir.

Q. Two thousand in May, Nineteen Hundred and Seventeen.

Mr. Harding—That is for rent.

Mr. McCran—I don't want any assistance from you.

Mr. Harding—He didn't give it, I don't want this witness to be confused.

Q. Who wrote the word "Rent" in the stub of the check of May, Nineteen Hundred and Seventeen? A. I did with father's....

Q. Who wrote it? A. I did.

Q. That is your handwriting? A. Yes, sir.

Q Did your father give you a bonus in Nineteen Hundred and Twenty? A. I don't believe so.

Q. Don't you know? A. I don't recall it.

Q. Can't you tell us whether or not your father

in Nineteen Hundred and Twenty gave you a bonus or not? A. I am not positive.

Q. Might he have given you one? A. He might have.

Q. Did you ask him for one? A. No, sir, he always volunteered.

Q. Didn't you demand from your father in Nineteen Hundred and Twenty a bonus of five thousand dollars? A. Absolutely not.

Q. Didn't you get in a quarrel with your father because you demanded five thousand dollars bonus? A. Absolutely not.

Q. You are positive you had no words with your father over a bonus Nineteen Hundred and Twenty? A. No, sir, I did not.

Q. You are sure? A. Sure.

Q. Did your father tell you in Nineteen Hundred and Twenty he wanted to give twenty-five hundred dollars to his wife, Mrs. Ulrich, twenty-five hundred to you and twenty-five hundred to Mrs. Ulrich and you said no? A. That is all news to me.

Q. That is not true? A. It is news to me, I never heard it.

Q. I ask you if that is true? A. I never heard of my father saying he wanted to give it.

Q. Did you discuss the question of a bonus in Nineteen Hundred and Twenty with your father? A. I don't believe we did.

Q. Did you? A. I don't think so.

Q. Might you? A. No, I doubt it.

Q. Just think for a moment and think whether or not you discussed the question of a bonus at all with your father in Nineteen Hundred and Twenty? A. I don't believe we did.

Q. You might have? A. I am almost sure I did not.

Q. Are you sure? A. I wouldn't say positive. but to the best of my recollection, I did not.

Q. The year before you got a check for five thousand dollars from your father for a bonus? A. Yes.

Q. Didn't you expect to get one in Nineteen Hundred and Twenty? A. No.

Q. Why? A. Because business slackened up.

Q. Didn't you expect it? A. I only expected it when business was good.

Q. You made money? A. We made a little but business was rather poor in Nineteen Hundred and Twenty.

Q. Business, you say, was not so good in Nineteen Hundred and Twenty? A. Not so good.

Q. Do you say you didn't talk on the question of a bonus to you from your father? A. I didn't expect any bonus.

Q. Do you say you didn't discuss with your father the question of a bonus for the year of Nineteen Hundred and Twenty? A. Not to my recollection.

Q. What does that mean? A. Not that I can think of now.

Q. You might have? A. I doubt it.

Q. You might have? A. I doubt it. I don't recall if I did.

Q. Is there anything would help you to find out whether or not you did discuss the bonus for the year Nineteen Hundred and Twenty? A. No.

Q. See if I can help your recollection; didn't your father say to you after you had spoken to him about a bonus, that business in Nineteen Hundred and Twenty was not so good? A. No, sir.

Q. And therefore he couldn't and wouldn't give you a five thousand dollar bonus for that year, does that help your recollection? A. No, sir.

Q. Did that conversation take place? A. Not that I heard.

Q. Would you say it didn't? A. I didn't hear it.

Q. Would you have heard it if you and your father discussed it? A. I would, surely.

Q. You are quite sure you and your father didn't discuss it? I am almost positive we did not discuss it.

Q. Will you say you didn't? A. To the best of my recollection we did not.

Q. One year such a conversation did take place between you and your father? A. I don't think it did.

Q. Would you say it did not? A. I wouldn't say, I am not quite positive.

Q. It might have taken place? A. No, I don't think it did.

Q. Will you say it didn't? You ought to know? A. To my knowledge, I don't think there was.

Q. You mean to your knowledge now on the stand you don't think so? A. No, to my knowledge at all times.

Q. Will you say that you and your father didn't discuss the question of bonus to you for Nineteen Hundred and Twenty? A. No, sir, he didn't, I don't think he did.

Q. What did your father give you when you got married, Frank? A. I don't know, about two or three hundred dollars' worth of furniture.

Q. What else? A. That is all I recollect.

Q. Did he give you a house? A. No, sir.

Q. How long after you got married was it he

gave you the house? A. About eight years as near as I can recollect.

Q. You lived with your father and mother after you got married? A. About a week.

Q. Where did you go to live then? A. Two hundred and eleven Park Avenue.

Q. In what house? A. Two hundred and eleven.

Q. Whose house? A. Father's house.

Q. Did you pay him rent? A. No, sir, neither did any of the rest of the family.

The Court—Hereafter confine yourself to the question.

Mr. McCran—I ask that is be striken out.

The Court—Strike it out.

Q. Did he pay any of your household expenses while you lived on Park Avenue? A. No, sir.

Q. None? A. No, sir.

Q. When you lived on Park Avenue did you draw the checks then? A. I couldn't say, Mr. McCran, I couldn't say.

Q. What else did your father give as a present besides the things you have mentioned? A. I believe he gave me a few stocks.

The Court—The question is what did he give you?

The Witness— Well, he gave me some, I don't know just the amounts, some shares in the Franklin Trust Company.

Q. Have you got them yet? A. Yes, sir.

Q. How many did you get? A. I think there is five or six.

Q You think? Don't you know? A. I am not positive.

Q. Do I understand you have stocks and don't know the number of shares they represent? A. Because I put them in the safe deposit box and they paid no interest until last year and I really have forgotten.

Q. They paid interest last year? A. I believe they did.

Q. You believe it? A. Yes, sir.

Q. Did you get interest last year? A. I believe so.

Q. When you got interest last year, did you look in the box to see if you got the right amount? A. I trusted that to...

Q. Did you look in your box to see how many shares of Franklin Trust Company you got? A. No, sir.

Q. How many did you get? A. I told you it might be five, six, seven, it might be eight.

Q. It might be ten? A. It might be.

Q. Have you got so many securities, young man, that you don't know what they are? A. No.

Q. You mean to say your father gave you stock and you don't know what he gave you, the amount? A. I am not positive.

Q. Did you pay so little attention to the gifts of your father that you didn't even look? A. I did at the time.

Q. You don't know whether you owned five or ten shares in the Franklin Trust Company that your father gave you? A. In the neighborhood of five or ten.

Q. That makes quite a difference, in the neighborhood, in value? A. Yes, sir.

Q. What is that stock worth per share? A. I

dont think it is worth much more than what he paid for it.

Q. What did you pay for it? A. I believe around one hundred and sixty-five dollars.

Q. You haven't even kept track of sales of that stock, have you? A. No, sir.

Q. If I told you that sales had been made within the last six months at two hundred and thirty-two, would you doubt it? A. Not if you told me.

Q. I happen to be president of that company? A. I am well aware of that fact.

Q. You said you didn't think it was worth any more that what you paid for it? A. No, I did not think so.

Q. Are you worth so much money you don't know the value of the property you have? A. I I wish I was.

Q. I ask you again? A. No.

Q. Is your stock on the books of the Franklin Trust Company in your own name? A. I believe so.

Q. Do you know? A. The check was sent to me in my name.

Q. Didn't you look at the stock certificates when you put them in the safe deposit box? A. I did at the time I got them.

Q. Whose name were they in? A. My name.

Q. A gift from your father? A. Yes, sir.

Q. Paid for by your father? A. Yes, sir.

Q. Out of his own money? A. Yes, sir.

Q. And you don't know thether this represents five shares he gave you or ten shares he gave you? A. That is something I am not quite positive about.

Q. What else did he give you? A. Nothing I can recall.

Q. Try. It is very important in this case, very important you should know what your father gave you. Just try to think? A. I can't think of anything else, Mr. McCran.

Q. Let me see if I can help you. Did you ever hear of the United States Trust Company or the German American Trust Company? A. Yes, sir.

Q. Did you ever get any of that stock? A. Yes, I did.

Q. That helps your recollection? A. Yes, sir.

Q. How much did you get of that stock? A. I think around about five shares.

Q. Around about five shares? A. Yes, sir.

Q. Do you know any more about the number of shares of stock in.... Is it the Uuited States Trust Company now? A. Yes, it is now.

Q. It was originally the German-American? A. Yes.

Q. When you got your stock, was it the United States or German-American? A. I couldn't say.

Q. When did you get it? A. The nearest to my knowledge, six or seven years ago.

Q. Where did your father give you this stock in the United States Trust Company? A. Where?

Q. Yes. Where was he when he gave it to you? A. Brother and father and I were together.

Q. Where? A. In the office.

Q. Was the stock he gave you bought by him out of his moneys? A. I believe it was.

Q. Speaking of your father's business you were intimately connected with it then? A. Yes, sir.

Q. Why do you say you think it was? A. I say I think it was.

Q. You wrote out the check that your father signed for it? A. I wouldn't say that positively for the United States.

Q. Do you have any trouble with your memory? A. Not at all.

Q. You have a good memory? A. Very good.

Q. How many shares of stock did your father give you in the German American or now, the United States Trust Company. A. Five or six shares, Mr. McCran.

Q. Five or six? A. I believe that is what it was.

Q. Was that stock afterwards increased by the bank to you? A. Yes, sir.

Q. What extra stock did you afterwards get from the bank because of the ownership of what your father gave you? A. Around two shares, somewheres around two.

Q. Somewheres around two? A. Yes, sir.

Q. Did you have this stock transferred or not on the books of the United States Trust Company? A. No, I didn't.

Q. The stock your father gave you? A. No, I didn't.

Q. How many shares did your father give to your brother Albert? A. The same amount he gave to me.

Q. How many? A. Five, or five or six, the same as he gave to me.

Q. Just stop and think. He gave Albert the same number he gave you. How many did he give Albert? A. I believe it was five or six.

Q. It might have been seven? A. I don't think so but it might have been.

Q. Might have been eight? A. It might have been, I doubt it.

Q. It might have been nine? A. No, I don't think so.

Q. That stock is in your name on the books of the trust company? A. Yes, sir.

Q. Who transferred it to your name after your father gave it to you? A. I don't know.

Q. Who did? A. Father did, I suppose.

Q. So that is now stands in your name? A. Yes.

Q. What is that stock worth per share? A. I should judge two hundred and eighty-five.

Q. Would you say it was not worth five hundred dollars a share? A. I wouldn't say so if people could get it.

Q. On sales of it? A. Only very few sales I ever heard of.

Q. I want to get an idea of what the market value is of that stock? A. I should judge two hundred and eighty or two hundred and eighty-five.

Q. What dividends do you get out of it? A. A little over six I believe.

Q. How much in money? A. I can't recall what I did get.

Q. You don't know what the income is to yourself on your securities? A. I believe it is somewhere in the neighborhood of one hundred or a hundred and twenty dollars a year, something like that.

Q. Don't you know? A. No, sir.

Q. You don't know how many shares you now

hold in the United States Trust Company which were the gift of your father? A. I didn't memorize them.

Q. Where are these shares? You have a safe deposit box, is it in that box you keep your securities? A. Some of them.

Q. Have you got any more securities your father gave you? A. No, sir, not that I can recall.

Q. Just stop and think. Tell us whether or not you have any more securities in that safe deposit box, that your father gave you? A. No, sir.

Q. Are you sure of that? A. No.

Q. Are you positive? A. Yes, sir.

Q. You don't think so? A. No.

Q. You are not sure, are you? A. Well, I don't think I have.

Q. You don't think you have? A. No, sir.

Q. Might you have?

Mr. Harding—There is a question that has been repeated three or four times, back and forth to this witness. I don't think, if counsel doesn't want to burden the record I don't think he ought to go on repeating that question, on and on, and particularly the manner in which he is doing it. On a subject such as this one that the witness cannot be sure of and one that can be absolutely made sure of, and on a subject which to my mind is one that can be made certain of, there ought to be a limit to the number of times that counsel asks the witness the same question and gets the same answer.

I have listened to that no less than six times. I object to asking the question over and over and getting the same answer.

Mr. McCran—I still don't know what the purpose of your speech is.

Mr. Harding—My whole purpose is this, there ought to be some limit to counsel asking the same question and getting the same answer if he does it five or six times.

The Court—Proceed with your examination.

Q. I am now going to ask you for the seventh time, are there or not, in your safe deposit box, any securities that your father gave you other than the Franklin Trust Company and the German American or United States Trust Company stock? A. No, sir.

Q. There are not? A. I don't think so.

Q. Or any other place? A. No, sir.

Q. Are you sure about that? A. Pretty sure.

Q. Did your father give you any interest in a building and loan? A. No, sir.

Q. Did he give you any other stocks other than the Franklin and United States or German-American? A: Not that I remember.

Q. Did he give you any land stock? A. No, sir, not that I remember outside of the house he gave brother and I.

Q. I mean in a land company? A. No, sir.

Q. Are you sure? A. No, I don't believe he did, Mr. Harding.

Q. McCran? A. Mr. McCran, excuse me.

Q. You don't believe he did? A. No, sir, I don't believe he did in any land company.

Q. Well, in what company? A. I can't recall.

Q. Your father did give you other stocks in other companies than the Franklin and German-American or United States? A. Not that I can memorize now.

Q. Could he have given to you without you knowing now? A. I don't suppose so, I don't see how he could.

Q. Are you sure he didn't? A. I don't think he did. He might have but I don't think so.

Q. He might have but you cannot now recall. Is that it? A. That is about the way.

Q. He gave you some Liberty Bonds, didn't he? A. No, sir.

Q. None? A. No, sir.

Q. Are you sure? A. Yes, sir.

Q. He gave you an interest in some real estate, the mill property on Ward and Dale Avenue? A. No, sir.

Q. Your father didn't? A. No, sir, not to the best of my recollection, he didn't.

Q. Who paid for the land of the mill property on Ward Street and Dale Avenue? A. That is something I don't know.

Q. You mean to say you don't know your father paid for it? A. I do.

Q. The title to that property was originally in the name of your brother Albert? A. Yes, sir.

Q. Your father required your brother Albert to make a deed, didn't he? A. I don't know, Mr. McCran.

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

Q. Didn't your father make your brother Albert make a deed of two thirds interest in that property, one third to you and one third to him? A. I don't suppose he made him.

Q. Did he request him? A. Not that I heard.

Q. That is how you got your third interest? A. Yes, sir.

Q. How did you get your interest? A. My brother gave it to me.

Q. And gave it to your father too? A. Yes, sir.

Q. Do you know how this brother got this property? A. I suppose he bought it.

Q. With whose money? A. I suppose his own so far as I know.

Q. Wasn't it your father's money that paid for the Ward Street and Dale Avenue property? A. What do you mean by property.

Q. The mill property? A. The land or building?

Q. The land? A. I don't know.

Q. Did you ever hear? A. I heard that Albert owned it.

Q. You heard the title was in Albert's name? A. Yes, sir.

Q. Was there any reason why Albert should give you a third interest? A. As a brother.

Q. Did you pay him anything for it? A. No, sir.

Q. It was a gift from your brother? A. Yes.

Q. To you? A. Yes, sir.

Q. Are you sure about that? A. I believe that is the way it is.

Q. How old was your brother when he died, your brother Albert? A. I believe around fifty-one or fifty-two, somewhere around that.

Q. Fifty-one or fifty-two? A. I believe so.

Q. How old were you when you got the third interest in the land on Dale Avenue? A. Twenty-one.

Q. How much older than you was your brother Al? A. Oh, twelve or fourteen years.

Q. Did your brother Albert ever tell you that he bought and paid for the Dale Avenue property? A. I don't believe that was ever discussed.

Q. Did your father ever tell you that it was his money that paid for the Dale Avenue and Ward Street property, the land? A. No, sir, he didn't.

Q. He didn't? A. No, sir.

Q. There was a mill put on the property? A. Yes, sir.

Q. What kind of a building? A. Four story and basement brick mill.

Q. Who paid for the erection of that building? A. Well, I believe father did, I wouldn't say positive but I believe father did.

Q. To the best of your recollection? A. Yes.

Q. You didn't pay for it? A. No.

Q. You have got a third interest in the mill, haven't you? A. Yes, sir.

Q. How much of that mill property was occupied by Ulrich Company? A. Three floors and basement.

Q. What was done with the fourth floor? A. We rented it.

Q. At the time of your father's death what was

the rental of the property on the fourth floor? A. A dollar a foot.

Q. That amounted to how much in money? A. Four thousand dollars a year.

Q. Four thousand for the fourth floor? A. Yes.

Q. Were the other floors as good as the fourth floor for mill purposes? A. Yes, all but the basement.

Q. Three floors as good as the fourth floor were used by the Ulrich Company? A. Yes, sir.

Q. What is that property worth? A. That is a question. What it is worth.

Q. What do you estimate it is worth, you are one of the owners of it? A. I don't know. Around about thirty-eight or forty thousand dollars, perhaps a little more.

Q. You are a business man, aren't you? A. I pretend to be.

Q. Engaged in using mill property for mill purposes? A. Yes, sir.

Q. Do you say you estimate this property, the fourth floor of which rents for four thousand dollars a year, is only worth forty thousand dollars? A. That would be my idea of it.

Q. What would you get for the first floor, your ground floor, Mr. Owner, you are part owner of that building? A. About, around twenty-eight hundred.

Q. You wouldn't get as much as the fourth floor? A. Not for the basement, no.

Q. What would get for the first ground floor? A. I should judge around three thousand.

Q. You wouldn't get as much for the first floor as the top? A. No, I don't think you would.

Q. What would you get for the second floor? A. Three thousand, thirty-two hundred, something like that.

Q. What would you get for the third floor? A. The same.

Q How much? A. Three thousand, thirty-two hundred, something like that.

Q. And the fourth floor, four thousand? A. Mr. McCran, you said at the time of my father's death.

Q. The property is worth something? A. Yes.

Q. And was from January first...? A. The mill only brought thirty-five cents a foot for years and years.

Q. Was the value of that prperty the same from January first, Nineteen Hundred and Twenty-one, down to the death of your father in that year? A. The reason...

Q. Was the value of that property the same from January first, Nineteen Hundred and twenty-one, down to the death of your father in July of that year? Q. No, it wasn't worth as much.

Q. Do you say a mill property bringing in sixteen thousand, two hundred dollars is only worth forty thousand dollars? A. It is not worth that to-day.

Q. That day? A. That is a question.

Q. I ask you, Mr. Business Man, what is the value of your property that accrues rental income of sixteen thousand, two hundred dollars a year? A. About forty or fifty thousand dollars.

Q. What is it worth now, to-day? A. Less than it was then.

Q. How much? A. I should judge about in the neighborhood of thirty-eight thousand.

Q. Would you be willing that that building be sold for thirty-eight thousand dollars? A. I wouldn't sell my share.

Q. You wouldn't sell your one third? A. That would be eleven or twelve thousand dollars.

Q. There is no incumbrances on the property? A. No.

Q. Debts all paid? A. Yes, sir.

Q. Your father was a great man for paying his debts? A. Yes, sir.

Q. A prompt man? A. Yes, sir.

Q. The debts of the mill were paid promptly? A. Yes, sir.

Q. Every month he paid bills promptly? A. Yes.

Q. When the month began there were no bills excepting current bills coming in after that? A. There were some bills there.

Q. Small bills? A. Some large and some small.

Q. He never held any bills over to the end of the month if the bills came in? A. As a rule, no.

Q. Did the business have any debts excepting current debts? A. No.

Q. Other than the Franklin stock, the German-American or United States Trust Company stock, your home property, and your interest in the Ward Street property, the bonus, the thousand dollars and the two thousand dollars you and Al got in the Allentown...? A. That was rent.

Q. Other than these items did your father ever give you anything? A. There is nothing I recollect.

Q. Nothing you recollect? A. No, sir, not that I recollect.

Q. Will you say that the mill property is not worth seventy-five thousand dollars? A. I wouldn't say. It is according to what you can get if you wanted to sell it. That is what it is worth. What it will bring. I have never tried to sell it.

Q. You have got the sign back on your house, "For sale"? A. I haven't fixed any price.

Q. What would you sell it for? A. According to how many buyers come around and I see what the demand is for it.

Q. Have you only got one buyer?

Mr. Harding—I object. I don't think counsel has any right to ask the witness what he would sell his property for. I don't think he ought to be bound by that, what he would take for it.

Q. Tell me how you came to go to Allentown, to open a mill up there? A. Owing to business conditions down here.

Q. Tell us what caused you to go to Allentown? A. We were short of help here and very busy. Help was cheaper in Pennsylvania than it was here and we figured we could do lots of things up there cheaper than we could do it here in Paterson.

Q. You and Al figured things could be manufactured cheaper? A. Some things.

Q. At that time you were in your father's employ? A. Yes, sir.

Q. Who was superintending the business? A. Brother and I was.

Q. You looked after the business as superintendents? A. Yes, sir.

Q. So you figured that certain things could be made cheaper up in Allentown? A. Yes, sir.

Q. For whom could you manufacture things cheaper than down here? A. For different people.

Q. Some of your people down here for example? A. This plant up there used to get considerable orders and send them to Paterson.

Q. Before you went to Allentown, did you figure you could manufacture some things cheaper, some things that customers of the mill down here wanted? A. Yes.

Q. Did you contemplate that some of the customers of the Paterson plant would have their orders filled at Allentown? A. Not necessarily, no, sir.

Q. Did you contemplate that? A. No, sir.

Q. Did you do business up there for customers of the Paterson plant? A. When the Paterson plant was busy.

Q. As soon as you thought you and Al were so busy in your father's business and so short of help, that a plant ought to be opened in Allentown? A. I thought so, yes.

Q. When did you and Al first talk that over? A. I should judge about in September, five years this September.

Q. After you and Al had talked it over when

did you first talk to your father about it? A. From the start.

Q. When? Before or after you and Al talked it over? A. The three of us was there together.

Q. What was that talk? A. Discussing business and how orders were coming in and we couldn't fill them, and customers hollering for work, and that we couldn't enlarge here because we didn't have help. We had some machinery here and we spoke it over and asked Papa if he didn't think it was a good idea to start a place in Pennsylvania and he said yes.

Q. Did you get ready to start? A. I suppose so but not at the moment.

Q. I mean shortly thereafter? A. Yes, sir.

Q. When did you have a conversation with your father about taking him in on this business? A. At that time and when we went to Pennsylvania.

Q. Who went up? A. I went up on one occasion and brother went on another.

Q. What did you do up there? A. I went to rent floor space.

Q. And you succeeded? A. Yes, towards the—

Q. You did succeed? A. Yes, sir.

Q. When did you succeed? A. About November.

Q. After you had this conversation with your father, how could you take care of the business here and go up to open a place in Allentown? Did you have any conversation with him until you and Al had gone up to Allentown and made arrangements for the place? A. It was talked of almost every day.

Q. When was it you offered to take your father in and he declined? A. Just as the lease was signed.

Q. Tell us the conversation? A. I told father I had seen this place in Allentown and both brother Al and I thought it was a good opportunity to pick this place up and both Al and I said to father, "What will we do, will we take this up," and he says, "Yes." Then I says to father, "Don't you want to come in on this too," and he says, "No, no, I don't want anything to do with it, I am too old, I am going to turn this business to you and stay home, I don't want that."

Q. He did not claim any interest in the Allentown business? A. Positively.

Q. It was yours? A. Brother and I.

Q. Actually your property and Al's property? A. Yes, sir.

Q. Then business began up above? A. Yes, sir.

Q. It began in December, I think? A. It was rented in December.

Q. Who paid the rent for the month of December,Nineteen Hundred and Seventeen? A. That I wouldn't be sure of.

Q. Would there be any method by which you could be sure? A. I don't know.

Q. As a matter of fact didn't your father pay rent for the month of December in the Allentown plant? A. I am not sure. Father helped us along with the Allentown mill.

Q. You and Al were to have the entire business up in Allentown and your father gave you and Al two thousand dollars? A. I think it was two thousand.

Q. He gave it to you because you and Al were going up to Allentown and launch a business? A. Yes.

Q. What else did he give you? A. Some machinery.

Q. What machinery? A. I cannot memorize what machinery.

Q. Tell us what machinery and how many machines were sent up to the plant that belonged to you and Al in Allentown? A. Perhaps six or seven.

Q. Might it have been more? A. Some were returned to the Paterson mill again.

Q. How many were sent up to the mill? A. Six or seven.

Q. How many machines did you need up there in order to go into business? A. It didn't take so much machinery.

Q. How many? It was your business? A. Ten or twelve.

Q. Where did you get the machines that your father didn't give you out of the plant down there? A. Where did we get them?

Q. Yes? A. Bought them.

Q. Where? A. Different places.

Q. Where, what places? A. Several.

Q. Give me the names? A. In New York.

Q. Give me the names? A. Fay and Egan.

Q. Give me another? A. I can't recall another. We bought some on Centre Street, New York.

Q. Did you have to put an order in for these machines? A. If we couldn't get them right away.

Q. When did you put that order in? A. In December sometime, I believe.

Q. When did you begin operations? A. I suppose somewhere around February.

Q. How many machines did you need altogether? Your father gave you seven and you say you needed ten or twelve? A. About that.

Q. How many machines did you and Al buy? A. I don't know, about five or six.

Q. Who paid for them? A. Al and I.

Q. You and Al paid for them? A. Yes, sir.

Q. How many did your father pay for? A. We took these old machines from this mill here.

Q. How many machines did you have that your father paid for? A. I don't think he paid for any.

Q. You don't think so? A. Not now, I don't recall.

Q. Might he have paid for them? A. It is possible.

Q. Tell me one firm that you and Al paid for machinery? A. I am most sure we paid Fay and Egan.

Q. Is that the only one you recall? A. Just now it is.

Q. How many machines did you get from Fay and Egan? A. Two.

Q. And your father paid for the other three? A. No, sir.

Q. You can't recall any other firm excepting Fay and Egan that you paid for machinery? A. That is all I can memorize.

Q. Memorize? A. That is all just now.

Q. Your memory is good? A. Yes, sir, very.

Q. When you went up to Allentown where did you open your bank account? A. The Allentown National Bank.

Q. How many bank accounts did the Allentown Branch of your business have? A. One.

Q. Only one? A. So, I believe, yes.

Q. Where did you keep the books of the business of the Allentown business? A. At Allentown.

Q. Was a duplicate kept in your father's mill office? A. No, only the check book.

Q. Wasn't there a ledger account? A. Only what Allentown would owe Paterson or Paterson would owe Allentown.

Q. How did Allentown pay what it owed Paterson? A. Pay by check.

Q. On what bank? A. The Allentown National Bank and then at times do work and pay it up that way.

Q. Did you ever pay your father for any of the machinery that went up there? A. No.

Q. Did you ever pay for any of the goods that went up there? A. Yes, sir.

Q. What did you pay him for? A. Many different items, small items.

Q. How many check books did you keep up at Allentown? A. One.

Q. Who kept that check book? A. It was kept in the safe here under my brother's and my control.

Q. Didn't your father one day in Nineteen Hundred and Nineteen call your attention to a check that was deposited in Allentown National Bank which he said should have been deposited to his account in Paterson? A. That is news to me.

Q. That didn't take place or don't you recall it? A. It didn't take place in front of me.

Q. I am speaking between you and your father? A. No, sir.

Q. Not at all? A. Not as I recall.

Q. You say your father didn't call to your attention that check for seven hundred or seven hundred odd dollars which had been deposited in the Allentown National Bank to your account and demand of you why that went there instead of going into his business account here? A. No, I don't remember.

Q. You don't want to begin again with a long series of questions. Do you say it didn't take place? A. I said I didn't remember if it had.

Q. Might it have taken place? A. I doubt it.

Q. Might it have taken place and you now forget it? A. It is possible.

Q. It is possible your father charged you with depositing that check in the Allentown National Bank for seven hundred dollars when it ought to have been deposited he said to Ulrich Company's account here? A. He never said that to me.

Q. Did he say anything like that to you? A. No, sir.

Q. When was it your father made you, directed you or requested you to sign your name to an order putting the Allentown business in his name? A. After he had asked me to consolidate the Allentown Mill with the Paterson Mill and I done it voluntarily.

Q. How long after Nineteen Hundred and Seventeen was that? A. In Nineteen Hundred and Nineteen.

Q. So that your father in Nineteen Hundred and Nineteen wanted to consolidate the two businesses after he told you he was too old to have anything to do with it in Nineteen Hundred and Seventeen? A. Yes, sir.

Q. Did he send for the order? A. No, I believe I did.

Q. Are you sure? A. I think so.

Q. Are you sure? A. I am pretty sure.

Q. Pretty sure? A. Yes, sir.

Q. What was the date of that? When you signed the order transferring the account in the bank at Allentown? A. About the middle of Nineteen Hundred and Nineteen.

Q. I am going to show you the stub of a check book and ask you to look at it and I ask you to look very carefully at it and then tell me just what it is? A. That is a check book.

Q. A check book? It is the stub of the check book used in the Allentown business? A. I believe it is.

Q. Whose handwriting are these stubs made out in beginning with number one, beginning February twenty-seventh, Nineteen Hundred and Eighteen and onward to June first, Nineteen Hundred and Nineteen, whose handwriting are these stubs in? Look at them?

Mr. Harding—You have asked the witness whether they are in his handwriting or not. I have no doubt they probably are but there might possibly be some that are not. He should be given an opportunity to look. Counsel asks the question and ruffles over a lot of leaves and asks him to state whether or not these are in his handwriting, and runs rapidly over these leaves. There was no opportunity for the witness to see or anybody else to see whether these are in his handwriting. Counsel after having asked that question, without giving the witness an opportunity to look it over starts to continue. All I want is for this witness to have an opportunity to look over these stubs.

Mr. McCran—Let the stenographer read the question.

The Stenographer—Whose handwriting are these stubs made out in beginning with number one, beginning February twenty-seventh, Nineteen Hundred and Eighteen, and onward to June first, Nineteen Hundred and Nineteen, whose handwriting are these stubs in? Look at them.

Mr. Harding—I am not objecting to that question. Mr. McCran started to ask something else but the stenographer didn't get it.

A. Most of them are mine.

Q. Look it over again and look at every one of them? A. They are mostly mine.

Q. Look at them, Mr. Witness?

The Court—The witness will take the book and look the stubs over and answer the question.

A. I have not found any—. They are all in my writing.

Q. This was the check book on the Allentown National Bank? A. Yes, sir.

Q. The check book of the Allentown business?

Q. Look at these stubs from number one down to June first, Nineteen Hundred and Nineteen and see

if you can show me one made out to the Franz Ulrich Company? Or to your father? A. I haven't seen any.

Q. Look at that book and show me how many were made out for machinery that you and Al bought for the Allentown plant? A. I don't know whether it will show in here.

Q. Look. A. There are some here, check number thirteen and fourteen.

Q. That is the number of the check? A. Yes. Here is a check for the lawyer that prepared the certificate of trade name.

Q. Paid to a lawyer up there? A. Yes, sir.

Q. That prepared the certificate of trade name? A. Yes, sir.

Q. How much was that check? A. Five dollars and fourteen cents.

Q. Give me the rest of the checks paid out on account of machinery you and Al bought for the Allentown plant? A. Check thirty-eight and thirty-nine.

Q. Do you find any checks in this book other than the numbers you have given me, for machinery? A. No, I haven't. Not in that book.

Mr. McCran—I ask that this check book to which the witness has been referring be marked for identification.

Check Book marked Exhibit P-4 for identification.

Q. Check number thirteen, you say that is for some machinery? A. Some parts.

Q. Some parts? A. Yes, I believe so.

Q. Look at that voucher for check number thirteen what parts did that cover? A. Pulleys, perhaps.

Q. Perhaps or do you know? A. That is as near as I can recall.

Q. What is the amount of that? A. Two hundred and fifteen dollars and thirty cents.

Q. I show you Exhibit P-4 and now refer you to stub number fourteen, dated March sixteenth, Nineteen Hundred and eighteen, to W. H. Taylor Company for seventy-nine dollars and ninety-three cents. What was that for? A. Belting, pulleys and other machinery.

Q. Neither thirteen or fourteen is for machinery proper? A. There might have been a lathe in there.

Q. I show you Exhibit P-4, check number thirty-eight dated September twenty-third, Nineteen Hundred and eighteen to Mecan Junior Company for twenty-two dollars and thirty cents and ask you what that was for? A. Hangers.

Q. That wasn't for machinery? A. Yes, you would call that machinery.

Q. I now show you stub of Exhibit P-4, check number thirty-nine dated September twenty-third, Nineteen Hundred and Eighteen to W. H. Taylor Company for Five dollars and seventy-two cents and ask you what that is for? A. Belts.

Q. Not very much belting? A. Belting I think or a pulley or hanger.

Q. So that out of your business at Allentown you paid you say for machinery on checks, num-

ber thirteen, fourteen, thirty-eight and thirty-nine? A. Yes, sir.

Q. The aggregate of these checks is three hundred and twenty-three dollars and twenty-five cents? A. Yes, but there is, to the best of my knowledge, there is another check book before that.

Q. You told me before there was only one check book? A. At a time. We use only one check book.

Q. This is check book number one voucher number one? A. Yes, but this is February twenty-seventh, Nineteen Hundred and eighteen.

Q. Was there another book? A. There must have been.

Q. There must have been? A. Yes, sir.

Q. Isn't this the check book of the account you opened in Allentown and the only check book? A. No, sir, I don't think so.

Q. Do you say there was another check book? A. I believe there was.

Q. Why did you tell me when I first asked you before showing you these vouchers, there was only one check book? A. There was only one at a time.

Q. That is your explanation now? A. That is the way I took it right from the start.

Q. There was another check book used to pay for machinery? A. As much as I recall.

Q. That other check book was the check book of your father, Franz Ulrich? A. No, sir.

Q. Didn't your father sign checks drawn by you out of his private account to pay for machinery that went into the Allentown mill? A. Some of it.

Q. How much of it? A. Five or six.

Q. You said you got seven machines from him? A. About that.

Q. Out of the mill you said you got those machines? A. Yes, sir.

Q. You said the total machines was twelve, now do you want me to understand he bought five machines for you? A. He gave us most of the machines from the Paterson mill.

Q. And the rest he bought? A. I don't think so.

Q. Can you produce in this case a check other than the vouchers shown in this check book of the Allentown account owned by you to anybody for machinery at the Allentown mill? A. Well, I believe so if the books was here.

Q. Can you? A. I can't produce it because they have possession of the books there.

Q. Where was the check book of Allentown kept? A. In father's office.

Q. Didn't your father's bookkeeper keep a ledger of Allentown? A. No.

Q. You were one of the superintendents all the time? A. Yes, sir.

Q. You knew what Coogan was doing? A. Yes.

Q Do you tell me that Coogan didn't keep accounts of the Allentown mill from the beginning? A. No, only when the Allentown mill would buy stuff from Paterson, the same as a regular customer.

Q. You never paid any bills? A. Yes, we did.

Q. Out of what account? A. The Allentown National Bank.

Q. I ask you if you want to correct your statement from February, Nineteen Hundred and Eighteen down to the time your father took over the Allentown mill from you, that book shows not one

check to your father or Ulrich Company? A. Yes, sir, but we took that in account when we would do stuff up there for the Paterson mill.

Q. When you told me you paid cash or check you were not telling the truth? A. We paid that way and maybe a check or two.

Q. Show me one? A. I don't see them in this book, I believe there is another book.

Q. What other book? A. There must be another book.

Q. Then this stub book from the Allentown National Bank running from number one on, you say was not the only book? A. There must have been some checks made out before the twenty-seventh of February when we started in December.

Q. You didn't start in December? A. We started to get ready.

Q. When did you start to operate the business in Allentown? A. Later on, two or three months.

Q. Didn't you state in answer to a question of mine that the business began in February, Nineteen Hundred and eighteen? A. We leased the place in December.

Q. You began operating the business in February, Nineteen Hundred and eighteen? A. I would. n't say positively, I am not sure.

Q. When did you begin to operate the business in Allentown? A. As I told you, before in January or February.

Q. I show you this check book once more. I show you check book dated February twenty-seventh, had you been doing business before that? A. We wasn't doing business but we had to buy stuff.

Q. Did you make any checks before that? A. Yes, I believe we did.

Q. On what bank? A. The Allentown National Bank.

Q. Did you have two check books running? A. We had one running before this one.

Q. Why did you open this one on February twenty-seventh with check number one? A. That is the way you handed it to me.

Q. That is check number one? A. Yes, sir.

Q. Dated February, twenty-seventh? A. Yes, sir.

Q. You say you had another check book before? A. I think there was.

Q. Are you sure of that? A. I think so.

Q And then you opened this one on February twenty-seventh with voucher number one? A. Yes, sir.

Q. Do you want me to believe you used the first book from December to February? A. No, I believe this was a printed book and the other one wasn't.

Q. Your recollection is improving? A. No, just as clear as ever.

Q. When was the exact date if you can place it, when your father told you to turn over the Allentown accounts and business? A. The exact date, I can't remember. I believe it was somewhere in.... No, I don't know. Around May or June, Nineteen Hundred and Nineteen.

Q. May or June of Nineteen Hundred and Nineteen? A. Yes, somewhere around that time.

Q. You told me or your counsel if I am correct that you turned over to your father the whole interest in the Allentown property? A. Yes, sir.

Q. What was up at Allentown at the time you turned over to your father, other than machines he had given you? A. There was stuff my brother and I had bought.

Q. What stuff? A. Shop machinery and stock.

Q. Had you bought any shop machinery or stock other than shown in the stubs of your check book marked P-4? A. We must have done so.

Q. You must have done so? A. Yes, sir.

Q. What else was up there, stock and all that? A. Machinery and stock.

Q. Outside of machinery and what your father had sent up there what was the value of the other things? A. About four thousand or forty-five hundred.

Q. How much money did you have in the bank at that time? A. When we turned it over?

Q. Yes, when we turned it over? A. Very little in the bank; we had some money on the books.

Q. How much money was in the bank? A. After I gave Mrs. Ulrich that check, I think there was something over a hundred dollars.

Q. What was the value of all that belonged to you and Albert in the Allentown mill at the time that you took over your brother Albert's interest in it? A. Five or six thousand dollars, something like that.

Q. How much did Mrs. Ulrich get? A. Twenty-six or twenty-seven hundred dollars.

Q. Did that represent the full value of the property in the business at Allentown? A. She accepted that, she must have considered that.

Q. What did you consider it? A. I considered it between five and six thousand dollars.

Q. So that when Mrs. Ulrich got the check for half of the Allentown business it represented what you considered to be half of the Allentown business to which your brother's widow was entitled? A. Yes, sir.

Q. That left you with the other half. Before you got Albert's interest your half was worth twenty-five or twenty-six hundred dollars? A. Yes, sir.

Q. That is what it was worth when you turned it over to your father? A. Something in that neighborhood.

Q. Tell me again what the consideration was from your father for turning over the business at Allentown? A. My father promised he would will to me the business of Ulrich Company.

Q. What was the business of Ulrich Company worth at that time? A. About fifty thousand dollars.

Q. So that if you turned over to your father, as I understand it, the Allentown property, all of it, both your interest and Al's interest, worth five or six thousand dollars he was to turn over to you a business of fifty thousand dollars? A. It wasn't done in that way.

Q. Well, tell us how? A. Father always promised us the business was brother's and mine.

Q. Promised or told you? A. He both promised and told us.

Q. Was there any reason your father ought to promise you. He told you it was going to be your business and Al's business some day? A. He told us he would will it to us.

Q. He would will it to you? A. Yes, sir.

Q. As I understand it your father expected that

you and Al would succeed him in business and keep up the name of Ulrich Company? A. Yes, sir.

Q. When Albert died you were the only surviving son and he looked to you, didn't he? A. A. Yes, sir.

Q. You knew it was your father's desire that you should succeed him in the business and carry on the business in his name? A. Yes, sir.

Q. You knew that yourself before you and your father had any final trouble? A. Yes, sir.

Q. When was Albert taken sick? A. Sometime in January.

Q. What time in January? A. I don't know just when he was taken sick.

Q. What year A. I believe it was somewhere in Nineteen Hundred and nineteen.

Q. Before Albert took sick and from the time the lease was taken on the Allentown mill, the two of you continued down here? A. Yes, sir.

Q. And got the same salaries of your father? A. Yes, sir.

Q. And were still the local managers of his business? A. Yes, sir.

Q. And at the same time looking after Allentown? A. Yes, sir.

Q. At the time that you and Al went into this business which you claim you owned at Allentown, did your father at any time tell people or talk or act or indicate that he believed he was the owner of the Allentown plant? A. No, sir, father was quite clear that the place belonged to Al and I and he always was clear about it.

Q. Didn't he put on his checks that he sent out,

Allentown and Paterson? A. Yes, sir, that was advertising.

Q. He put that on his checks? A. Yes, sir, and we put it on the Allentown bill to advertise Paterson, Allentown and Paterson.

Mr. McCran—I ask that this check be marked for identification.

Check marked Exhibit P-5 for identification.

Q. I show you a check of Ulrich Company which was signed by your father? A. Yes, sir.

Q. And marked Exhibit P-5 for identification and printed upon it, Mills, Paterson, N. J., Allentown, Pa. Is that correct? A. Yes, sir.

Q. Why did your father put on his checks of Ulrich Company of Paterson, "Mills at Paterson and Allentown," if the property was yours? A. He did that for advertising.

Q. Advertising for you and Al? A. Trying to help us as father would.

Q. So your father was all the time advertising for business for you at Allentown? A. Yes, sir.

Q. And you did business with some of his customers that would otherwise come to Paterson? A. No.

Q. None? A. I wouldn't say so.

Q. Would you say there were not? A. I wouldn't say positive, it wasn't taking business from Paterson to my knowledge.

Q. I notice annexed to that check I have just shown you, Exhibit P-5, being check number seventeen thousand five hundred and thirty-four (17534), dated May eighth, Nineteen Hundred and

eighteen, to the order of William H. Taylor Company and signed by your father, annexed to it is a bill, two bills, receipted for the aggregate amount of the check and I ask you to look at these bills and tell me what your father was paying for with that check? A. One is on the motor.

Q. What motor? A. In the Allentown mill.

Q. What was the other one for? A. For a little grindstone he bought for us.

Q. For the Allentown mill? A. Yes, sir.

Q. Why should he pay for repairs on a motor of the Allentown mill if you and your brother were the sole owners? A. To help us along.

Q. He kept on giving you a lot of things? A. Little things like this.

Q. Look at this check marked Exhibit P-6 what is that for? To the order of M. Freidus and signed by your father? A. Yes, sir.

Q. What is that for? A. One of the machines father gave us.

Q. This check is dated October nineteenth, Ninecen Hundred and seventeen? A. Yes, sir.

Mr. McCran—I ask that these checks be marked for identification.

Checks No. 17161 and No. 17031 marked exhibits P-8 and P-9, respectively, for identification.

Q. I show you Exhibits marked for identification P-8 and P-9, being two checks of Ulrich Company and I ask you if they were signed by your father? A. Yes, sir.

Q. Check number seventeen thousand and thirty-one for one hundred dollars, dated October nineteenth, Nineteen Hundred and seventeen, and the other, number seventeen thousand, one hundred and sixty-one, dated December eleventh, Nineteen Hundred and seventeen for Three hundred and eleven dollars and sixty cents and ask you if these checks were not in payment of the annexed bills to J. A. Fay and Egan Company? A. Yes, sir, that is part of the machinery father gave us.

Q. Part of the machinery your father bought for you? A. Yes, sir.

Q. I show you Exhibits marked P-10-A and P-10-B fr identification being checks of the Ulrich Company and signed by your father? A. Yes, sir.

Q. Check number seventeen thousand four hundred and forty-five for four hundred and twenty-six dollars and eighty-five cents and check number seventeen thousand four hundred and seventeen for five hundred and sixty-four dollars and seventy-four cents both to the order of the Burlington Venetian Blind Company? A. Yes.

Q. And fastened to them is a bill? A. Yes, sir.

Q. The checks are in payment of the annexed bills? A. Yes, sir.

Q. For what? A. Shafts.

Q. There is a long list of things? A. Yes, sir.

Q. More that your father gave you for Allentown? A. Yes, sir, but mostly returned to Paterson.

Q. All paid for by your father? A. Yes, sir, but returned to Paterson.

Q. All of them? A. The biggest part of them, I don't know what has been done since I was out.

Q. I show you Exhibit marked for identification

as P-11 and ask you if that check is signed by your father? A. Yes, sir.

Q. And it is dated December ninth, Nineteen Hundred and eighteen? A. Yes, sir.

Q. December? A. Yes, sir.

Q. Payable to the order of F. A. Chase Company for one hundred and eighty-nine dollars and ninety-one cents? A. Yes, sir.

Q. I ask you if that check was in payment of the bill annexed thereto of F. A. Chase and Company and what does it represent? A. Supplies father bought for us.

Q. He bought supplies not only in the beginning but paid for them after you were started up there? A. Yes, sir.

Q. Why? Wasn't the business successful? A. Yes, sir, but we didn't have much money and father was helping us out.

Q. Instead of giving you cash he was paying your bills? A. He was building up the business for us.

Q. Instead of giving you cash after that he was paying your bills? A. He was giving us this material and paying for it.

Q. These were all bills for your business? A. He volunteered to pay the bills.

Q. And still had no interest in that business? A. No, sir.

Q. Nor did he believe he had, and never spoke about it? A. He knew he had no interest in it.

Q. I show you Exhibit P-12 being check number Seventeen thousand and ninety-four to the order of the Woodcrafts Equipment Company for eighty dollars signed by your father? A. Yes, sir.

Q. For what? A. One belt.

Q. Used at Allentwn? A. I believe so.

Q. I have got the bill here, do you believe so or is it so? A. It says here—

Q. Is it? A. Yes, it must be if it says so here.

Q. I show you Exhibit P-13 being check number seventeen thousand two hundred and fifty-seven and ask you if it is signed by your father? A. Yes, sir.

Q. To John Royle's Sons for thirty dollars? A. Yes, sir.

Q. In payment of the bill annexed? A. Yes.

Q. For what? A. Motor shafting at Allentown.

Q. I show you Exhibit P-14, being check number seventeen thousand, one hundred and eight, is that signed by your father? A. Yes, sir.

Q. In payment of the bill annexed to the check? A. Yes, sir.

Q. For twenty-three dollars? A. Yes, sir.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-15, check number seventeen thousand four hundred and sixty-five with the six bills attached to the check and ask you if that is signed by your father? A. Yes, sir.

Q. And represents what? A. Material.

Q. For where? A. Allentown.

Q. I show you Exhibit P-16, check number seventeen thousand four hundred and twenty-one and ask you if that check was signed by your father? A. Yes, sir, for Sixteen dollars and forty-six cents.

Q. In payment of the bill attached? A. I believe so.

Q. Look at it? A. It is for the same amount, yes.

Q. I ask you what that was in payment of? A. That must be for power.

Q. This is for power? A. Yes, sir.

Q. Made to the order of the Lehigh Valley Light and Power Company for power that you and your brother used in the business which belonged to you in Allentown? A. Yes, sir.

Q. Your father paid the power bills? A. A few of them, yes, sir.

Q. I show you Exhibit P-17, check number seventeen thousand seven hundred and eighty-three, again to the Lehigh Valley Light and Power and dated August twenty-sixth, Nineteen Hundred and eighteen, which is in payment of the annexed bill for power at Allentown? A. Yes, sir.

Q. I show you Exhibit P-18, check number seventeen thousand two hundred and seventy-five, and ask you if that is signed by your father? A. Yes, sir.

Q. Dated January thirty-first, Nineteen Hundred and eighteen and in payment of the attached bill to the Watson Machine Company for forty-five dollars and thirty-one cents in payment of castings that went up to Allentown? A. Yes, sir.

Q. I show you Exhibit P-19, check number seventeen thousand four hundred and sixty-seven and ask if that check was signed by your father? A. Yes, sir.

Q. What was that in payment of, made to the order of the Union Transfer Company? A. I don't remember but it says hauling.

Q. What hauling was there up there? A. Such as freight from the depot.

The Court—What is the amount of that?

The Witness—Twenty-two dollars and forty-seven cents.

Q. I show you Exhibit P-20, being check number seventeen thousand, six hundred and twenty-four, also to the Union Transfer Company, and ask you if that was signed by your father? A. Yes, sir.

Q. I ask you if that was in payment of the annexed bill and what it relates to? A. To freight hauling and also a half a ton of coal must have been taken up.

Q. For Allentown? A. Yes, sir.

Q. Five dollars and seventy-seven cents? A. Yes.

Q. I show you check number seventeen thousand eight hundred and three being Exhibit P-21 and ask you if that was signed by your father? A. Yes, sir.

Q. For twenty dollars and fifteen cents, in payment of the annexed bill? A. Yes, sir.

Q. For the Allentown mill? A. Yes, sir.

Q. I show you Exhibit P-22, being check number seventeen thousand, three hundred and twenty-nine for thirty-eight dollars and twenty-two cents and ask you if that was signed by your father? A. Yes, sir.

Q. In payment of the annexed bill? A. Yes, sir.

Q. What was it in payment of? A. Shuttle eyes.

Q. For the Allentown mill? A. Yes, sir.

Q. I show you Exhibit P-23, being check number seventeen thousand, two hundred and four, for twenty-one dollars and twenty-two cents, with four

bills attached and ask you if that check was signed by your father? A. Yes, sir.

Q. What was that check in payment of? A. Pulleys and castings.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-24 check number seventeen thousand, six hundred six for one hundred and forty dollars and ninety cents with receipted bill annexed, and ask you if that check was signed by your father? A. Yes, sir.

Q. I ask you what it was in payment of? A. I believe there is only some of that went to Allentown and some went to Paterson.

Q. Did you look at the bottom of that bill and see it is marked five sent to Allentown and five sent to Paterson. According to those figures half of that bill represents merchandise sent to Allentown? A. Yes.

Q. I show you Exhibit P-25, being check number seventeen thousand four hundred and forty-three with two bills attached and I ask you if that check was signed by your father? A. Yes, sir.

Q. I ask you what that check was in payment of? A. Paper and paper cutter.

Q. For Allentown? A. Yes, sir.

Q. I show yu Exhibit P-26, being check number seventeen thousand, three hundred and thirty-three with three bills attached and I ask you if that check was signed by your father? A. Yes, sir.

Q. I ask you what it was for? A. Hardware.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-27, being check number seventeen thousand, six hundred and sixty-two,

with one bill attached and ask you if that check was signed by your father? A. Yes, sir.

Q. What was that check in payment of? A. I don't know whether it is for light or power.

Q. Light or power furnished by the Lehigh Valley Light and Power Company at Allentown for the Allentown mill? A. Yes, sir.

Q. I show you Exhibit P-28, being check number seventeen thousand, six hundred and sixteen with five receipted bills attached and ask you if that check was signed by your father? A. Yes, sir.

Q. I ask you to look at the bills and tell me what that check was in payment of? A. Hardware.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-29, being check number seventeen thousand, six hundred and sixty-three with one bill attached and I ask you if that check was signed by your father? A. Yes, sir.

Q. I ask you what that check was in payment of? A. Hardware.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-30, being check number seventeen thousand, five hundred and thirty-three and I ask you if that was signed by your father? A. Yes, sir.

Q. With one receipted bill attached? A. Yes.

Q. In payment of what? A. Lumber.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-31, being check number seventeen thousand, four hundred and ninety-one with receipted bill attached and ask you what it is for? A. Light and Power.

Q. Furnished by the Lehigh Valley Light and

Power Company at Allentown for the plant at Allentown? A. Yes, sir.

Q. I show you Exhibit P-32, being check number seventeen thousand, seven hundred and sixteen with one receipted bill attached and ask you if that was signed by your father? A. Yes, sir.

Q. What was that in payment of? A. Light or power.

Q. Light and power furnished by the Lehigh Valley Light and Power Company for the mill in Allentown? A. Yes, sir.

Q. I show you Exhibit P-33, being check number seventeen thousand, six hundred and seventy-seven with bill attached and ask you if that is signed by your father? A. Yes, sir.

Q. In payment of what? A. Tables.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-34, being check number seventeen thousand, seven hundred and fifteen and ask you if that check was signed by your father? A. Yes.

Q. With one bill attached? A. Yes, sir.

Q. In payment of what? A. Lumber.

Q. I show you Exhibit P-35, being check number seventeen thousand, six hundred and eighteen, and ask you if that check was signed by your father? A. Yes.

Q. And is in payment of what? A. Lumber.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-36, being check number seventeen thousand, seven hundred and thirty-six, with two bills attached and ask you if that check was signed by your father? A. Yes, sir.

Q. Ii payment of what? A. Lumber.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-37, being check number seventeen thousand, one hundred and ten and ask you if your father signed that? A. Yes, sir.

Q. That is in payment of what? A. I don't know.

Q. Just look? A. This is for a machine.

Q. For the Allentown mill? A. Yes, sir.

Q. I show you Exhibit P-38, being check number seventeen thousand, eight hundred and one and I ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Supplies and hardware.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-39, being check number seventeen thousand, six hundred and thirty-three, with receipted bill attached and ask you if that was signed by your father? A. Yes, sir.

Q. In payment of what? A. Lumber.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-40, being check number seventeen thousand, six hundred and thirty-three with the receipted bill attached and ask you if that check was signed by your father? A. Yes, sir.

Q. That is for Allentown? A. Yes, sir.

Q. I show you check number seventeen thousand, five hundred and sixty-nine, being Exhibit P-41 and with one bill attached and ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Some fuses.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-42, being check num-

ber seventeen thousand, eight hundred with receipted bill attached and ask you if that check was signed by your father? A. Yes, sir.

Q. It was in payment ow what? A. It is a bill for some wood.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-43, being check number seventeen thousand, four hundred and sixty-four with four receipted bills attached and ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Some lumber.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-44, being check number seventeen thousand, three hundred and twenty-three with receipted bill attached and ask you if that check was signed by your father? A. Yes, sir.

Q. In payment for what? A. Some saws.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-45 with receipted bill attached and being check number seventeen thousand, six and thirteen, and I ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. I don't know.

Q. Look at that? A. Moving Mr. Guichiner to Allentown.

Q. Moving Guichner to Allentown? A. Yes, sir.

Q. Who was he? A. The manager up there.

Q. This check was dated June seventh, Nineteen Hundred and eighteen? A. Yes, sir.

Q. Had he worked down here for Ulrich Company? A. Yes, sir.

Q. What was his business? A. Bookkeeper.

Q. And he went out of this plant here up to Allentown? A. Yes, sir.

Q. I show you Exhibit P-46, being check number two with receipted bill attached and ask you if that check was signed by your father? A. No, sir, by my brother Al and I.

Q. By you and Albert? A. Yes, sir.

Q. The check is on the Allentown National Bank dated March second, Nineteen Hundred and eighteen? A. Yes, sir.

Q. I notice that the last exhibit I showed you which was signed by Albert and yourself is a check on the Allentown National Bank and is check number two, dated March second, Nineteen Hundred and eighteen. I ask you to look at this book and I ask you if that check wasn't taken from Exhibit P-4, that being the stub of a check book I showed you this morning? A. I suppose it is.

Q. Look at it? A. It is the same.

Q. The stub of number two in Exhibit P-4, being the stub of a check book used at the Allentown plant on account of the Allentown National Bank is the stub from which check number two, Exhibit P-46 was taken? A. Yes.

Q. I show you Exhibit P-47, being check number seventeeen thousand, three hundred and thirty-four, with receipted bill attached and I ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Coal.

Q. For the Allentown mill? A. Yes, sir.

Q. I show you Exhibit P-48, being check number eighteen thousand, two hundred and twen-

ty-five, with two receipted bills attached and ask you if the check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Spindles.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-49, being check number seventeen thousand, eight hundred and five, with two receipted bills attached and ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Spindles.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-50, being check number seventeen thousand, one hundred and fifty, with receipted bill attached and I ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Some supplies.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-51, being check number seventeen thousand, seven hundred and seventy-one with two receipted bills and ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Supplies for Allentown.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-52, being check number seventeen thousand, eight hundred and ninety-eight and with two receipted bills attached and ask you if that check was signed by your father? A. Yes, sir.

Q. In payment of what? A. Supplies for Allentown.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-53, being check number seventeen thousand, four hundred and eighty-

one, with one receipted bill attached and ask you if that was signed by your father? A. Yes, sir.

Q. In payment of what? A. Coal.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-54, being check number seventeen thousand, seven hundred and ninety-two, with receipted bill attached and ask you if your father signed that check? A. Yes, sir.

Q. In payment of what? A. To running some pipe up there.

Q. Pipe at Allentown? A. Yes, sir.

Q. I show you Exhibit P-55 being check number seventeen thousand, four hundred and ninety and with receipted bill attached and ask you if your father signed that check? A. Yes, sir.

Q. In payment of what? A. Some gas.

Q. It is payable to the Allentown Bethlehem Gas Company? A. Yes, sir.

Q. For gas used at Allentown? A. Yes, sir.

Q. I show you Exhibit P-56, being check number seventeen thousand, six hundred and eighty, with receipted bill attached and I ask you if your father signed that? A. Yes, sir.

Q. I ask you what that was in payment of? A. Telephone calls.

Q. The telephone bill of the telephone company at Pennsylvania for the telephone at Allentown? A. Yes, sir.

Q. I show you Exhibit P-57, being check number seventeen thousand, six hundred and seventy-nine, with bill attached and ask you if your father signed that check? A. Yes, sir.

Q. That is a bill for what? A. Coal for Allentown.

Q. For Allentown? A. Yes, sir.

Q. I show you Exhibit P-5 once more, being check number seventeen thousand, five hundred and thirty-four with two receipted bills attached and I ask you to look at the check and tell me, Mr. Ulrich, whose handwriting is that check made out in for signature at the bottom? A. My handwriting.

Q. And P-6 the same? A. Yes, sir.

Q. P-7 8 9 10-A 10-B 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57, all being checks with bills attached to them and I ask you if the body of the checks of every one of these exhibits, these checks, are made out in your handwriting? A. Yes.

(At this point a recess was taken until 2: P. M.)

FRANK ULRICH, recalled to the stand and testifies as follows:

Cross Examination, (continued) by Mr. McCran:

Q. Albert died February ninth, Nineteen Hundred and nineteeen, I think? A. Yes, sir, I believe so.

Q. At the time of his death according to you, you and Albert owned the Allentown business without any interest of your father whatever? A. Yes, sir.

Q. How long after Albert died was it that your father spoke to you about turning over the Allentown business? A. I believe it was May, about May.

Q. May of Nineteen Hundred and nineteen? A. Yes, sir.

Q. That is to say the May after the February in which Albert died? A. Yes, sir.

Q. Where did your father speak to you about turning the business over to him? A. In the office of the Ulrich Company.

Q. How did that conversation come about between you and your father? A. Well, we were discussing the business here and business up there, how business was good and so on.

Q. Go on. A. So father said, "Frank, why don't you put the Allentown mill in with this mill, you will get it all anyway and why not make it the one business, make it all under one head." I said, "All right, father, if you wish it I will."

Q. He had told that to you and Albert at the time you started business? A. No, sir.

Q. Didn't he tell you and Albert that the business would be yours? A. Yes, sir.

Q. Yours and Albert's? A. Yes, sir, Albert and I.

Q. That was something he had told you before you went to Allentown and he told you again in Nineteen Hundred and nineteen? A. Well...

Q. There wasn't any difference? A. The Allentown mill was in addition to what he had promised us before.

Q. What did he say about turning it over, if anything? A. He said nothing further, just to put it under one head, and make us all in one.

Q. Didn't he tell you something further? You said this morning or yesterday that the consideration for turning over the Allentown business was

to get the business in Paterson? A. Well, he was going to give me the business in Paterson, he was going to give me the business.

Q. When you had that conversation with your father, did Albert's estate have any interest in the Allentown mill? A. No, sir, this was afterwards.

Q. After what? A. After I gave Mrs. Ulrich her check for her interest in the Allentown mill.

Q. After you had bought out the interest from Mrs. Ulrich? A. Yes, sir.

Q. How did you come to buy out the interest of Mrs. Ulrich representing the estate of her husband, your brother Albert? A. Well, that was her wishes.

Q. Tell us about that? A. We were conversing.

Q. Who? A. Mrs. Ulrich and I were speaking about the Allentown mill and she said, "Frank, I haven't got any money to put in to go any further ahead," and I said, "Well, what do you want to do," and she said she wanted money and I said there was so much money in the bank and then there was the business.

Q. How much money did you tell her was in the bank? A. Twenty-seven hundred dollars and she said she wanted the money and I turned over the money to her, I just left a very small ammount, just to have the bank account going.

Q. What did she give you when you turned the money over to her in the way of a receipt? A. She gave me a bill of sale.

Q. Have you got that bill of sale? A. I have it home.

Q. Have you got a bill of sale? A. Yes, sir, I have.

Q. For a half interest? A. In the Allentown mill.

Q. Signed by Mrs. Ulrich? A. Yes, sir.

Q. Will you produce it? A. If you wish.

Q. Yes, I do. A. All right.

Q. Where is it? A. Either home or in the safe deposit box.

Q. It is not out of your possession? A. No, sir.

Q. You didn't part with it? A. No, sir.

Q. What was the date of that conversation with Mrs. Ulrich? A. As near as I can judge, somewhere about April.

Q. Nineteen Hundred and Nineteen? A. March or April, yes, sir.

Q. Where was that bill of sale drawn? A. I believe she had it drawn by Henry Smith.

Q. You believe she had it drawn? A. I believe so.

Q. How did she come to do that? A. You are asking me something I don't know.

Q. You say she gave you a bill of sale and you have it in your possession? A. She gave me the bill of sale when I gave her the twenty-seven hundred dollars.

Q. That is the bill of sale you now say you have in your possession, either home or in your safe deposit box and which you are going to produce in this case? A. Yes, sir.

Q. How did you pay her twenty-seven hundred dollars? A. In a check.

Q. Whose check? A. A check on the Allentown bank.

Q. Signed by whom? A. By myself.

Q. By you? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir.

Q. No doubt about that? A. No, sir.

Q. Have you got that check? A. No, I have not.

Q. Where is it? A. I don't know.

Q. When did you last see it? A. The last I seen of it was when I handed it to Mrs. Ulrich.

Q. Didn't you see it when you balanced your Allentown? A. No, sir, oh, yes, I seen it when I balanced the books.

Q. What bank was it drawn on? A. The Allentown National Bank.

Q. Signed by you as I understand? A. Yes, sir.

Q. On your account? A. Yes, account of Ulrich Company.

Q. Did you have that bank account balanced? A. Yes, sir.

Q. Did you get that check back? A. Yes, sir.

Q. What did you do with it? A. It must be in the Ulrich Company here.

Q. Did you ever see it there? A. I did at the time.

Q. At what time? A. The time it came back.

Q. Do you know the date of the transfer of the account from you to your father, of the Allentown bank account? A. I believe it was sometime in July, Nineteen Hundred and nineteen.

Q. Mr. Ulrich, you say the conversation concerning the purchase of your brother Al's interest was had with Mrs. Ulrich? A. Yes, sir.

Q. That is Mrs. Ulrich in Court here? Mrs. Ulrich, stand up, please. Is that the lady? A. Yes, sir.

Q. Where did you have it with her? A. Home, in her house.

Q. You handed her the check? A. That is something I wouldn't swear to, I don't know whether I did or not.

Q. Did you mail it to her? A. I don't think so, I cannot recall.

Q. How did she get it? A. She got it from Mr. Smith.

Q. How did Mr. Smith get it? A. I am most sure I gave it to Mr. Smith or gave it to Mr. Burchill.

Q. So Mr. Burchill knew of it from you? A. He must have, or Mrs. Ulrich.

Q. Did Mr. Burchill know of the transaction from you? A. I believe he did.

Q. Did you talk to him about it? A. No, I did not speak to him about it but he went to Mr. Smith to have the bill of sale made up.

Q. On behalf of whom did he go to Mr. Smith? A. Mrs. Ulrich, I believe.

Q. You believe? Will you say it was not on behalf of your father? A. I will.

Q. It was not? A. No, sir.

Q. Your father had sent you a check for interest representing some transaction concerning the Allentown mill? A. He had, yes, sir.

Q. When did he send that to you? A. In November, Nineteen Hundred and twenty.

Q. You didn't cash it? A. No, sir.

Q. Why? A. Because I wanted to get my Allentown mill.

Q. That you had transferred by bill of sale to

your father? A. He had promised me he would give me the business all back on his death.

Q. How would that affect you in taking the check from him? A. I simply didn't give it any more thought but sent the check back to him.

Q. Is that the only statement you have to make about that? A. Yes, sir.

Q. Your father sent you the check for twenty-seven hundred dollars? A. Yes, that was after he had put me out.

Q. That had something to do with it? A. Oh, no, after I was out he sent me the check for twenty-seven hundred dollars, after he put me out.

Q. After he put you out? A. Yes, sir.

Q. You didn't cash the check? A. No, sir.

Q. Your reason for sending it back is because your father was to give you all his business when he died? A. Yes, sir.

Q. At that time, that was in Nineteen Hundred and twenty? A. Yes, sir.

Q. How long had you been out? A. I guess, I should judge about a week or so, as near as I can think of now.

Q. What time of the year was it you got the check? A. November.

Q. November of Nineteen Hundred and twenty? A. Yes, sir.

Q. That was after you went out finally or did you go back after that? A. I went back after that.

Q. When you got back the check from your father for the twenty-seven hundred dollars, you didn't use it because he was to give you all the business? A. Yes, I thought we could be reconciled together.

Q. What had that to do with refusing the check? A. I didn't want it.

Q. You had never refused any other check? A. No, sir.

Q. You never refused any check in the business? A. No, sir.

Q. Or any security? A. No, sir.

Q. This check was sent back again? A. Yes, sir.

Q. You just enclosed it in a plain envelope? A. I handed it to mother to give to father.

Q. Had your father told you you were not going to get the business? A. No, sir.

Q. Or anytime prior to that? A. No, sir.

Q. What your father was going to do, at that time you didn't know? A. He always said...

Q. When you got the check for twenty-seven hundred dollars you didn't know what your father was going to do then? A. I was out, I didn't know what he meant when I got the check, in case I was out.

Q. You were getting ready, were you, in case you didn't get the mill? A. No, sir, I had no thought of getting ready for anything.

Q. This automobile you bought, you say your father didn't buy that? A. Which automobile.

Q. Your automobile, the one you had in your garage? A. I had a couple of them.

Q. Did your father buy any of them for you? A. He might have given something towards them, yes.

Q. What did he give you towards it? A. He gave Albert and I each seven hundred dollars.

Q. What did he give you? A. Seven hundred dollars.

Q. He gave you eight hundred? A. It might have been eight hundred but I think it was seven hundred.

Q. Why didn't you tell me that this morning when I asked you about automobiles? A. You didn't ask me that, you asked me where the automobile was kept.

Q. I asked you when you first got an automobile? A. Yes, sir.

Q. You said about five or six years ago? A. Yes, sir.

Q. And I asked you if your father paid for that? A. No, he didn't pay for that first automobile.

Q. Which one did he? A. He paid for one after that. He gave me seven or eight hundred dollars for a new machine.

Q. He made a contribution to you for an automobile in Nineteen Hundred and thirteen, nine years ago, didn't he? A. I don't think it is that long ago.

Mr. McCran—I ask this book be marked for identification.

(Book of stubs Nos. 13631 to 14230 marked Exhibit P-58 for identification.)

Q. I show you this book which purports to be the stub of a check book and which has been marked Exhibit P-58 and I ask you to look at voucher number thirteen thousand, seven hundred and twenty,

and I ask you whose handwriting is that voucher in? A. Mine.

Q. With that voucher before you I again ask you if your father didn't contribute eight hundred dollars to you for an automobile on June sixth, Nineteen Hundred and thirteen? A. Yes, he did.

Q. When did you buy an automobile before that? A. Just before that I bought a second hand machine.

Q. This was the first automobile you bought? A. No, before this I bought a second hand machine.

Q. When you said it was only five or six years ago you were mistaken? A. I was mistaken.

Q. It is not the turning up of this record that makes you think you were? A. I want to tell the truth, Mr. McCran.

Q. Your father paid insurance of yours too? A. Yes, sir.

Q. Back in Nineteen Hundred and thirteen? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Do you remember the year? A. I don't remember the year but I remember the insurance.

Q. He paid it by this voucher stub. I show you Exhibit P-58 and ask you to turn to stub number thirteen thousand eight hundred and ten, in your handwriting, August fourth, Nineteen Hundred and thirteen, F. Ulrich, auto insurance? A. Yes, that is right.

Q. He paid your life insurance too, didn't he? A. I don't know, I wouldn't say on that.

Q. I will try to help your memory. I again show you Exhibit P-58 and I ask you to turn to voucher sixteen thousand, three hundred and thirty-six and

see if that will help your memory any? A. It is not in this book.

Q. Well, I ask you to look at that book and tell me what that book is? A. A check book, stub book.

Q. Your father's check book stubs and check book? A. Yes, sir.

Mr. McCran—I ask that this book be marked.

(Stub book containing stubs Nos. 16031 to 16630 marked Exhibit P-59 for identification.

Q. I ask you in order to help your memory if you will just look at this book Exhibit P-59 and look at voucher sixteen thousand three hundred and thirty-six. Just look at sixteen thousand, three hundred and thirty-six? A. Yes, sir.

Q. December eighteenth, Nineteen Hundred and sixteen? A. Yes, sir.

Q. Check to G. F. Denike, secretary? A. Yes.

Q. What was that check for? A. I am trying to think.

Q. See if that helps your memory any? A. That is for insurance.

Q. Your insurance? A. Insurance in the Commercial Travellers.

Q. Life insurance? A. Accident. Commercial salesman's insurance.

Q. Will you kindly look at this Exhibit marked for identification as P-59 and tell me check by check whose handwriting these stubs are made out in? A. Do you want me to go over them all?

Q. As many as you feel necessary to answer my question? A. I have looked about half through and only see two.

Q. What numbers are not in your handwriting? A. Sixteen thousand and forty, and sixteen thousand and forty-one.

Q. Whose handwriting are they in? A. I think Mr. Guichiner.

Q. Look the rest of the book through and tell me how many more are not in your handwriting? A. Here is one, number sixteen thousand, three hundred and thirteen.

Mr. Harding—That means that is not in your handwriting? A. Yes, sir.

Q. Whose handwriting is that in? A. Mr. Guichiner.

Q. He is the man went from the mill here up to Allentown? A. Yes, sir. Here is another one, sixteen thousand, three hundred and twenty-six.

Q. Whose handwriting is that voucher or stub in? A. It looks like Mr. Guichiner. And also sixteen thousand, three hundred and twenty-seven.

Q. With the exception of the five vouchers, the numbers of which you gave, all the other stubs in this book are in your handwriting? A. Yes, sir.

Q. Les me ask you further. Will you kindly turn to stub sixteen thousand, three hundred and ninety for Nineteen hundred and seventeen and look at that and tell me whether your father again paid your insurance? A. I guess so, yes, sir.

Q. Look at it? A. He did.

Q. What is the amount of that? A. Thirty-four dollars and forty-one cents.

Q. What kind of insurance was that? A. I can't say but I know for F. it must be for me but I cannot say it must be life or fire insurance or something.

Q. Will you turn to that same book, Exhibit P-59, the same book you have been looking at and look at stub sixteen thousand, three hundred and seventy-one, dated January fifth, Nineteen Hundred and seventeen, to the order of Charles A. Bergen for twenty-five percent on Franklin Trust Company stock, Eleven Hundred and twenty-five dollars. That is in your handwriting? A. Yes.

Q. Turn to stub in the same book, number sixteen thousand, four hundred and thirty-four? A. Yes, sir.

Q. That is in your handwriting? A. Yes, sir.

Q. February third, Nineteen Hundred and seventeen to Charles A. Bergen, Franklin Trust Company? A. Yes, sir.

Q. Written out by you in your handwriting? A. Yes, sir.

Q. Representing what? A. I don't know.

Q. Look at these two vouchers. Will that help you tell me how many shares of Franklin Trust Company stock you got from your father? A. I believe my father gave me six or seven or eight.

Q. With these vouchers before you made out in your own handwriting, I ask you how many he gave you? A. I think he...

Mr. Harding—I presume he can find out for you so there will be no question about it.

Mr. McCran—There will be no question about that at all.

Mr. Harding—Why take so much time to find out from a witness that don't know exactly what it is when it is an easy matter to find out?

Mr. McCran—Of course I take it counsel will let me examine the witness not only as to facts but also as to credibility.

Mr. Harding—If that is the case I object to the prolonged cross examination and the burdening of the record and taking the time of the Court and counsel on a subject which the witness says he is not sure about but can make certain. He has said it time and time again. I don't think the Court ought to allow it, counsel says himself he knows about it.

Mr. McCran—The credibility of this witness is important, he is an interested party in this case.

Mr. Harding—This is not a test of credibility to ask the witness about a matter that time and time again he has said he is not certain of, he has given the best information he he can, he has said, time and time and time again he is not certain and yet counsel persists. I am objecting to the asking of this same thing over and over again when it is perfectly apparent that its only purpose is to repeat the question. I suggest there ought to be a limit to it. My point is, Your Honor, this witness has been thoroughly examined upon this subject, the questions have

been answered by him as best he can, he has said he don't, at present, know how many shares he had but this can be made certain. Now counsel says he is trying to test his credibility by asking this over and over again. I don't propose to sit here and allow such questions to burden the record.

Mr. McCran—I showed this witness two vouchers made out in the handwriting of the witness and I asked him whether or not these vouchers in his handwriting whether they would help him to recall how many shares he got in the Franklin Trust Campany.

Mr. Harding—And he answered the question and told you he couldn't remember how many shares he had and still you persist.

The Court—Why waste time, proceed with the examination.

Q. Your father paid for the carpenter work on the garage? A. Yes, sir.

Q. Yours? A. Yes, sir.

Q. Turn to voucher sixteen thousand, three hundred and ninety-four, in the same book, Exhibit P-59? A. Yes.

Q. That is in your handwriting? A. Yes, sir.

Q. What did your father pay for that work? A. For fixing the doors when he got an auto truck.

Q. I ask you how much? A. One hundred and ten dollars.

Q. Your father paid for the plumbing work in the garage? A. Yes, sir.

Q. Did your father pay for anything in the

building and loan for you? A. Not that recollect.

Q. Turn to voucher number twelve thousand, one hundred and seventy-eight in that book. I ask that be marked.

Stub book containing stubs Nos. 11895 to 12394 marked Exhibit P-60 for identification.

Q. In book marked for identification P-60 and see if that helps your recollection any? A. I don't just understand you, Mr. McCran.

Q. How did your father come to pay any moneys for your building and loan? A. I don't understand you, I don't know of any building and loan. You say building and loan I just come to think of it father bought some shares for Al and I in a loan company but no building and loan.

Q. The Provident Loan Company? A. Yes, sir.

Q. Did he give you stock? A. Yes, sir.

Q. He did give you some stock? A. Yes, sir.

Q. How many shares? A. Two and a half.

Q. Why didn't you tell me that this morning? A. I didn't think of it.

Q. This record helps your recollection, doesn't it? A. You asked me.

Q. I asked you this morning if your father gave you any other stocks besides the Franklin and United States Trust Company? A. I said the Provident Loan.

Q. He did give you shares in the Provident Loan Company? A. Yes, sir, Brother and I.

Q. You, he gave you? A. Yes, sir.

Q. I ask you again did he give you any other stock or securities that you have not already mentioned before I go on? A. No, sir, not that I remember.

Q. Let me repeat this question. I asked you this morning did your father give you any Liberty bonds or bonds? A. No, sir.

Q. Sure about that? A. Yes, sir.

Q. What club did your father pay your dues in? A. In the Elks a couple of times and the United Commercial Travelers.

Q. What other clubs? A. I think that is all. That is all I recollect.

Q. How many shares did he give you in the Provident Loan Company? A. Two and a half.

Q. You never gave them back to him? A. No, sir.

Q. He bought them and gave them to you? A. Yes, he presented them to me.

Q. In Exhibit P-59 the checks were drawn in that book with the exception of those you mentioned, and I believe I showed you Exhibit fifty-eight this morning, being a check book of your father's. I think you looked at it. I don't want to make a statement if you didn't. Did you say whether or not all the checks in Exhibit P-58 were in your handwriting? A. I don't say that is in my handwriting.

Q. What number? A. Thirteen thousand, seven hundred and fifty-three. And here is another one.

Q. Thirteen thousand, seven hundred and fifty-four? A. Yes, sir.

Q. Go ahead, are there any others? A. No.

Mr. McCran—Counsel desires to inspect some matters and in order to do so, will not now press in his questions the identification of seven check stub books of the father, Franz Ulrich used in connection with his business and private affairs at the mill and which I believe are all substantially in the handwriting of this witness, Frank Ulrich. I will have these books marked for identification and if later on I refer to any particular voucher, I desire to recall the witness to say whether it is his handwriting. I wish to reserve the right to recall the witness for this purpose.

Q. If you will just look at this book and tell me what that Exhibit P-60 is? A. Stubs of a check book.

Q. Whose check book? A. Father's.

Q. I show you five more stub check books and ask you if will just look at them and tell me what they are? A. This is a check book of father's.

Q. Exhibit P-61 is a stub check book of your father's? A. Yes, sir.

Q. I show you Exhibit P-62 and ask you if that is a stub check book of your father's? A. Yes, sir.

Q. I show you Exhibit P-63 and ask you if that is a stub check book of your father's? A. Yes, sir.

Q. I show you stub check book sixty-four, Exhibit P-64 for identification and ask you if that is a stub check book of your father's? A. Yes, sir.

Q. I show you stub check book marked for iden-

tification Exhibit P-65 and ask you if that is a stub check book of your father's? A. Yes, sir.

Q. I show you Exhibit P-66 for identification and ask you if that is a check book, a stub check book of your father's? A. Yes, sir.

Q. Was the Allentown mill a success in Nineteen Hundred and eighteen? A. Not very much.

Q. Was a report made to the Government for income tax purposes? A. Yes, sir.

Q. As part of the Ulrich Company or separate? A. Separate in Nineteen Hundred Hundred and Nineteen.

Q. In Nineteen Hundred and eighteen? A. No, I don't think that there was any report made in Nineteen hundred and eighteen.

Q. You made no report? A. We didn't make any money that year.

Q. Did you and Albert make any report to the government for that business? A. I believe we did. Albert is the one who attended to that.

Q. Was it a separate matter or included as part of the business in Paterson? A. I don't know how we included it, he is the one who attended to that part.

Q. He might have included it as part of the Paterson business? A. I don't think he would in Nineteen hundred and eighteen.

Q. I am asking you what he did? A. I don't know. I don't think he did.

Mr. McCran—I ask that that be stricken out, whatever he thought.

The Court—Strike it out.

Q. You said you noticed a change in your father? A. Yes, sir.

Q. When was the first time you noticed that? A. Mostly when I went back in the latter part of January, Nineteen Hundred and Twenty-one.

Q. Why you went back before the latter part of January, you went back after the Christmas holidays in Nineteen hundred and twenty? A. That is the time. Between that three weeks, right after the holidays and the end of January.

Q. Did you notice a change when you went back first around the holidays of Nineteen Hundred and Twenty? A. Yes, sir.

Q. What was the change? A. Mentally. The way he would go on.

Q. For example what would he do? A. You couldn't reason with him, he would be talking on a subject, well, take the mail, he would come in and read the mail and if you tried to explain to him he wouldn't seem to know what you were talking about.

Q. He would read the mail? A. He opened the mail.

Q. Look at it? A. Yes, sir.

Q. Read it? A. Look at it.

Q. And then hand it over after he had looked at it? A. He laid them all on his desk.

Q. He made some comments on them as he opened the mail? A. Not towards the last.

Q. The time you are speaking of is the Christmas holidays when you went back? A. No, he didn't seem to know, his faculties were not—

Q. Answer my question. When you went back after the Christmas holidays didn't he continue to

open the mail as he had done for years before? A. Not every morning, some mornings he did.

Q. Read it? A. Look at it.

Q. Then passed it over to you or someone else? A. Yes, sir.

Q. With comments? A. Not necessarily.

Q. Whenever he did that he made comments? A. Not after the holidays.

Q. Do you say, Mr. Ulrich, that your father, after the holidays of Nineteen Hundred and twenty, didn't open the mail in the morning and at times make comments on it to you or someone else? A. No, not in my presence.

Q. Were you there every morning? A. Yes, sir.

Q. What was the customary hour of your father getting to the mill? A. Oh, around nine o'clock, half past eight or nine o'clock.

Q. Might it have been a little earlier than half past eight? A. Occasionally it might have been.

Q. When was it you were not at the mill prior to going back after the Christmas holidays? A. About six or seven days.

Q. Prior to that time what was your father's hours of getting to the mill? A. About eight, eight thirty, or nine o'clock.

Q. Seven or seven thirty? A. Well, not at that time because we were only working eight hours and didn't start before eight.

Q. Did your father get there around eight o'clock every morning prior to the time you were out before the holidays? A. No, sir.

Q. Wasn't your father one of the first men to get to the mill every morning? A. Up to the last year or two.

Q. He went down every morning, didn't he? A. Practically.

Q. Didn't he go down nearly every morning? A. Yes, sir.

Q. When you arrived at the mill would you be there first or would he be there ahead of you? A. Some times I would be there first and sometimes he would be.

Q. When you got to the mill? I am speaking of the time you were not there before the holidays of Nineteen hundred and twenty? A. Yes, sir.

Q. Up to the time you went away what was your father's customary conduct with reference to the business when he got there in the morning? What would he do? A. Why, go into the office, sit down and read his paper.

Q. Go ahead and tell us? A. For the past three or four years, five years he sat there and read his paper, conversed with anybody that came in and talk to you and go home about eleven o'clock.

Q. Would he open the mail? A. Yes, sir.

Q. That was one of the things he did regularly when he was at the office? A. Well, pretty regular.

Q. After he read the mail he would either give it to you or someone else for attention? A. Yes, sir, after he looked at it.

Q. He was the man that opened the mail? A. Not every morning.

Q. Almost every morning? A. Lots of time he didn't.

Q. Wouldn't he go around the factory before he would go home to lunch? A. Very seldom. Very rarely in the last couple of years. The last year.

Q. Would he go around any at all? A. Oh, in weeks he wouldn't go around.

Q. Well, when he would go around would he go all around? A. No, sir, mostly go into the woodwork department.

Q. Then go home to lunch? A. Yes, sir.

Q. Then he would return what time? A. He returned after one, half past one or two o'clock.

Q. And remained until what time? A. Quarter to four or four o'clock.

Q. Up to the time when you stayed away— A. When I was put out.

Q. All right, we will take your words, up to the time you were put out. What time was that? A. November.

Q. November, Nineteen Hundred and Twenty? A. Yes, sir.

Q. Your father was all right then? A. Yes.

Q. He was all right up to November, nineteen hundred and twenty? A. Yes, sir.

Q. Your father was a pretty positive man? A. Not of late.

Q. Up to November, Nineteen Hundred and Twenty? A. Quite so, yes.

Q. He would let everybody know that he was the boss in the mill? A. On occasions, yes, sir.

Q. Whenever the occasion arose he would let people know he was boss? A. Yes, sir.

Q. He let you know that too? A. Very seldom.

Q. Whenever the question of authority arose between you and your father, he told you he was boss? A. It was very seldom there was ever a question of authority to be settled.

Q. Whenever it did arise? A. I don't remember it ever arising between father and I.

Q. It might arise with other people? A. Yes, I suppose so.

Q. There wasn't any question up to November Nineteen Hundred and twenty, in the mind of anybody that your father was boss of that business? A. I knew he owned it.

Q. He wouldn't allow anybody to question him? A. I never questioned him.

Q. He wouldn't allow anybody to question him? A. I can't say whether he would let others question him.

Q. You knew he was boss? A. I knew he was boss, I knew he owned the business.

Q. You knew he acted like the man that owned that business? A. In years gone by he did.

Q. In November of Nineteen Hundred and Twenty? A. He acted as if he was boss.

Q. In November of Nineteen Hundred and Twenty and then you were not there until after the Christmas holidays? A. Until just after the Christmas holidays, after New Year's.

Q. Are you sure? A. I wouldn't say the exact date but I think it was after New Year's.

Q. This change took place from the time you left in November and the time you came back in January? A. Yes, sir.

Q. You and he had quite a serious quarrel when he told you to get out? A. No.

Q. He told you to get the hell out of here and not come back? A. Yes, sir.

Q. And he said other things too? A. Yes, sir, he got very irritable.

Q. You came back after New Year's of Nineteen hundred and twenty-one? A. Yes, sir.

Q. And all these changes took place in that time? A. Yes, sir, he failed very fast.

Q. In the two months? A. Yes, sir.

Q. When you came back after January, Nineteen hundred and twenty-one, he still continued to come down to the mill? A. He would at times, and then he would stay home and then come down.

Q. How often would he stay home in any given week and not come down to the mill? A. A day or two days.

Q. Would there be weeks when he wouldn't stay home at all during the week? A. Yes, sir.

Q. After you came back? A. Yes, sir.

Q. When he got down in the morning after you came back in January, didn't he continue to read his mail? A. Not very much. Very seldom. Either Mr. Burchill or I would read it.

Q. Did he read his newspaper? A. He would very seldom pick it up.

Q. What would he do in the morning after January, Nineteen Hundred and twenty-one? A. Sit there and go to sleep and wake up and go off again.

Q. What was he doing? A. I suppose thinking.

Q. Would he go in any department? A. He might go in the shuttle department.

Q. Wouldn't he go back and look around the different departments? A. He would go back to the toilet.

Q. Would he go out of the office after you went back in January, Nineteen Hundred and twenty-one,

for the purpose of looking over the work? A. No, sir.

Q. Sure of that? A. Yes, sir.

Q. No mistake about it? A. No, sir.

Q. Did he give any orders around the place? A. Not at that time.

Q. None while you were there? A. Not after the holidays. Very few orders.

Q. Did you and he quarrel at all after you went back in January? A. Not until the final quarrel.

Q. When was the final quarrel? A. The latter part of January or the first part of February.

Q. You were back about four weeks? A. About three weeks.

Q. When you and he had a quarrel? A. When he a quarrel with me.

Q. From the time you came back in January up to the time you had the serious quarrel, had differences arose between you and your father in which loud language was used? A. No, sir, not from me.

Q. Just think? A. No, sir.

Q. There wasn't any loud language used since you came back in January until this quarrel came up? A. No, sir.

Q. Weren't you and your father continually having differences? A. No, sir.

Q. Were you not continually calling him names? A. No, that is a lie, whoever said so, that is a lie.

Q. Where did he discharge you in January? A. In his house.

Q. The following morning you came down to the mill? A. Yes, sir, I told him I was going down in the morning.

Q. Was he coming down? A. Yes, sir, I suppose so.

Q. And you came down? A. Yes, sir.

Q. Was he there ahead of you? A. Yes, sir.

Q. What time did you get there? A. About half past eight.

Q. He got there that morning about half past eight? A. Yes, sir.

Q. Where was he when you came in the office? A. He just about had got in ahead of me, he was walking from the closet where he keeps his hat and coat.

Q. That was in the main office? A. Yes, sir, just between the two.

Q. Who was in the office there? A. Mr. Coogan was in the one office.

Q. Who is he? A. The bookkeeper and in the other office, the young lady stenographer.

Q. Where was your father? A. In the private office.

Q. Where is your desk? A. In a corner of the private office.

Q. Was anybody else in the private office? A. My son had walked in but he had gone out.

Q. You are sure there was nobody else? A. No, sir.

Q. Did anybody come in before the trouble arose between you and your father? A. No, sir.

Q. Where was the stenographer? A. Sitting at her desk right alongside of mine.

Q. Was sombebody in there? A. I said no.

Q. But the stenographer was there? A. Yes, sir.

Q. Where was Coogan? A. At his desk in the other office.

Q. Your son came in and then went out. Went out where? A. By Mr. Coogan.

Q. Where was the stenographer's desk with reference to your desk? A. Right beside it.

Q. Where was the stenographer sitting or standing with reference to the desk? A. Sitting at her desk.

Q. When you saw your father there what did you say? A. I says, "Father did you think over what you told me last night about telling me to get out. Why don't you get Lang and the bookkeeper and the girl and find out the truth and who is lying and making trouble." He says, "Get the hell out of here. I don't want to listen to you," and I said "Wait till I get my things."

Q. Where was your father? A. In front of me, in back of the girl.

Q. He said, "Get the hell out of here"? A. There was other language too.

Q. Tell us what he said? A. "God damn it, get the hell out of here, I don't want you in here."

Q. He swore? A. Yes, sir.

Q. And you swore back? A. No, sir.

Q. When he said that to you what did you do? A. I went to my desk and opened the drawer to get my papers belonging to me.

Q. You didn't start to get out as soon as your father told you? A. No, I didn't.

Q. You stooped down to get your papers where? A. In the drawer at the side of the desk.

Q. The bottom drawer or the drawer near the top? A. I believe it was the bottom drawer.

Q. What papers did you have there? A. Odds and ends of paper, really of no value.

Q. If it was of no value why didn't you get out when your father told you to get out? A. I just took my belongings.

Q. You stooped down? A. Yes, sir.

Q. Did you open the drawer? A. Yes, sir.

Q. Did you take the papers out of the drawer? A. I had some in my hand.

Q. Did you rise up? A. No, sir.

Q. Where was your father when you started to stoop down? A. He walked over alongside of me.

Q. What was he saying? A. Cursing and calling me names.

Q. What did he say? A. "You robber, you burglar, get the hell out of here."

Q. And you were still going on getting the papers and not getting out? A. Yes, sir.

Q. What became of the stenographer? A. She sat there.

Q. How close to you? A. Three or four feet.

Q. Sitting at the desk? A. Yes, sir.

Q. Then as your father kept coming over, swearing, what did you do? Anything? A. I didn't even answer him.

Q. As he came to you did he brush you from the rear? A. From the side like.

Q. What was the next thing? A. Then he grabbed me by the throat and...

Q. How could he grab you by the throat when he was in back of you? A. He was on the side of me, and I was stooping over and he grabbed me by the throat, by the neck.

Q. Was he between you and the stenographer

or on the other side? A. No, sir, between the stenographer and I.

Q. He was a very old man, eighty-three or eighty-four? A. Yes, sir.

Q. He couldn't harm you? A. No, sir.

Q. When he grabbed you by the throat, what did you do? A. Nothing, I just looked up this way, and went to get up and as I did his heel hit the back of the stenographer's chair and he sat down on the floor.

Q. He sat down on the floor? A. Yes, sir, he sat down and then laid over.

Q. Wasn't he on his back? A. He was after he sat down.

Q. When he put his hands around your throat he was standing between you and the stenographer and you raised up? A. Yes, sir.

Q. And you upset him and he sat down? A. He went to step back I suppose and his heel struck the chair.

Q. Did he have hold of you by the throat? A. No, sir.

Q. When did he let go? A. The minute I raised up, he let go.

Q. You broke his hold? A. No, sir.

Q. He let go himself? A. Yes, sir.

Q. As you continued to rise to an erect position you saw your father lying on the floor? A. As I got up, yes, sir.

Q. Did you pick him up? A. I tried to, yes.

Q. How did you try? A. I went over to try to pick him up but he wouldn't let me.

Q. What way? A. With my hands.

Q. How wouldn't he let you? A. He said, "Get the hell away from me, get the hell away from me."

Q. Where was your son? A. My son came running in and tried to help him up.

Q. Who finally picked him up? A. Mr. Coogan.

Q. What became of the stenographer while all this was going on? A. She sat at her desk.

Q. She saw what was going on? A. Yes, sir.

Q. She was in a position to see it? A. She should be.

Q. Right beside you? A. Yes, sir.

Q. Did your father then when Mr. Coogan came in charge you with having pushed or knocked him down? A. No, sir, he didn't.

Q. Did he get a hard fall on the floor? A. No, he didn't.

Q. He got a light fall? A. Yes, sir.

Q. Where was his hat, did he have his hat on? A. That is something I would not say for sure.

Q. Did he have his hat on when he was lying on the floor? A. I don't think he did.

Q. Did your father have his hat on all the time in the office? A. As a practise he would take his derby off and put on a soft hat.

Q. And while around the mill he had the soft hat on? A. Yes, sir.

Q. Did he have the soft hat on that day? A. I wouldn't say positive.

Q. Did he have a hat on his head when he was on the floor? A. I don't know.

Q. Mr. Coogan is the bookkeeper? A. Yes, sir.

Q. He was the one that came in and lifted him up? A. Yes, sir.

Q. Then what did you do? A. Walked out.

Q. Just tell me again if you please. As you were leaning over your father came over and did what? A. Grabbed me around the neck.

Q. Now, Mr. Ulrich, did you tell me or Mr. Harding yesterday that your father had something in his hand with which he struck at you? A. He had struck me before I went to get the papers. That caused me to go and get my papers. He had an envelope, a small envelope and he hit me alongside the face with it.

Q. How long was that before you went over to the desk? A. Five minutes, two minutes, something like that.

Q. One minute? A. As soon as he hit me I went to the desk to get my papers.

Q. What was he saying all this time? A. He was calling me "robber."

Q. How long did you remain after your father was on the floor? A. I tried to pick him up and as soon as I saw Mr. Coogan pick him up I went out.

Q. Did he tell you not to pick him up? A. I tried to pick him up and then Coogan picked him up.

Q. Then how long did you stay? A. I went out.

Q. There wasn't much change in your father's ability, his fighting ability? A. That is where his trouble was.

Q. You mean by becoming excited? A. No, he didn't know what he was doing.

Q. Did this old gentleman of eighty-three have the strength to grab you by the throat? A. He attempted to, yes, sir.

Q. You have been exceedingly active in this case, haven't you? A. What do you mean?

Q. I mean you are the principal caveator? A. Well, there are others, I don't know.

Q. You don't know? A. There is others.

Q. In your father's will you don't get anything, do you? A. No, sir.

Q. You saw the statement in your father's will, why he didn't give you anything? A. Yes, sir.

Q. Owing to the gifts and donations heretofore made by me to my son, Frank Ulrich, and owing to the fact that he has recently engaged in business in the same line as mine, and is now one of my competitors, I have made no additional provision for him in this will. He did make you a lot of gifts and donations? A. Yes.

Q. You were then engaged in business the same as his, as a competitor? A. Not at that time.

Q. You were getting ready? A. Not until after he put me out

Q. After he put you out you did get ready to engage in business as a competitor? A. I had to go in business, what was I going to do, I can't live on nothing.

Q. You did engage in business? A. Yes, sir.

Q. You are still in the same business? A. Yes, sir.

Q. You were in that business up to the time of your father's death? A. Yes, sir.

Q. That is the same line that Ulrich and Company for twenty or more years had been engaged in? A. Some parts.

Q. In some parts it is a competitive business? A. Yes, sir.

Q. You tried to get customers? A. Some, yes.

Q. You didn't discriminate as to customers?

You wouldn't refuse to take a man, or his business, if you could take care of him, because before that he was having work done by Ulrich Company? A. I don't suppose I would.

Q. What was the name under which you carried on this business? A. The Royal Reed & Harness Company.

Q. When did you begin to get ready for this business? A. About the middle of February. I believe.

Q. Your father was also generous in his donations to your brother Albert? A. Yes, sir.

Q. Up to the time of his death? A. Yes, sir.

Q. Even after his death with reference to his widow so far as you know? A. So far as I know.

Q. After he made this will he conveyed some of his property to his daughters you said yesterday? A. Yes, sir.

Q. He conveyed what to Rosina Burchill? A. Under which will?

Q. Under this last will, the one we are contesting about? A. I don't believe he conveyed any property then.

Q. For example, when did he convey the property on Park Avenue to Mrs. Handwerk, your sister, his daughter? A. About as near as I can recollect, about two and a half years.

Q. When did he convey the other property in which he lived to Mrs. Burchill? A. About the same time.

Q. There are still vacant lots on Park Avenue? A. At East thirty-second Street.

Q. Park Avenue is one of the principal residen-

tial streets of the City of Paterson? A. Well, one of them, yes.

Q. He had property on Main Street, didn't he, which he sold? A. Yes, sir.

Q. When did your father sell the property on Main Street, do you know? A. I believe last May.

Q. Did he get a good price for it? A. I don't know. I wouldn't consider is a very good price.

Q. There are lots still down on Crooks Avenue? A. Yes, sir.

Q. Undisposed of? A. Yes, sir.

Q. Do you know whether or not your father in addition to all these things he had, in addition to the bank accounts that stood in his name at Allentown and in Paterson, did he have any savings accounts which he kept in the names of any of his children? A. Not that I know of that he kept in the name of the children.

Q. Or his own name for his children? A. He had an account in the United States Trust Company.

Q. What kind was that? A. He had a savings account.

Q. How much was in it? A. Either twenty-two or twenty-seven thousand dollars.

Q. One or two savings accounts? A. One.

Q. I mean do you know whether it was one or two? A. I am most sure it was only one.

Q. Did he do anything with that savings account before he died? A. Yes, sir.

Q. What did he do? A. I believe he gave it to my sister, Rosina, Rose.

Mr. Harding—That would be Mrs. Burchill?

The Witness—Yes, sir.

Q. Your sister named in the will for a bequest is your sister Catherine? A. Yes, sir.

Q. When did he will that to your sister, Rosina? A. I don't know exactly but it must...

Q. I mean about? A. Around in May, I should judge.

Mr. Harding—Nineteen Hundred and Twenty-one?

The Witness—Yes, sir.

Q. Do you know whether or not your father continued leaving home in the morning and coming down to the mill up to a few days before his death? A. Yes, sir, I think he did.

Q. Did he remain all the morning? Did he remain all the morning and sometimes come back down to the mill in the afternoon? A. He would stay home and he would go to the mill.

Q. In other words, do you know whether or not your father kept an eye on his business up to the time of his death? A. He was capable.

Q. I ask you do you know? A. No, I don't know. He wasn't able.

Q. You don't know as a matter of fact what your father did at the mill, as a fact, yourself, after you left there in the January preceding his death? A. No.

Q. You don't know? A. No.

Q. What he did, you don't know? A. Not in the mill, no.

Q. You went to Henry Smith and had this drawn? A. Which one is that?

Q. The bill of sale from you to your father for the Allentown property? A. Yes, sir.

Q. Henry Smith drew the bill of sale according to your instructions? A. I told him I wanted to give this over to Papa.

Q. Did you tell him what was in it? A. I told him to make the Allentown Mill over to Papa so it is all in one.

Q. Since the making of that bill of sale you have had no interest in the Allentown Mill? A. No, sir.

Q. Now you claim an interest in it? A. Yes, I claim I own it, Papa intended to give it to me.

Q. Haven't you claimed you had legal title to it? A. Well...

Q. Well, what? A. Yes.

Q. You told the Allentown National Bank that that business was yours, didn't you, since your father died? A. I don't remember that.

Q. Now, Frank? A. I don't know whether I did or not.

Q. Didn't you tell them that the bank was not to pay out the money to the executors? A. I don't think I said that, but not to pay out the money until they are sure they are right.

Re Direct Examination, by Mr. Harding:

Q. I show you a check number four hundred and seventy-seven which purports to be dated at Allentown, Pa., November twentieth, Nineteen hundred and twenty? A. Yes, sir.

Q. Pay to the order of Frank Ulrich, twenty-seven hundred dollars, two thousand and seven hundred dollars and in print at the bottom of it, "to the

Allentown National Bank and it appears to have the right power part of the check torn off? A. Yes, sir.

Q. Can you state what that check was or is? A. A check from the Allentown Bank, from the Allentown mill.

Q. Is that the check referred to as having been sent to you and which you refused to accept? A. Yes.

Q. The check was sent to you about that date, November twentieth, Nineteen hundred and twenty? A. Yes.

Q. I think in your answer to Mr. McCran you said you did return that check to your father? A. Yes.

Q. According to your recollection was it torn when you had it or not? A. It was not torn when I had it.

Q. Did a letter accompany that check when it was sent to you? A. Yes, sir.

Q. Have you that letter? A. I did have.

Q. Can you state whether or not your father's signature was on the part of the check that is now torn off? A. Yes, sir.

Mr. McCran—We concede that.

Q. Have you the original letter that accompanied that check? A. That is the original letter.

Q. The letter you have in your hand is the original letter? A. Yes, sir.

Mr. Harding—I now offer in evidence this check.

Check admitted in evidence and marked Exhibit C-2 for the caveators.

Mr. Harding—I now offer letter dated November twentieth, Nineteen Hundred and twenty, addressed to Frank Ulrich, No. 821 Madison Avenue, Paterson, New Jersey, and signed Franz Ulrich in typewriting.

Letter admitted in evidence and marked Exhibit C-3 for the caveators.

Q. That check and letter which accompanied it I understood you to say to Mr. McCran was sent to you after your father discharged you? A. Yes, sir.

Q. Then you refused to take the check and returned it to him? A. Yes, sir.

Q. When you turned over the Allentown property to your father, I mean by this transaction evidenced by the bill of sale and the matters relating to that transaction, what became of the books of account, check book and different documents and things that belonged to the Allentown company? A. They are all in the Ulrich Company of Paterson and no books in the Allentown mill.

Q. They were left in your father's possession after they were turned over and have been there up to the time of his death? A. Yes, sir.

Q. And they are so far as you know in the hands of the executors of his estate? A. Yes, sir.

Q. Were the books left at Allentown or brought down from Allentown here? A. They were left at Allentown, everything just as they were.

Q. You didn't mean to say they were transferred from Allentown to here? A. No.

Q. They were left in the possession of your father during his life and afterward in possession of

his executors and some of them are here now? A. Yes.

Q. Of course, those you have seen here were brought down? A. The check books you refer to were brought to the Paterson Mill.

The Court—I understood the books were at the Paterson mill.

Mr. McCran—That is right.

Q. Were the checks of the Allentown business always kept in Paterson? A. Yes, sir.

Q. For my own satisfaction let me ask you this. Do you know whether any of the books of the Allentown company have ever been brought from Allentown here to Paterson? A. No, sir.

Q. Were there any books of the Allentown business kept in Allentown? A. Yes, sir.

Q. What books were kept there? A. The day book, journal and ledger.

Q. What became of them so far as you know after you gave the business over to your father? A. They were at Allentown.

Q. Are they there now, so far as you know? A. So far as I know, yes.

Q. None of them have appeared here today in this trial? A. I have not seen them.

Q. When the will was read was Mr. Burchill present? A. Yes, sir.

Q. Was he present with other members of your family a few hours before the will was read? A. Yes, sir.

Q. Who were present on that occasion? A.

Mrs. Burchill, Mr. Burchill, my mother, Mr. Handwerk, my wife, myself and I believe Mr. Ulrich too.

Q. Was anything said by Mr. Burchill on that occasion as to whether or not Mr. Ulrich, your father, had made a will? A. Yes, sir. Mother said to me, "Have you the will", and I asked her did she have it. She asked me did I have it and I said no, and we asked different ones and asked Mr. Burchill and he says, "No." I says, "Are you sure you have no will," and he put up his hand and says, "So help me God I don't know if there is a will", or if there was a will.

Q. Did you then together with Mr. Burchill make an attempt to find whether there was a will by making an investigation? A. Yes, sir.

Q. What was done? A. My brother-in-law, Mr. Handwerk and my brother-in-law, Mr. Burchill and I went to the bank, the United States Trust Company and got Mr. McDermott to open the safe deposit box, and Mr. Burchill knew we were looking for the will and came to help us look for the will. Mr. McDermott told us it was not in the safe deposit box and then we went over to the mill, Mr. Burchill, Mr. Handwerk and myself and took all the papers out of the safe, the three of us looked and went all through the papers and then we went back again and I says, "Mother, we couldn't find the will."

Q. That was in Mr. Burchill's presence? A. He came in the house with us.

Q. Anyway you reported you couldn't find the will? A. We couldn't find the will, no, sir.

Q. Did Mr. Burchill indicate to you in any way whether there had ever been a will drawn to his knowledge? A. No, sir.

Q. Did he say a word about having gone with your father to have Mr. Dunn draw a will? A. No, sir, he didn't.

Q. Just when was it you made this search? A. Father was buried and we got home, I think it was somewhere around twelve o'clock from the funeral and it must have been around half past one we went to look for this will.

Q. Was this on the day the will was read? A. Yes, sir.

Q. That you made the search? A. Yes, sir.

Q. Did you make the search after or before Mr. Burchill held up his hand and said he didn't know anything about it? A. After he said it.

Q. After that the will was read? A. I went home and the will was read. Mr. Dunn said, "Frank, I will be over to your mother's to read the will tonight at half past seven."

Q. Did he then come and read it? A. He did.

Q. Who was present then? A. The whole family, Mrs. Ulrich and Mr. Burchill.

Q. Mr. Burchill up to that time never told you he knew anything about the will Mr. Dunn had? A. No, he didn't.

Q. Just state the circumstances of reading the will? A. Mr. Dunn came in and greeted different ones around the room he knew and put his hands in his pocket and got out the envelope and when he took it out, he put his right hand over this envelope where it was torn, and that impressed me that he wanted to conceal that this envelope had been opened...

Mr. McCran—I object to it and ask that what impressed him be stricken out.

Mr. Harding—I consent that that be stricken out.

Q. Tell us what he did? A. Mr. Dunn held this envelope with his right hand at the torn side and runs his other hand across the top to open it.

Q. You mean to say you didn't understand why he should do that? A. Yes, sir, why did he do it when the envelope was open, and he held his hand like that.

Q. After your father had told you as stated about refusing the order of the Bethlehem Ribbon Company but not the Miesch, did you speak to Burchill about that? A. I did.

Q. What did you say? A. I told him I thought it was entirely wrong for him to tell father such lies about the thing when he knows it wasn't so. When I said that to him he turned around and walked away and never said anything back to me,

Q. Did you tell him your father had told you what he, Burchill, had told your father about this matter? A. Yes, sir, I told him he told father I refused an order from the Bethlehem Ribbon Company and it was not so, but Mr. Burchill had told father it was the Bethlehem Ribbon Company.

Q. When you had this conversation you related about the gasoline, did you speak to Mr. Burchill and tell him what your father had told you that Mr. Burchill had told your father? A. Yes, sir, I went to Burchill and I says, "What was the trouble about the gasoline, if there is any trouble you ought to come to me about it," and he says, "If you knew what I know about the gasoline, you would make a holler too."

Q. Did you say to him whether or not your father had told you that Mr. Burchill had told your father about the gasoline? A. Yes, sir, because he knew father had told me and he had told father.

Q. Did you tell Mr. Burchill your father had told you? A. I went to him and said, "What did you tell father about that gasoline for."

Q. What did he say? A. He says, "If you knew what I know about it you would holler too."

Q. Did he deny he had told your father about it? A. No, sir, he didn't.

Q. After you had this last trouble with your father which I think you said was in the early part of February, Nineteen Hundred and twenty-one? A. Yes.

Q. After you left on that occasion? A. Yes, sir.

Q. Has your father ever asked you or written to you...? A. No, sir.

Q. To go back with him in his business? A. No, sir.

Q. Did he ever make any overture whatsoever himself? A. No, sir.

Q. Did he ever have anyone come to see you since that time with a view of having you return to him and his business? A. No, sir.

Q. As I understood you to say you had no personal knowledge as to who bought the land on which the mill was built? A. Yes, sir.

Q. At the time that the land was bought on which this mill was built, how old were you? A. I should judge eighteen or nineteen years old.

Q. You knew nothing about that transaction? A. No, sir.

Q. When you got the deed, your brother gave you a third interest...

Mr. McCran—I object to counsel leading the witness. He is not a witness. He is leading his own witness by statements of fact.

Mr. Harding—I am repeating what this witness has said a great many times. It has already been said by the witness, brought out by counsel.

Q. Did you understand or not that the third interest was given you in this property from your brother? A. Yes, sir.

Q. Did you have any understanding as to where the other two-thirds interest was? A. No, I didn't have, only that father got a third, I got a third, and brother got a third.

Q. Did you pretend to go into the details of that transaction? A. No, sir, I didn't.

Q. Did you or didn't you know whether or not your brother bought that property from funds given to him by your father and that it was subsequently to be divided or not? A. No, sir, I did not.

Q. Did you know anything more about it than that it was given to you when you were twenty-one? A. No, sir.

Q. Did your father ever make any reference to it one way or the other, whatsoever? A. No, sir.

Q. Did he ever say anything to you to indicate that it was done without his knowledge? A. No, sir.

Q. Up to the time of his death have you ever conversed with him about your third interest? A. No, I did not.

Q. Did he ever do anything more than to recognize it was in you? A. No, sir.

Re Cross Examination, by Mr. McCran:

Q. Have you a quick temper? A. No.

Q. No? A. No, sir.

Q. You didn't narrate to us all of the conversa- you had on the night that the will was read? A. Yes, I did, as much as I recall.

Q. Didn't you thank Mr. Dunn for having cut you out? A. No, I didn't.

Q. You say you didn't say that to Mr. Dunn? A. No, sir.

Q. Did you swear any that night? A. I don't believe I did.

Q. Did you get angry that night? A. I might have been a little angry.

Q. And cursed and swore? A. No, sir.

Q. In the presence of your sisters? A. No, sir.

Q. Did you call any of your sisters or sisters-in-law any names? A. No, sir, I didn't.

Q. Are you sure? A. Yes, sir.

(At this point an indefinite adjournment was taken.)

Third Day October 9th, 1922.

The hearing of testimony in the matter of the probate of last will and testament of Franz Ulrich continued on the above date at 10 A. M.

Appearances:

Honorable Thomas F. McCran and
John Pomfret, Esq. for the proponent.
John W. Harding, Esq. and
Edward F. Merrey, Esq.

FRANK ULRICH, recalled to the witness stand and testifies as follows:

Direct Eamination, by Mr. McCran.

Q. In addition to the stock in the German American or United States Trust Co., and the Franklin Trust Company, did your father give you any other bank stock? A. No, sir.

Q. Did he give you any stock in the Second National Bank? A. No, sir.

Q. Have you any stock in the Second National Bank? A. Yes, sir.

Q. How did you acquire that? A. By buying it. I bought it.

Q. How did you pay for it? A. With my own money.

Q. When? A. About Nineteen hundred and sixteen.

Q. Did your father give your brother Albert any Second National Bank stock? A. No, sir.

Q. Did he buy it at the same time you did? A. I believe a little before.

Q. So your father gave you no stock in the Second National Bank? A. No, sir.

Q. By what means did you pay for it? By cash or check? A. By check I am most sure, no, by cash.

Q. Cash drawn by check from your account in order to get the stock? A. I think it was drawn from a savings account and transferred from my savings account to the Second National Bank.

Q. How many shares have you? A. Ten.

Q. Was the check drawn from your fathers account, payable to the Second National Bank for the stock you both got, you and Albert? A. No, sir.

WILLIAM CRUTCHLOW, sworn as a witness for the Caveators and testifies as follows:

Direct Examination by Mr. Harding:

Q. What is your age? A. Fifty-eight.

Q. Where do you live? A. Three hundred and sixty Madison Avenue.

Q. In Paterson? A. In Paterson.

Q. How long have you lived in Paterson? A. Thirty years.

Q. What has been your business since you have lived in Paterson? A. The silk business.

Q. Whom are you connected with now? A. A. and W. Price.

Q. How long have you been connected with that firm? A. Sixteen years.

Q. Did you know Franz Ulrich, the testator, during his life? A. I did.

Q. How long have you known him? A. About twenty-two years.

Q. Do you remember when he died? A. I think he died in July, nineteen hundred and twenty-one.

Q. Have you known him this length of time. You have mentioned before his death? A. Yes, sir.

Q. How intimately acquainted with him were you? A. The last twelve years, very much so.

Q. Just state what your relations were? A. My relations with Mr. Ulrich were going there and giving orders for different goods we used in the mill and when I would go there we would generally have a little conversation about different things.

Q. You representing your firm then did business or had business dealings? A. All the time.

Q. Just state what the nature was? A. Buying shuttles, quills, harness, bobbins, reed and things like that.

Q. These things you were constantly buying there during the last twelve years of his life? They were all used by your firm? A. Yes, sir, by our firm.

Q. In the business? A. Yes, sir.

Q. Did you know his son Frank Ulrich? A. I do.

Q. How long have you known him? A. I have known Frank about eighteen years.

Q. Did your acquaintance rise with him in relation to the business relations with the father? A. In connection with the business.

Q. Was Frank connected with the father? A. He was.

Q. Aside from the business relations you have spoken of what were your relations with both Frank and his father with reference to friendship? A. We were very friendly indeed.

Q. Do you remember when or did you know Albert Ulrich who died some time ago? A. I did.

Q. Do you recall when he died? A. I think about nineteen hundred and nineteen.

Q. Did you know Langley Burchill, the son-in-law of Franz Ulrich? A. Only just of late.

Q. Do you remember when he went into the mill of Ulrich? A. I do.

Q. Do you know what time that was in reference to Albert Ulrich's death? A. I think it was some-

time after his death. I cannot say just what time but some time after his death.

Q. Do you recall that sometime before the death of the testator of going to the mill and finding that Frank Ulrich, the son was no longer there? A. I do.

Q. Can you state about when that was? A. I should think as near as I can tell you I should think about nineteen hundred and twenty-one.

Q. The testator died in nineteen hundred and twenty-one? A. Around in November.

Q. What time in nineteen hundred and twenty-one was it that you found Frank had gone away? A. I should think around November, sometime around November.

Q. Whom did you see when you went there on that occasion? A. First I saw the old gentleman, Mr. Ulrich.

Q. That was at the mill, was it? A. Yes, sir, that was at the mill.

Q. Did you have a conversation with him? A. I did.

Q. What was it? A. I was speaking to him about some shuttles.

Q. Yes? A. And I tried to explain to him what I wanted and he didn't seem as if he could understand me so after talking to him for a long time I found it was impossible to make him understand just exactly what I wanted.

Q. Did you have a sample of the shuttle there? A. I did.

Q. Was it your custom to take a sample? A. Yes, sir, and give it to him and give him a number which they usually had a number.

Q. Tell us what he said about the shuttle? A. He simply said he did not understand the shuttle. I spoke to him about the tension and he didn't understand me.

Q. Did he say whether or not he had machinery that would make it? A. He did not.

Q. Was this peculiar talk on his part and if so tell us why? A. It was very peculiar because the man didn't seem to understand it.

Q. Before that time, did he? A. He thoroughly understood anything you asked him.

Q. Did you before that time on other occasions show him such a shuttle and did he understand it? A. I showed him shuttles just about the same as that and he thoroughly understood it.

Q. Up to this time had you ever seen anything that indicated any impairment of his mind? A. No, up to that time I did not.

Q. Then on that occasion what else took place, after you had tried to make him understand? A. He said to me, "now if I had Frank here he would look after that but I have not been able to understand just eactly what you have been saying and I cannot understand that shuttle."

Q. Did you learn on that occasion that Frank was not there? A. I did.

Q Did he say anything to you about it at that time? A. No, not at that time.

Q. Did you say anything or did he say anything about Mr. Burchill? A. He said to go outside and see Mr. Burchill.

Q. What did he say to see him for? Anything in particular? A. About the business.

Q. Did you go out to see Mr. Burchill? A. I did.

Q. What took place? Just tell us in your own way? A. I went outside to see Mr. Burchill and then I asked him why Frank wasn't there.

Q. Before you get to that I want to ask you whether or not you saw anything peculiar with reference to the old gentleman on that occasion? A. When I was outside I was standing outside and while I was standing there Mr. Ulrich came out the front office, private office.

Q. He came out from what? A. The private office.

Q. And what happened? A. He went through into the work shop and when he was coming back I noticed his clothes were disarranged, his trousers were opened.

Q. Tell us exactly what you saw. A. His trousers were opened and his shirt was out.

Q. Could you see his underclothes? A. His underclothing was exposed.

Q. Go on. A. I said to Mr. Burchill, don't let that old gentleman—

Mr. McCran—I object to what he said to Mr. Burchill.

Mr. Harding—This is part of the res gestae but as a matter of fact in a case of this kind, which is not a jury case, it is usual to take all testimony unless it is clearly out of order and then the Court can rule upon it afterwards.

Q. Go ahead. A. I said to Mr. Burchill—

Mr. McCran—If the Court please, this is a

statement made to a third party and not to or by the testator.

Mr. Harding—It is a statement made to Mr. Burchill.

The Court—I shall sustain the objection.

Q. Was the girl present, the stenographer present at this time? A. In the front office, the private office.

Q. Where was Mr. Ulrich with reference to the stenographer. Where was he going? A. He was going back into the front office.

By Mr. McCran—I asked that that be stricken out. It is a conclusion on the part of the witness.

The Court—Strike it out.

Q. State where he was? A. I was just on the outside of the partition of the front office and Mr. Ulrich was just the same as if he was going through the door there.

Q. You saw him in this condition, with his clothes unbuttoned walking towards the office? A. Yes, sir.

Q. Where the girl was? A. Yes, sir.

Q. Was he or not apparently to you going into the office? A. He was.

Mr. McCran—I object to it and ask that it be stricken out.

The Court—Strike it out.

Q. How near was he to the office door? A. About two feet away.

Q. Did you see him come out of the office where the stenographer was and go into the shop? A. I did.

Q. Did you see him come back from where the toilet was to go back? A. Yes, sir.

Q. With his clothes in this condition? A. Yes, sir.

Q. So that you made a remark to Mr. Burchill about it? A. I did.

Q. And Mr. Burchill made a reply to you? A. He did.

Mr. Harding—I propose to show by this witness that he said to Mr. Burchill—

Mr. McCran—Is this going to go into the record?

The Court—Argument of Counsel will not go into the record.

Mr. Harding—I am making an offer to the Court showing what we propose to prove and surely the Court will not refuse to take the offer. This is not a Jury case and we can talk about it. We wish to make an offer. I have never heard the Court refuse to take an offer from Counsel. This is my offer and I ask that the stenographer take it down.

The Court—The objection wasn't to an offer. The Court is also familiar with the fact that in a case of this kind a much wider scope would be allowed in taking testimony than in a trial in which Jurors are to determine what shall be done. There is no question about that.

Mr. Harding—It is very important that we have the right start in this kind of case be-

cause it will be most unfortunate to get out testimony and then have it sent back because of the fact that your Honor could consider it or not as you please. There ought not to be any objections to showing these facts in this case when the son-in-law is the controlling factor. I have been in a great many cases of this kind and have never, as yet, had the Court refuse to take this class of testimony. It will all be connected up with other circumstances.

The Court—There is nothing before the Court.

Q. Did you make a remark to Mr. Burchill with reference to the condition of Mr. Ulrich? A. I did.
Q. Did Mr. Burchill reply to it? A. He did.
Q. I ask you now, what these remarks were?

Objected to by Mr McCran.

The Court—That is the same question propounded a moment ago upon which the Court has ruled.

Mr. Harding—I don't know whether I have been able to have my stenographer take the offer for me. The offer is this: to prove by this witness that the witness said to Mr. Burchill, "you don't intend to let Mr. Ulrich go into the office before the stenographer," who was a girl, "in that condition," and that Mr. Burchill stated, "She is used to it. The old man is out of his mind and don't know what he is doing and she understands it."

That is my offer. I ask your Honor to rule upon my offer.

The Court—There is no question pending for the Court to pass on.

Mr. Harding—I ask your honor to rule upon the offer now.

The Court—The Court has sustained the objection on the previous question.

Q. After that did you have a conversation with Mr. Burchill with reference to Frank's leaving? A. I did.
Q. What was said between you and Mr. Burchill with reference to that? A. Mr. Burchill told me—

Mr. McCran—I have the same objection to this testimony.

The Court—What is the object of this testimony?

Mr. Harding—This is the object of the testimony and it seems to me it is most important testimony in this case and clearly admissible. We propose to show by this witness that he had a conversation with Mr. Burchill that he asked Mr. Burchill why Frank had left and Mr. Burchill told him that the reason Frank had left was because Frank's father had become angry at Frank because Frank had refused to take an order from the Bethlehem Ribbon Co., and Burchill told Mr. Crutchlow that Frank had acted properly in not taking that order from the

Bethlehem Ribbon Co., and refusing to take the business. He also told Mr. Crutchlow that Frank and his son also was, he said that they had been using gasoline against the father's account and charging it on the father's bill. Burchill stated to Mr. Crutchlow and he admitted that he had told the testator that gasoline had been used in that way and Frank had no business to use it and on account of that the father, the testator, had become very angry and that resulted in the father discharging Frank. The result was finally that Mr. Crutchlow told Mr. Burchill that there had never been any trouble there before he came and told him that he had been the cause of it and finally brought up the question of getting Frank back and he told Mr. Burchill that he would like to have Frank back and asked him if he would have any objections, and he said no. As a result of that we propose to follow up that conversation and show that Mr. Crutchlow went to Frank and asked him about it and that Frank told him that what Burchill had told him, Mr. Crutchlow, was not true that he had never refused to accept an order from the Bethlehem Ribbon Co., but that on the contrary he had refused to accept an order from the Miesch Co., and the reason he refused it was that they had had lots of trouble with them before and they were rushed for work and couldn't take the work unless they sacrificed their business and failed to take orders for other customers.

Mr. McCran—May I just interrupt a moment?

Mr. Harding—Don't interrupt me now.

Mr. McCran—I don't wish to interrupt but I object to this statement.

Mr. Harding—This is my offer. I have asked you about it and I am making it.

Mr. McCran—I object to counsel encumbering the record with his statement.

The Court— Make it as brief as possible.

Mr. Harding—I have not gotton through half of it. My point is this....

Mr. McCran—Every word of this history is going into the record.

Mr. Harding—This is not a history. This is my point. We are trying to give the Court all the evidence we possibly can.

The Court—The Court is very anxious to get all the evidence that we need.

Mr. Harding—Frank then says to him, "It is not true about the gasoline, I have not used it. Burchill and his wife used the only gasoline used in that way." Now comes the important part. Burchill went to Crutchlow, went on with the understanding he had with Burchill himself, that he was willing to have Frank come back. After having that conversation with Burchill and Frank he went to Mr. Ulrich and repeated to Mr. Ulrich everything that had taken place between Burchill and himself and Frank and himself. The important part of his testimony will be that when this was told to Mr. Ulrich, this conversation, Mr. Ulrich, after hearing the

conversation that Mr. Crutchlow had had after these things were related to him they agreed to have Frank come back and Mr. Ulrich, the testator, told Crutchlow that Burchill himself had told him Mr. Ulrich, about this Miesch order. And understand this, Burchill, himself, had told Mr. Crutchlow that he didn't tell him at all. It seems to me there can be no question about the competency of this testimony which resulted in a conversation between Mr. Crutchlow and the testator. It seems to me it bears directly upon any undue influence and also capacity itself. We will show by this witness that the testator said that Mr. Burchill had told him which Mr. Burchill had said he had not told him. Competent and relevant, it seems to me that this transaction brought to the attention of Mr. Ulrich, himself, is the most important kind of testimony in this case. That is my offer. I cannot prove everything all at once. It is a question of fact and if your Honor wants to get the truth in this case in which undue influence is charged it seems to me you cannot take this testimony out of the case without destroying and keeping out the great light. If your Honor is in doubt about the competency of these things the witness is here now and you can take the testimony and then rule upon it afterwards.

The Court—I fail to see where the question has a bearing on the mental capacity or showing that undue influence was exercised on the testator and I shall sustain the objection.

Q. Did you have a conversation with the testator or first I will ask you this. Did you have a conversation with Mr. Burchill in reference to Frank's leaving and the cause of it? A. I did.

Q. Did you after that have a conversation with Frank? A. I did.

Q. With reference to his leaving? A. I did.

Q. Did you relate to Frank what Mr. Burchill had told you? A. I did.

Q. Did Frank tell you his story? A. He did.

Q. Did you then see the testator? A. I did.

Q. Did you have a conversation with the testator? A. I did.

Q. With reference to the conversation you had with Mr. Burchill and with reference to the conversation you had had with Frank? A. I did.

Q. I ask you to state to the Court what the conversation between you and the testator was and when it took place? A. I cannot just exactly say the date that it took place but it was after I had the conversation with Mr. Burchill and Mr. Ulrich Jr. I spoke to Mr. Burchill about Frank and he said Frank had gone away and the reason he had gone away was that him and his father had disagreed and I asked him what they had disagreed about and said they had always been very comfortable before and he said Frank had refused to take orders and I said what kind of orders and he said he refused to take an order from the Bethlehem Ribbon Co., and he also said there was some dispute about the gas. Frank was using gas from the gas station either Frank or the boy was using it for their own purpose. Then I went to Frank and had a talk to him about it and told him what Mr. Burchill had said.

Mr. McCran—Is this what the testator said what the conversation was?

The Court—So I understand. This is the conversation between the testator and this witness.

Q. I want you to state the conversation you had with Mr. Ulrich? A. With Mr. Ulrich.

Q. The testator, after you saw the other two? A. After I seen them I went to talk with old Mr. Ulrich.

Q. What did you say to him? A. I asked him why Frank wasn't there and he said the reason why Frank wasn't there was that Frank had refused to do business. I said, "Why has he refused to do business." And he said he had refused to take orders and he also said he has been taking gas and then he started to holler and I said, "Mr. Ulrich, don't get excited. Sit down and let's talk the thing over." He said he knew these things were the truth because Mr. Burchill had told him so and I said that Mr. Burchill was satisfied to have Frank come back and he said, "Allright, let Frank come back."

Q. What did he say Mr. Burchill had told him? A. That Frank had refused to take an order from the Bethlehem Silk Co., and also he had been taking gas, either him or his son were taking gas from the station and the firm had been paying for it.

Q. Do I understand you to say Mr. Burchill had told him that either he or the son was taking gas? A. Yes, sir.

Q. Was anything said about the conversation you had with Mr. Burchill and Frank by you to Mr. Ulrich? A. I told him the conversation.

Q. Tell us the conversation? A. I told him I had the conversation with Mr. Burchill and Frank that Mr. Burchill was satisfied for Frank to come back.

Q. Did you tell him anything about what Burchill told you about the Bethlehem order and the gas? A. I told him Mr. Burchill had said, Frank had refused to take an order from the Bethlehem Silk Co., and I told him I had told Frank and Frank said that was a mistake that he had not refused to take an order. He felt sore and thought Frank ought to take and then he said he got mad about Frank not taking that order.

Q. Did he tell you who first told him about Frank not taking that order? A. He said Mr. Burchill had told him.

Q. Did you try to explain to him what Frank had told you about the reason why he had not taken the Bethlehem Silk Co. order? A. I did.

Q. What did Mr. Ulrich say? A. He said he ought to have taken it

Q. When you first spoke to Mr. Ulrich about his son Frank, state just what his actions were. How did he act? A. When I first went in and spoke to Mr. Ulrich about his son Frank, he got mad.

Q. Describe how he acted? A. He jumped up and threw his arms around and swore a little and said he didn't want to have any more to do with Frank and then after I told him I had had the conversation with Mr. Burchill and he was satisfied for him to come back, he said allright.

Q. In other words did he change right away. Did his attitude towards Frank's return? A. Yes, sir.

Q. As soon as you told him about Burchill being satisfied, he changed? A. Yes, sir.

Q. Did he say anything about the son Frank whether or not Frank went away of his own accord? A. He said he had sent Frank away on account of this order.

Q. Did he say anything about his dependence on Burchill? A. He said he could not get along without him.

Q. In what way? A. He said he looked after the business and also carried coal up and helped him generally around the house.

Q. As you observed it how did his actions and apparent mental condition of Mr. Ulrich appear to you on this occasion as compared to his actions previous to that? A. Very different before that time.

Q. Just specify how different? A. When I used to go to Mr. Ulrich to his office he was always very nice and very calm and we would talk about different things, speaking of different things. But this time the man didn't seem to know what he was talking about.

Q. What had his relations been with Frank prior to this? A. Very good indeed. I never saw any trouble at all. No trouble at all either with Frank or Al.

Q. Previous to this last conversation you had with Mr. Ulrich, can you state how he was with reference to positiveness and judgment? A. He was always positive.

Q. On this occasion when you had this last conversation with him and you spoke of this sudden change and his general appearance and his bitterness towards Frank until you spoke of Burchill's

willingness to have him come back and he changed right away and said he could come back? A. That indicated a change. It indicated a big change. I never heard him speak that way about Frank before.

Q. Was he still swearing at Frank when you told him that Burchill was willing to have Frank come back?

Mr. McCran—I don't object to the question but I do object to Council suggesting things rather than letting the witness tell them. It is very leading.

Q. What was he doing at the point when you told him that Burchill was willing to have Frank come back? A. He was in a rage and as soon as I told him Mr. Burchill was willing for Frank to come back he calmed right down.

Q. There was a manifest change? A. Yes, sir, a decided change.

Q. Did he then express himself as to whether he wanted Frank to come back? A. After that he said he would have Frank back again. Frank was to come around and see him.

Q. Do you remember Frank's going back after this conversation? A. I do.

Q. When did he go back? A. I think he went back around November.

Q. Do you know when Frank went back, Frank Ulrich? A. January.

Q. Then you had this conversation sometime in January of nineteen hundred and twenty-one? A. Yes, sir.

Q. You remember his going back? A. Yes, sir.

Q. And you remember him being back there for a while? A. I do.

Q. Do you remember of his leaving again? A. I do.

Q. Do you remember talking with Mr. Burchill after Frank about Frank's leaving? A. I do, he said....

Mr. McCran—I object to anything he said.

Q. Did you hear the cause of Frank's leaving? A. I did.

Q. Did you talk with Frank about it? A. I did.

Mr. Harding—I propose to make the same kind of an offer and the offer is after Frank..

Mr. Dunn—Is that not simply encumbering the record?

Mr. Harding—My offer is to prove by this witness that after Frank left he saw Mr. Burchill about it and Burchill stated to this witness that the reason Frank left was when he made or when the old gentleman had got angry with Frank because Frank's son had waited for the mail to go out to take a parcel for his father and that Burchill had ordered him to take it out and Burchill said to this witness that he had told the testator that Frank's son had delayed the sending off of the packages some ten or fifteen minutes so that he could take this order that Frank had told his son about. This package was a pencil and on account of Frank's son not having obeyed him in that respect the

testator had got angry at that and had discharged Frank. That is my offer.

Q. Did you see Mr. Ulrich from this occasion you spoke of in January up to the time of his death? A. I did.

Q. Did you talk with him? A. Yes, sir.

Q. What was his condition from that time on compared with what it was in January, nineteen hundred and twenty-one? A. Gradually getting worse.

Q. Describe to the Court how his talk was in general.

Mr. McCran—May I ask when this was?

Q. From January up to the time of his death can you state any specific occasion? A. No, I was to see him many times.

Q. Did you have much to say to him more than business or did you talk generally? A. I tried to have a conversation.

Q. And what was the result? A. The result was I could not have a conversation.

Q. Why? A. He seemed to be feeble.

Q. What? A. He seemed to be so feeble and upset.

Q. Why? What did he say? A. He said he would have no money that he had to go to the Poor House and I told him he would have plenty of money and he had plenty of business.

Q. Can you tell us just about when that was? A. That was right after Frank was out the second time.

Q. After Frank went out the last time that would be nineteen hundred and twenty-one? A. Yes, sir.

Q. Judging from his actions when you saw him during the last six months of his life including what you saw of him when he talked to you about the shuttle and as you said didn't seem to comprehend it and the conversation you had with him in January with reference to Frank's going back and this conversation you spoke about that he spoke of not having any money and the occasion you saw him coming from the toilet what, in your opinion, what was his mental condition?

Objected to by Mr. McCran.
The Court—I will admit it.

A. The way I always found Mr. Ulrich after that time, up to the mill, he didn't seem to understand what he was doing. You would speak to him about business or anything and he didn't seem to understand what you were talking about. I tried to have what I call fun with him trying to get him to talk about different things but I couldn't get him down to sense at all and I tried quite a number of times.

Cross Examination by Mr. McCran:

Q. You were a great friend of Frank's? Weren't you? A. I was.

Q. And you had known the father very well also? A. I sure did.

Q. In fact you are a customer of Frank's firm at the present time? A. I am.

Q. When did you become such a customer? A. Of Frank's firm.

Q. Yes. The new firm. The Royal Reed and Harness Company? A. Well, maybe a couple of months after he started up.

Q. Less than a couple of months? A. Two months.

Q. You wouldn't say it was less than two months? A. That is as near as I can tell.

Q. You knew he was going in business? A. A. I was just trying to get it correct when I knew he was going in business. I think it was when he hired a place on Paterson Street.

Q. When was it you had the place on Paterson street? A. I really cannot tell you, I can find out from the mill in a very short time.

Q. When was it that Frank first told you that he intended to go into business? A. When he hired the place on Paterson Street.

Q. When was that in reference to January, nineteen hundred and twenty-one? A. I cannot think properly about it. I know he was in business two months before I gave him an order.

Q. When was it he first spoke to you about it? A. Afterwards.

Q. Did he consult you about going into business? A. He had no reason.

Q. I asked you did he? A. No.

Q. Did he speak to you about it? A. He might have, I don't know.

Q. How long before he went into business? A. I cannot tell you that. When he hired the place on Paterson street, I found he had hired a place on Paterson street and two months after I gave him an order for some reed.

Q. You had spoken with Frank shortly after he left the business of his father in January? A. Lots of times.

Q. How long after he left his father's place was it that you had any conversation with him? A. I cannot tell you.

Q. You were very much interested in Frank going back to the father's place after he had gone out the year previous? A. I was.

Q. When did you first learn he had gone out the second time? A. Mr. Burchill told me.

Q. When was that? A. In January sometime, I guess.

Q. Didn't you try to get him back the second time like you did the first time? A. I spoke to him about going back.

Q. You spoke to Frank? A. I did.

Q. When was that? A. In January.

Q. Did Frank tell you then .that he was going into business? A. No.

Q. Did he tell you what he was doing? A. He told me he wasn't doing anything.

Q. How long have you been doing business with the old gentleman at the Ulrich Co.? A. About twenty-two years.

Q. They had been making shuttles for you? A. Yes, sir.

Q. Reeds? A. Quills and reeds, yes.

Q. For silk harness? A. For everything you use in that line.

Q. When was it you called at the office and spoke to the father about a shuttle that you referred to on you direct examination? A. That must have been in February, I think, about that time.

Q. Can't you be sure? A. I think it was in February.

Q. What year? A. Nineteen hundred and twenty-one, I think it was.

Q. You think it was? A. Nineteen hundred and twenty-one.

Q. Are you sure, Mr. Crutchlow. Can't you speak up, answer that? A. I said, yes.

Q. What year was it and what month? A. The month I cannot tell you. The year, nineteen hundred and twenty-one in January, I think.

Q. Was it prior to the time when Frank returned to work for the father or after? A. It was before.

Q. What do you mean before? A. It was just after Frank went away the first time.

Q. Then Frank came back? A. He did.

Q. That couldn't have been in January or February, nineteen hundred and twenty-one? A. I don't see why it couldn't.

Q. Could it? A. He went back in January, nineteen hundred and twenty-one.

Q. Then it was prior to that? A. Yes, sir.

Q. Was it in nineteen hundred and twenty-one or nineteen hundred and twenty? A. Nineteen hundred and twenty-one, I think it was.

Q. What time in nineteen hundred and twenty-one? A. I cannot tell you more than I have already told you.

Q. How long was it before Frank went back? A. I should think one month before he went back.

Q. Frank went back right after New Year's? A. Yes, sir.

Q. Was it in September, November, when? A. November, that is the time.

Q. Now you think it was in November? A. Yes, sir.

Q. What year? A. The same year.

Q. Of nineteen hundred and twenty-one? A. Nineteen hundred and twenty-one.

Q. The father died in nineteen hundred and twenty-one, you know? A. Yes, sir.

Q. When was this? A. Well, I am telling you as near as I can tell you.

Q. So it was in January or February now you say this happened? A. I say it was just before Frank went back the last time. I have not got the date down. I can't remember them well.

Q. Where did you see the father that time about the shuttle? A. In the private office.

Q. Who was present? A. Mr. Ulrich and his stenographer

Q. You had been having shuttles made for a long time prior to that by the Ulrich Co.? A. Yes, sir.

Q. Did you bring a shuttle in with you? A. I did.

Q. That was the same kind of a shuttle you wanted him to make? A. Yes, sir.

Q. What was the need of any discussion about the shuttle? A. When you take a shuttle as a rule to a man and ask him about it he will ask you if you want any changes made, if you want a different tension, if you want five or three sides or a two side and I was talking of all these things and Mr. Ulrich was not paying attention but he was in the habit of asking these questions and this time he

didn't ask about the fiber or the sides or anything as he usually did and after I asked him about it he didn't seem to understand. He said, "I don't know, since I had that stroke at Greenwood Lake I cannot remember anything."

Q. When was it you saw him before that? The last time before that? A. It might have been a month before, it might have been two months.

Q. Which was it? A. Say two months.

Q. You say now it was a period of two months? A. As near as I can remember.

Q. Do you know when he had the stroke at Greenwood Lake? A. No, I don't know.

Q. Do you know whether that stroke at Greenwood Lake wasn't ten years before your conversation? A. No, I don't know.

Q. How long did you think it was? A. Not more that a year and a half or two years.

Q. You didn't notice anything about him? A. All I noticed is that his face was crooked.

Q. You didn't notice anything about him not understanding shuttles until this day in question? A. That day I did. I noticed it more than any other time.

Q. You won't say that Mr. Ulrich did not understand or do you want us to understand that Mr. Ulrich could not understand the kind of a shuttle he wanted or you wanted to have made? A. He did not.

Q. What did he do about the shuttle? A. He didn't do anything.

Q. What did you do about it? A. I took it outside.

Q. To whom? A. To Mr. Burchill. He said, "Lang understands all about the business."

Q. What time of day was that? A. In the morning.

Q. What time in the morning? A. Around ten o'clock.

Q. What was the difference in that shuttle you wanted and the shuttle you had before? Was that a new shuttle? A. There was no difference.

Q. There was no need of explaining these things to him? A. When you go to give an order for a shuttle you show the man who is going to make the shuttle a sample, they generally ask you questions. Do you want the same spindle, do you want the same tension and so on.

Q. Well, that is what you wanted? A. Yes, sir.

Q. Did you tell that to the father? A. I did and he said, "I don't understand."

Q. You took a shuttle into the office in which there was to be absolutely no changes from the one you brought in? A. Yes, sir.

Q. Then you said to him, "I want a shuttle," just like that. What was there to understand about that? A. Just exactly what I am telling you. That is why I think he had changed so much. He didn't really understand he had to make the same thing without any changes.

Q. Was Frank there? A. No.

Q. Did you ask him about it? A. Not then.

Q. Did you know Frank was gone? A. I did then.

Q. When? A. When I went out.

Q. Did you go back and have any conversation with the father? A. Afterwards.

Q. That morning? A. No.

Q. What else did you talk to the father about that morning? A. Nothing.

Q. Did he tell you Frank was out? A. After Mr. Burchill told me.

Q. Did the father tell you? A. No.

Q. How long were you with the father? A. Maybe a half an hour.

Q. Did the father say to you, "I don't want to be bothered with it, take it outside"? A. He did not.

Q. Where was he sitting? A. On a chair.

Q. At his desk? A. No, he wasn't sitting at any desk.

Q. What was he doing when you went in? A. Sitting still.

Q. Did he say good morning to you? A. No.

Q. Did you say good morning to him? A. Yes, sir.

Q. Then what did he say? A. "What do you want?"

Q. He knew you? A. Yes, sir.

Q. Then you told him you wanted a shuttle like the one you had with you? A. Yes, sir.

Q. Then he told you what? A. I started to explain to him. I said I wanted the same thing as what I had.

Q. You told him you wanted the same thing? A. Yes, sir, and he said he could not understand.

Q. Do you know whether or not he ever went about the shop? A. I know he always used to go around the shop.

Q. Did you learn that he still continued going around the shop? A. No, I didn't inquire.

Q. While you were still there I understood you

to say the father came out of the private office and went to the toilet out in the shop? A. Yes, sir.

Q. The door of the shop is about how far from the private office door? A. I should think about six or seven feet.

Q. Where were you and Burchill? A. Standing right near the partition between the inner office and the outer office.

Q. Do you know whether or not the father had any trouble with his bladder? A. No.

Q. You don't know that? A. Not at that time. I didn't know of that.

Q. Did Mr. Burchill go to your house at any time after that conversation? A. Mr. Burhchill.

Q. Yes? A. Go to my house. If he did I cannot remember it.

Q. Did he go to your house at any time about Frank returning to his father's mill? A. If he did I cannot remember it.

Q. Now, Mr. Crutchlow, just try and think. Didn't Mr. Burchill go to your house on a number of occasions for you to intercede with Frank to go back to his father's mill? A. You got me on that. I cannot remember it.

Q. Did he ever go to your mill? A. Yes, lots of times.

Q. Did he ever go to your mill after the occasion of your shuttle when Frank was out? A. Lots of times.

Q. Did he ever go to your mill and ask you to intercede to have Frank come back? A. I think he did.

Q. How many times did Mr. Burchill go to you at your mill or house to have you intercede with

Frank to have him back to the mill? A. I don't remember that he did at any time to ask me especially to have Frank come back to the mill. He said he would like to have Frank go back to the mill.

Q. And he asked you to try and endeavor to bring it about? A. He told me he would like to have him go back to the mill.

Q. Didn't he ask you to go to Frank and try and have him come back to the father's mill? A. The only thing I remember is that he would like to have him come back to the mill.

Q. He spoke to you about that? A. Yes, sir. That he would like to have him come back.

Q. That he would like to have Frank come back to the father's mill? A. Yes, sir.

Q. Didn't you as a result of that have conversation with Frank? A. Yes, sir.

Q. As a result of this conversation with Mr. Burchill did you go to Frank and try to get Frank and you did get him to come back to the mill? A. I went to Frank and said what I heard about the case and then....

Q. Didn't you urge him to go back? A. I don't think I went as far as that.

Q. What did you go to Frank for? A. I just stated the different stories I learned and then left it to himself.

Q. What was your purpose? A. I would like to help Frank out at any time.

Q. On these occasions you tried to get him to go back? A. I told him Mr. Burchill would like to have him go back to the mill. That is all I told him and I left it to himself to decide the other part.

Q. Did Mr. Burchill tell you he believed Frank's

place was in his father's mill. That is where he ought to be? A. Not that I remember.

Q. Would you say it is not so? A. I don't remember.

Q. Did you ever send for Mr. Burchill to go to your house or your mill? A. I asked him to bring Mr. Ulrich and Mrs. Ulrich around one night.

Q. Did you ever send word to Mr. Burchill to go to your home or telephone directly to the mill to him? A. I cannot remember.

Q. Would you say you did not? A. I cannot remember anything about it.

Q. Would you say you did not? A. I will have to say I don't know. I cannot remember.

Q. It might have been so? A. I cannot say.

Q. Might you have done so? A. I don't see why.

Q. Might you have done so? A. I would have no reason.

Q. I ask you again. Might you have done so? A. No, I don't think so.

Q. Mr. Ulrich was a positive man? A. Yes, sir, he was. Of course you mean the old man.

Q. Yes, the old gentleman? A. At one time he certainly was.

Q. He was pretty positive the day you were talking about Frank? A. I don't think so.

Q. You said he jumped up? A. Yes, sir.

Q. Swore? A. Yes, sir.

Q. Cursed? A. Cursed.

Q. Did you have any conversation with the father after Frank finally went out of the mill? A. Between the first and the second time.

Q. I mean the last? A. No.

Q. None at all? A. Before Frank went out the only conversation I had just talking to him friendly like.

Q. What were you talking about? A. Trying to talk about fishing and different things. Trying to see if we could get anything about him so that we could settle him down.

Q. Settle down about what? A. Before Frank went away from the mill.

Q. Before Frank went away from the mill? A. I had a conversation with him lots of times. I—

Q. Right up to what time? A. Six months before.

Q. Before what? A. Before he died.

Q. You think up to six months before he died he was alright? A He seemed to be.

Q. He died in July? A. Yes, sir.

Q. Six months prior to that time, you think? A. It might have been. It might have been more than six. I don't know.

Q. Now Mr. Crutchlow, what is it? A. I have not got dates for these things.

Q. The last conversation you had with the old gentleman was when? A. The last conversation that I had with Mr. Ulrich was about a week before he died.

Q. Where did you see him a week before he died? A. At his house.

Q. Was he in bed then? A. He was in bed just before I got there but he got up to come out.

Q. Did he get up himself? A. I don't know.

Q. You don't know whether he was in bed? A. I only know what his daughter told me, I didn't see him.

Q. Where did he see you? A. In his front room.

Q. You waited in the front room for him? A. Yes, sir.

Q. Did he walk in? A. I think he did. I am not sure.

Q. How long did you talk to him? A. About ten minutes.

Q. What did you talk about? A. I tried to ask him how he was and all he did was to put up his hands. He didn't seem to know what I was talking about.

Q. He died a week later, didn't he? A. He was a terribly sick man, he was in a very bad condition.

Q. Do I understand you to say that Mr. Ulrich told you the reason for Frank going out of the mill the last time was because of the boy, was because of young Frank Jr.'s son Melvin? A. Yes, sir. He said there had been trouble about a letter.

Q. When was that conversation? A. That was between the time Frank went out the first time and the second time. He went out in November and he went back in January so far as I remember.

Q. He went out in November and came back in January the first time? A. That is what I said.

Q. Well when was this conversation with the father? A. That conversation was between the time Frank went out the first time and before he went back the second time. No, I am wrong. This was the time after Frank went out of the mill the second time.

Q. How long after Frank went out of the mill the second time was this conversation had with the old gentleman? A. It might have been two days after.

Q. Where did that conversation take place? A. As near as I can remember it was in the mill. Mr. Ulrich came down in the morning. I think they expected him down in the machine.

Q. He came down every morning in the machine? A. Yes, sir.

Q. That was nothing unusual? A. No.

Q. Where was the conversation held? A. In the office.

Q. The private office? A. Yes, sir.

Q. Who was there? A. The girl.

Q. The same girl? A. Yes, sir.

Q. Did he tell you anything else why Frank left? A. When he got to where he said he had trouble with Melvin then he got up in a rage again and I couldn't get anything out of him at all and that was all at that time and then I seen Frank and I asked Frank about it and I seen Mr. Burchill after that, after we had the conversation about the old gentleman.

Q. Didn't you tell Mr. Harding, this morning, that Mr. Ulrich told you why he went out? A. He told me there was trouble over Melvin about a letter and then he went up in a rage.

Q. What else did he tell you? A. He didn't tell me anything.

Q. Did he tell you any more? A. No.

Q. Didn't you tell us more than that a short while ago? A. I don't think so.

Q. What did you do, get up and go out? A. I had to get up and go out. I couldn't talk to him.

Q. The father knew that you were a very close friend of the son Frank? A. At that time I don't think he knew anything.

Q. I ask you prior to that time? A. He knew I was always a good friend of Frank.

Q. You had been interceding about Frank returning to the mill? A. I had a conversation.

Q. You had interceded with the father? A. If you call that interceding, yes.

Q. The purpose of your talk was to endeavor to have Frank to come back to the mill? A. That was my idea.

Q. Your idea was to have the father take him back in the mill? A. Yes, sir, in the mill.

Q. When you came in there after the son had left there the last time that is what you wanted to speak to him about? A. I wanted to speak to him about that thing.

Q. And he didn't want to listen to you? A. He listened but he didn't seem to understand.

Q. Understand what? A. What I wanted to talk to him about.

Q. About what? A. About Melvin. I wanted to know what happened, why Frank went away.

Q. Did the father tell you that Frank had knocked him down two days before? A. I don't remember his saying deliberately that Frank had knocked him down.

Q. Did he say that Frank had knocked him or struck him down? A. On this one occasion he did not say anything about it. I started to inquire and he told me about Melvin and the letter and then he went into a rage.

Q. He didn't want to talk to you any more about it? A. Maybe he didn't.

Q. Maybe he didn't? A. That's what I said.

Q. Even that morning he was strong in his physical action so far as he went? A. Strong in the terms he used and strong as could be in his condition on that.

Q. He was as strong as any man could be? A. No, he was a very weak man.

Q. He cursed? A. Yes, sir.

Q. Swore? A. Cursed and swore.

Q. What did he say? A. He said, I asked him what was the matter with Frank going away and he said there had been some trouble with Melvin then he said, "Oh! to hell." I asked him what he meant and he said nothing.

Q. What did he do? A. He didn't do anything.

Q. Was he standing or sitting? A. He was sitting there.

Q. And that closed the conversation? A. Yes, sir.

Q. You knew it was closed too, didn't you? A. I didn't know it was closed. No, not necessarily.

Q. You went away from his presence after that, didn't you? A. I went away, yes, sir.

Q. How did you know that Frank wasn't in the mill that morning? A. I think I heard from someone that came up to the mill that he was out.

Q. And you went up to see about Frank? A. When?

Q. That morning? A. I don't know.

Q. You know prior to that call on the father that morning we are now speaking about that Frank was out of the mill? A. Yes, sir.

Q. Then you went up there to speak about Frank, didn't you? A. I did.

Q. You told that to the father too? A. No, I

told him I came to find out what was the reason Frank was out.

Q. And then he started to tell and then began to swear and said Oh! Hell or something like that? A. Yes, sir.

Redirect Examination by Mr. Harding.

Q. In reply to Mr. McCran you said that Burchill said he was willing to have Frank come back? A. Yes, sir.

Q. Did he say that on the occasion. I think you did say when you first spoke to Burchill about it on that morning? A. Yes, sir.

Q. What was said by you to Burchill before he said that he, Burchill, was willing to have him come back? A. As far as I can remember I said to Mr. Burchill, "I don't understand it. There has never been trouble here before. Things have always been running smooth and there is only two changes made. One was that Al died and the other that you came here. Are you the cause of the trouble?"

Q. Then was it that he said he was willing to have Frank come back? A. Yes, sir.

Q. Was that on the same occasion or on that same occasion did you talk with Burchill why Frank left? A. Yes, and he told me the reason that he had left was because him and the father had trouble about some harness about the business. He said the father was mad because Frank had refused to take an order from the Bethlehem Silk Co. and also about gasoline being taken from the station either by Frank or the boy and that the firm was paying for it.

Q. Did he say what he told Mr. Ulrich about it? A. He said the father was sore about it.

Q. And Burchill had told him about the Bethlehem Co. silk order and about the gasoline? A. Yes, sir.

Q. And that Mr. Ulrich, the testator, was sore about it? A. He was.

Q. Did he say to you whether or not Frank was to blame about the gasoline? A. He thought Frank was to blame.

Q. What did he say? A. He said that Frank had done wrong both about the Bethlehem order and the gasoline.

Q. Did he say anything more specific about that to you? A. He said the father was mad because he had the mistake over the Bethlehem and hadn't taken it and he was also mad about the gasoline.

Q. I understood you to say that when you saw Mr. Ulrich, the testator, afterwards he told you, the testator, that Burchill had told him about these things? A. I did.

Recross Examination by Mr. McCran.

Q. Was the Bethlehem or Miesch that was spoken about? A. Both.

Q. Did you understand there were two orders or one? A. Only one. That is all I understand.

Q. It was the Miesch order that wasn't filled? A. Yes, sir.

By Mr. Harding.

Q. Did you tell Mr. Burchill that he was mistaken about the Bethlehem order and that the order turned down was the Miesch order? A. Yes, sir.

Q. Where was that conversation? A. In the mill.

HENRY C. CHRISMAN, sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Merrey.

Q. You have a position with the United States Trust Co.? A. I do.

Q. What is your position? A. Assistant Secretary.

Q. What are your duties in particular? A. To open savings accounts.

Q. How long have you been connected with the United States Trust Co.? A. Eighteen years.

Q. Did you know Mr. Franz Ulrich? A. I do.

Q. How long have you known him? A. About twenty years.

Q. Did you have any business dealings with him? A. I did.

Q. For how long? A. Oh, ten years personally.

Q. How often would you see him? A. Three or four times a year, possibly. Sometimes oftener. It would just depend on his business to the bank.

Q. Did you see him at the bank? A. Yes, sir.

Q. Do you remember when he died? A. I don't know the date.

Q. Have you a general idea as to when it was? A. I know it was sometime last year.

Q. Did you see him in the last year? A. Yes, sir.

Q. Where about? A. In the bank.

Q. Do you remember that occasion? A. I do.

Q. What did Mr. Ulrich do at that time? A. He came in the bank and wanted to open an account.

Q. Who did he see first? A. He saw Mr. Fordyce.

Q. He holds what position in the bank? A. Vice President.

Q. How did you come to see him? A. Mr. Fordyce called me over.

Q. From one side of the bank to the other? A. Yes, sir.

Q. Then what happened? A. He wanted to open a savings account.

Q. That is Mr. Ulrich? A. Yes, sir. And he wanted it in a certain name and he gave us a slip of paper.

Q. Have you got that slip of paper with you? What is this paper you have here? A. A signature card.

Q. You used them in the bank? A. Yes, sir.

Q. This slip of paper is pasted on the signature card? A. Yes, sir.

Q. What was the name on this slip of paper? A. Franz Ulrich Schmidler.

Q. Did you say anything about that to him? A. I told him we could not open it in that name.

Q. Why? A. Because we knew it was not his name.

Q. Who was with him? A. Mr. Burchill.

Q. Where did Mr. Burchill stand? A. Oh, six or seven feet away.

Q. Did he tell you the amount of money he wished to deposit? A. Yes, sir.

Q. How much? A. Forty-five hundred dollars.

Q. This, I understand, is the identical slip pasted

on this card that he wanted to put the account in? A. Yes, sir.

Q. I notice it is cut? A. Yes, sir. We cut it up and put the name Schmidler in the middle and Ulrich on the end.

Q. You cut it up so you could put the name Ulrich on the end? A. Yes, sir.

Q. Where was the name Ulrich when he handed you the slip? On the lower part? A. No. In the center.

Q. Did he say why he wanted to put it in that name? A. No.

Q. Did he say that there was any person of that name? A. No.

Q. Did you talk to him about it? A. I told him I could not put it in that name.

Q. What was the final result? A. I told him we would have to put it in as Franz Schmidler Ulrich.

Q. Why didn't he put it in his own account? A. He had no middle name but we told him we would put it in that way. We would open it that way for him.

Q. Did he have much of a conversation about putting it in the name of Schmidler? A. No.

Q. Did he tell you he knew anybody by that name? A. No.

Q. He insisted in opening it in that name? A. Yes, at first.

Q. How long did he keep on insisting on the use of that name? A. A few minutes.

Q. Did you explain that if he used that name what the result would be? A. No.

Q. What was the condition of Mr. Ulrich that

day compared with what you had seen before? A. He was feeble.

Q. In what way? A. Physically.

Q. Could you understand him well? A. Yes, sir.

Q. Could he make you understand him? A. After a while.

Q. Could he talk to you very well? A. No.

Q. Did you ever have any difficulty about talking to him before? A. No.

Q. Could he talk to you well? A. Yes, sir.

Q. In every business transaction you had? A. Yes, sir.

Q. What language do you use? A. English.

Q. Do you speak German? A. I do.

Q. Did you usually employ English or German? A. English, sometimes a little German.

Q. Did you say he couldn't make you understand very well? A. No.

Q. Why not? A. His tongue seemed to be sort of tongue-tied and he could not articulate very well.

Q. But you thought he understood you? A. Yes, sir.

Q. He didn't tell you he did? A. He implied it by nodding his head.

Q. Did he have a talk with any other officers of the bank at the time? A. Mr. Fordyce.

Q. Mr. Fordyce was there? A. Yes, sir.

Q. How much money did he deposit? A. Forty-five hundred.

Q. That was finally deposited there? A. Yes, sir.

Q. How often did you see Mr. Ulrich in the last year of his life? A. Only on that occasion.

Q. Did he come in to you later and withdraw a large sum of money? A. No.

Q. You got his bank account there and it was something like twenty-three thousand dollars? A. No.

Q. Did you see him on that occasion? A. No.

Q. Have you got a transfer card? A. Yes, sir.

Q. What is that card? A. That is Franz Ulrich's card.

Q. Is that kept in your department? A. Yes, sir.

Q. What is the amount that was withdrawn? A. Twenty-two thousand four hundred and eighty-five dollars and forty-four cents.

Q. That was drawn on May twenty-seventh, nineteen hundred and twenty-one? A. May twenty-first, nineteen hundred and twenty-one.

Q. Have you another card to show where that went to? A. Yes, of Rosina Ulrich Burchill.

Q. That money was transferred on what date? A. May twenty-first, nineteen hundred and twenty-one.

Q. And the amount deposited to her credit was what? A. Twenty-two thousand four hundred and eighty-five dollars and forty-four cents.

Mr. Merrey—I offer these four cards in evidence, three ledger cards and the signature card.

Three ledger cards and the signature card admitted in evidence and marked exhibit C-4, C-5, C-6 and C-7 respectively for the caveators.

Cross Examination by Mr. McCran.

Q. Have you an account of Mr. Ulrich's wife? A. I don't know.

Q. Was there any doubt in your mind on that day in May that Mr. Ulrich knew what he wanted to do? A. Yes, sir.

Q. In what way? A. He understood what I said to him.

Q. There wasn't doubt in your mind that the old gentleman so far as his mind was concerned was alright? A. No.

Q. The purpose for which he wanted to use the name of Schmidler, you don't know? A. No.

Q. Do you know if that was his mother's name? A. No.

Q. It was only when you told him he had to use the name of Ulrich that that was finally done? A. Yes, sir.

Q. Was he at all insistent upon using the other name? A. First off he kind of complained and insisted he wanted it in that way and then I said I could not open the account that way.

Q. The purpose for which he wanted to put it in that name you don't know? A. No.

Q. There is no doubt in your mind from talking with him that he knew what he was doing? A. Yes, sir.

The Court—Do you mean to say there was or there wasn't any doubt?

The Witness—He simply understood what I said to him.

By Mr. McCran.

Q. Have you looked up the record of the United States Trust Co. which company is a consolidation of the Silk City Trust Company and the German American Trust Company to ascertain a number of shares of your company in the name of Frank Ulrich? A. Yes, eight shares.

Q. What was the value of these shares in March of nineteen hundred and twenty-one? A. Five hundred dollars.

Q. A share? A. Yes.

ROBERT H. FORDYCE, sworn as a witness for the caveators and testifies as follows:

Direct Eamination by Mr. Merrey.

Q. What is your position? A. Vice president.

Q. With whom? A. United States Trust Co.

Q. How long have you been connected with it? A. Twenty years on the first of December.

Q. Did you know Mr. Ulrich? A. I did.

Q. How long have you known him? A. Probably thirty years, possibly more.

Q. Did you have dealings with him. Did you do things for him? A. I did.

Q. Different banking transactions? A. Yes, sir.

Q. How often did he go in there? A. Of late years not so frequently.

Q. During the last year of his life how often did you see him? A. I possibly saw him from four to six times a year.

Q. Do you remember one occasion in May that he came to open an account? A. I do.

Q. Will you just tell us about that occasion? A. On that particular occasion he came in and said he wanted to open a savings account.

Q. Who was with him? A. Mr. Burchill was with him. Not with him at the moment I was talking to him and he told me what he wanted. He said he wanted to open a savings account and then he offered me a piece of paper on which had this name Franz Ulrich Schmidler. He had the Schmidler last and I asked him why he wanted it put in that way and I couldn't get from him the cause or reason. He seemed to be quite dull about it. I told him that he was very foolish. If anything happened to him, death or anything it would involve a lot of trouble with the heirs if he put the account in in that name and it took quite an effort to make him comprehend that condition of affairs and I called Mr. Burchill over and told him he couldn't open the account in that way and Mr. Burchill was very nice and said he thought it would be nice to do it that way but on explaining the matters to him he agreed with me.

Q. You say you called Mr. Burchill. A. Who was standing probably twenty feet away from us.

Q. Because you couldn't make Mr. Ulrich comprehend? Was that what you said? A. I called Mr. Burchill over and told him we could not take an account in that name that it would only lead to trouble.

Q. Before that did you make Mr. Ulrich understand it? A. I have a smattering of German myself and I asked him myself what he wanted and I told him it could not be done. He told me it was his mother's maiden name and I didn't know his reasons

for using it at the time but I tried to tell him that it could not be done. I thought Mr. Chrisman would be able to handle the case better than I so I called him.

Q. Did he understand you readily? A. Yes, sir, but he was very slow in replying.

Q. How often did you see him in that year? A. Not over half a dozen times.

Q. How often did you see him in years prior to that? A. Two or three times a month in the old days.

Q. Was there any change in him? A. He was growing more feeble.

Q. Feeble? A. Yes, generally.

Q. Did he seem to be able to understand business? A. I did not touch on business. The only thing we spoke of was opening this account.

Q. I mean the business you had with him? A. Yes, sir.

Q. Did you see him after that occasion? A. No, only several times on the street.

No Cross Examination.

EDWARD R. WEISS, sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Merrey.

Q. How long have you known Mr. Franz Ulrich? A. I knew him, say twenty-five years probably more.

Q. Did you do business with Mr. Ulrich? A. Yes, several times.

Q. How much business did you do? A. Quite often. Whenever he had a real estate deal I would search the title for him.

Q. Did you prepare any Will? A. A number of Wills.

Q. Do you remember the last Will you prepared for him? A. I have no distinct recollection of it. I remember I drew a Will for him a short time before he died, a year or so.

Q. Do you remember the contents of the Wills you drew for him? A. No.

Q. Do you remember any part of them? A. I would if I seen them.

Q. Could you give us a general outline of the Will? A. I think he left the business—

Q. First let me ask you. Do you remember this paper, Mr. Weiss? A. I saw him sign that before me.

Q. What is that? A. It purports to be his Will.

Q. The Will of whom? A. Franz Ulrich.

Q. Is that your signature on it? A. Yes, sir, as a witness.

Q. Do you remember preparing that Will for him? A. The date it specifies is the twenty-sixth day of July, nineteen hundred and twenty.

Q. Do you remember the preparation of that Will? A. Yes, sir.

Q. Where did it take place? A. The United States Trust Company.

Q. You are an officer of the United States Trust Company? A. Yes, sir.

Q. President, are you not? A. Yes, sir.

Q. You prepared that Will at that time? A. Yes, sir.

Q. Do you remember who was present? A. I don't remember who was present at the preparation of it.

Q. Was the testator's wife present? A. I think she was.

Q. Was there any other member of his family present? A. I don't think so.

Q. Have you looked over that Will to notice the contents? A. No, I have not looked at it.

Q. Will you kindly do so? A. Yes.

Q. Do you note that the Will gives the business and the interest in the mill property to the son Frank? A. Yes, sir.

Q. Can you recall other Wills that have the same provision? A. Yes, sir.

Q. So far as the provision regarding the business and the mill are concerned do you recollect what disposition was made? A. Only in a general way.

Q. What was it? A. Practically like that. I think there was a different interest at one time, in the business. I think he gave his son a part interest. I think that Will was made after the other son had died.

Q. You mean before the son had died? A. No. This Will was made after Albert died.

Q. Was any other Will made after Albert died? A. That is the one, I think.

Q. Was there any other made besides this one? A. Yes, sir.

Q. You had been doing business with Mr. Ulrich you say, for a great number of years? A Yes, sir.

Q. Who took this Will from your office? A. I don't know who took it. I suppose he took it and put it in the box. I think he said he was going to.

Q. You did business with him, you say. Now what kind of a man was he? A. In what respect?

Q. Was he a good business man? A. I think he was.

Q. Did he understand his business affairs? A. Yes, sir. He showed that by his success.

Q. The year before he died did you see him often? A. I didn't see him very often after this Will was made.

Q. Did you see him after? A. I did.

Q. Did you notice any change? A. I did.

Q What was the nature of the change? A. He didn't come down to the bank as often as he used to, and he was generally a little more feeble.

Q. Could you make him understand as readily? A. You could make him understand. I don't know as you could make him understand as readily as before.

Q. Could you notice that change getting more and more so as time went on? A. Yes, sir.

Mr. Merrey—I offer the Will in evidence.

Will admitted in evidence and marked exhibit C-8 for the caveators.

FELIX SELLS, sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Merrey.

Q. What is your business? A. Hotel.

Q. Whereabouts? A. Albion Place.

Q. Do you know Mr. Frank Ulrich? A. Sure.

Q. Did you know the old man? A. Yes, sir.

Q. How long have you known him? A. I only seen him once.

Q. When was that? A. The time he stopped in my place up there in the hotel.

Q. How long ago was that? A. I think it was last summer. I don't remember the date.

Q. Who was with him? A. I cannot tell you. There was a young boy with him, I think it was Frank's son and then a lady was with him and another gentleman.

Q. Was the lady with him, an old lady? A. Yes, sir, his wife was with him and a lady besides her and a gentleman.

Q. You didn't know Mr. Ulrich before this time? A. No, that is the first time I met him.

Q. Did they come into your place? A. They came up in an automobile and they stopped there and had a drink and a sandwich.

Q. Did you have any conversation with him? A. With him. No, he only came in and kept on quarreling from the time he had come in and had a drink and sandwich and he kept on quarreling all the time.

Q. What was the nature of the quarrel? A. About somebody doing him out of his home and his money, etc.

Q. This quarrel, he spoke out loud so it could be heard? A. No, just among themselves.

Q. Could you hear what he said? A. Oh, sure because I was right there. I was right there waiting on them.

Q. Did he speak loudly so everyone could hear? A. He kept on talking quite loud.

Q. What did he say? A. He was talking about somebody taking everything away from him, taking

his house and home. That was his main complaint.

Q. How long did he stay there? A. Half an hour, three quarters of a hour.

Q. Was his wife with him, Do you know her? A. Yes, sir.

Q. Who else? A. Another lady and gentleman was with him and then a young boy. I think he was young Ulrich, the grandson.

Cross Examination by Mr. McCran.

Q. When was this? A. Last summer. Some time in nineteen hundred and twenty-one.

Q. What time? A. I can't tell because I have not paid any attention to it. The people came in like anyone else and went out again.

Q. A lot of other people were there on that day? A. Not by themselves.

Q. Was there any particular reason why you should remember it? A. I didn't remember it, that was nothing to do.

Q. Who brought your attention to it? A. To what?

Q. To this occurrence you are now testifying to? A. I made remarks to Mr. Camphausen the next day, and I told him about Mr. Ulrich being in, and I said he acts kind of queer. What is the matter with him and that is all there was to it and I am called here as a witness.

Q. Can you tell us what month that was? A. I cannot.

Q. In the summer time? A. Yes, sir, in the summer time.

(After recess)

ANDREW F. MCBRIDE, sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Harding.

Q. Professionally you are a physician? A. I am.

Q. How old are you? A. I was born in '69.

Q. How long have you been practicing your profession? A. About thirty-three years.

Q. Here in Paterson? A. Yes, sir.

Q. What has been your practice generally? A. Well, general medicine principally.

Q. Have you held a medical office in the County? A. Yes, sir, I was County Physician for a time.

Q. How long were you County Physician? A. Eleven years.

Q. What duties did that comprise? A. All those who died from accident or were stricken without the assistance of a physician it was necessary for me to pass upon, the cause of death. I likewise had charge of the County Jail. The inmates confined there were treated by me for illness if they had any. I also had to examine any person who suffered any mental disease in the County of Passaic.

Q. Did you have charge of the cases of mental diseases while County Physician? A. Yes, sir.

Q. How long did that include? A. Eleven years.

Q. Was that a very extensive part of the official business you had? A. Yes, sir, it was.

Q. I mean, you made a special study of these cases? A. I had to be able to judge whether the persons examined by me, by request, were sane or insane.

Q. About how many cases did you have a year? A. Probably three hundred.

Q. Three hundred a year? A. Yes, sir, probably more.

Q. Did you make a special study of them? A. Yes, sir.

Q. When did that office end? A. January first, nineteen hundred eight.

Q. Were you acquainted with Franz Ulrich? A. Yes, sir.

Q. Who died, I think, in July, nineteen hundred and twenty-one? A. Yes, sir.

Q. He was the testator of the will involved in these proceedings? A. So I understand.

Q. Did you know the whole family? A. Yes, sir.

Q. Do you know especially Mrs. Ulrich, the testator's wife? A. Yes, sir.

Q. You knew his two daughters? A. Yes, sir.

Q. Did you know his son Albert before he died? A. Yes, sir.

Q. Do you remember when he died? A. I don't remember the date. No, sir.

Q. How long have you known Franz Ulrich, the testator? A. Twenty-five years, possibly more.

Q. Have you known his wife that long also? A. Yes, sir.

Q. Have you been their family physician? A. Yes, sir.

Q. For both of them? A. Yes, sir.

Q. Are you still the physician for Mrs. Ulrich? A. Yes, sir.

Q. I bring you down to the early part of the year, nineteen hundred and twenty-one and ask you if you

had seen quite frequently, the testator, Franz Ulrich up to that time? A. I saw him, I wouldn't say quite frequently. I saw him at intervals during that time.

Q. When you saw him would it be in an official capacity to see him or his wife? A. Mainly when I went to see Mrs. Ulrich.

Q. Up to the beginning of the year nineteen hundred and twenty-one I wish you would state to the Court what the general physical and mental condition was up to that time? A. He was a remarkably robust man with one exception. He suffered from some trouble with the prostatic gland and the bladder. Outside of that he was a very robust man I think.

Q. Up to that time? A. Yes, sir.

Q. Have you conversed with him a great deal on different subjects? A. I have conversed with him frequently when I went to the house.

Q. Up to the first part of the year nineteen hundred and twenty-one I wish you would state to the Court how he was mentally, including his will power as manifested to you so far as you could see? A. I think he had a great deal of will power, judgment very good, very active for a man of his years and very much interested in affairs.

Q. Do you know his relationship with the son Frank? A. I do not.

Q. After the beginning of the year nineteen hundred and twenty-one I would ask you to state whether or not there were any changes in his mental and physical condition? A. May I qualify my last answer. Do you mean did I know anything about the relationship through himself.

Q. No, I am not talking about this relationship at all. A. May I revert back to the last question prior to this? You asked me a question if I knew the relationship of the father and son.

Q. Yes, in the year of nineteen hundred and twenty-one or up to nineteen hundred and twenty-one or say up to nineteen hundred and twenty? A. I did not know through the father but I knew there was some trouble.

Q. I ask you about whether or not you saw any change in the physical and mental condition after the beginning of nineteen hundred and twenty-one? A. Yes, I think that Mr. Ulrich was showing effects of senility. I think his mental faculties were not as good as they were before, in other words there was a gradual decay, he didn't talk about things he formerly had, he did not exhibit to me the same interest in business he had formerly and when I went to the house I would find him dozing off in a chair which he didn't do before that. In other words while still interested very much in business he did not appear to be the same man and he did not to me present the same forcibleness as before, in other words he was more apathetic.

Q. What was the difference in the character of his talk at this period than it was before? A. He didn't talk as much about things, he didn't seem to exhibit the interest he had before.

Q. In addition to what you call appearances of senility did he have a disease? A. He had chronic inflamation of the prostatic gland and also trouble with the bladder called chronic cystitis.

Q. Can you state whether or not that had its beginning in nineteen hundred and twenty-one? A. I think the condition was gradual, it was a gradual one, gradually growing worse.

Q. Did that condition grow worse until it was the cause of his death? A. Yes, sir.

Q. I wish you would state specifically what the nature of this disease was. First, please describe what it was and state to the Court its effects upon the general physical condition of Mr. Ulrich and then the effects upon the brain or mind. A. The prostatic gland is set at the neck of the bladder for the control of expulsion of urine. This gland gradually becomes enlarged and diseased and the gland becomes hardened and has less power of control of function and that necessitates a part of the urine remaining in the bladder. That urine breaks down the walls and causes poisoning of the bladder and in the beginning for a long time nature will be able to control it but there comes a time when the matter will become so thick that the body itself becomes affected with it and becomes poisoned or septic. That sometime occurs very quickly and sometime very slowly, gradually.

Q. Is the effect of this septic or poisoned condition to get in the circulation? A. It is taken by the blood sometimes and goes through the blood system and in fact sometimes becomes overcharged with it and we get other symptoms, a person becomes less active mentally, less vigorous muscularly and there is a gradual breaking down of the system. If this poisoning gets into the circulation it goes through the blood to the brain, to every part of the body.

Q. To the cells of the brain? A. Yes, sir.

Q. How does it act? A. It poisons them.

Q. Is that deterioration? A. Yes, sir.

Q. How does it affect the function of the brain? A. It poisons the function.

Q. Is the memory affected? A. Yes, sir.

Q. Is the judgment affected? A. Yes, sir.

Q. It is only a question of how far it goes to make a total loss of memory or judgment? A. Yes, sir.

Q. Is it not generally established and accepted in your profession now, that the vast majority of mental diseases come from such septic poisons in one form or another? A. Poisoning causes a great deal of mental disease.

Q. Your profession has in the last year in experimentation amounting to prove established that a great deal of the mental trouble as caused by septic poisoning and that death follows all such poisons in the fashion you have mentioned? A. Yes, sir.

Q. It is well recognized? A. Yes, sir.

Q. You have spoken of this particular trouble in which the poisoning in connection with what you professionally said was a condition of senility. Did you know his age when he died? A. Not exactly, eighty-two or eighty-three, he was over eighty.

Q. I wish you would tell the Court just what he would be or just what you mean by senility. A. It is that condition wherein the vital forces are broken down.

Q. If old age goes on far enough, eventually without any other disease there is this breaking down? A. Yes, sir, some earlier than others.

Q. When it comes on how are the brain cells affected by that? Are they deteriorating? A. Yes, sir.

Q. In the processes of nature there is a waste and a restoration? A. Yes, sir.

Q. The majority of persons that become very old they fail to restore and that condition causes senility? A. Yes, sir.

Q. How is the mind affected by it? A. The mind is weaker.

Q. How is the power of recollection? A. Not so good.

Q. How is judgment? A. Bad.

Q. Do you mean to say that Mr. Ulrich had both of these conditions senility without regard to the prostatic gland and the trouble with the prostatic gland? A. That was my judgment.

Q. He had them both? A. Yes, sir.

Q. From the beginning of the year nineteen hundred and twenty-one until and down to the time of his death, which occurred, I think it was, July twenty-fourth, nineteen hundred and twenty-one, six or seven months, did you frequently go to his house and see both him and Mrs. Ulrich? A. Not frequently but I went to the house a number of times.

Q. You conversed with him at these times? A. Yes, sir, when he was home.

Q. You treated him for his last illness? A. Yes, sir.

Q. You have spoken of a change that occurred in the physical and mental condition between the time of the beginning of nineteen hundred and twenty-one down to his death from what it had been previous. I wish you would state to the Court just how that change was manifest to you and state as particularly as you can? A. To me Mr. Ulrich was always a very vigorous, aggressive, robust man both his physical make up and his mental make up. I

noticed about that time that he appeared to be very much less vigorous than he was before. He did not converse with the vigorousness he formerly had, and was rather apathetic and drowsy which, of course, could be accounted for by the conditions I have described before. He didn't seem to take the same interest in business, he was always very concerned about it but he didn't seem to be any near as concerned as he formerly was. He appeared to me as though he was suffering from the effects of senile and septic effects going through his system.

Q. Was that manifested in ordinary talk on current events that you might talk to him of? A. Yes, sir.

Q. It was clearly manifest? A. Yes, sir, to me.

Q. As you would converse about different topics would he understand them as he did before? A. I would not say he didn't understand them but he didn't take the same interest he had before.

Q. How about his excitability? A. He was formerly very excitable. Laterly he didn't seem to get so easily aroused in conversation. Laterly he didn't seem to be so disturbed, he didn't seem to take any interest at all.

Q. How does this senility and this condition of septic poisoning combined together affect the will power of the subject? A. Why, it would be weaker than before.

Q. Are they not susceptible to influence more so than they were before? A. A person suffering in that way would be more susceptible than one not.

Q. Is it not a well known fact that a person suf-

fering in that way in your experience are apt to take advice easily? A. Yes, sir.

Q. State what your experience is generally? A. They don't have the same judgment, they are not able to discriminate as they formerly were, as a person in robust health is. They don't feel the same, they have to have some mental support.

Q. Trifles cause them to be excited where before they would not? A. Yes, sir, they don't have the same mental condition.

Q. Are they not on trivial grounds apt to turn against those they think most of? A. Yes, sir, often times.

Q. Is that not a marked characteristic? A. Yes, sir.

Q. They fail to exercise the judgment they normally used? A. Yes, sir.

Mr. McCran—I object to the question as leading and ask that the answer be stricken out.

The Court—The question is leading, I will sustain the objection.

Mr. McCran—Will the answer be stricken out?

The Court—Strike out the answer.

Q. In your judgment, doctor, was Franz Ulrich during this time you have testified to in a mental condition capable of properly carrying on a business transaction?

Mr. McCran—What time?

Mr. Harding—From January to June.

A.There might have been times. But I personally think a person suffering the way I found him to be would be practically incapable of doing important work. I don't say there might not have been times he would not have been perfectly clear. In my opinion I think he would not have been able to perform any important business.

Q. Most of the time he would not be able to perform any important business? A. That would be my judgment of the case.

Q. Assuming that the capability of making a Will means that a man must have a fair understanding of the nature of his property, the different kinds of property, and understand who those are who naturally would be expected to be the objects of his gift and bounty, would you think he, most of the time during this period was capable of making a Will or not, having the capacity you have mentioned? A. I would not say so.

Q. You don't want to say that there might not have been times when he might have? A. I would not want to be positive all the time. His condition was such that most of the time he would not have been able to do anything of that kind.

Cross Examination by Mr. McCran.

Q. So between the first of January, nineteen hundred and twenty-one down to two or three weeks before his death, how many times did you see Mr. Ulrich? A. I cannot answer that positively, probably half a dozen times. I think fully a half a dozen.

Q. How many times did you see him during that

time? A. I don't know, three or four probably. I think about four.

Q. When did the old gentleman finally take to his bed? A. I think ten days or two weeks prior to his death.

Q. Do you know when he gave up going down to his business? A. I don't know when he gave it up fully but I know he did not go regular six months prior to his death as he had before. He was very punctual before that.

Q. What do you mean by regular? A. He was in the mill at seven or eight o'clock.

Q. Do you know he had been going to the mill for many years prior to seven o'clock? A. I knew he was very punctual.

Q. Do you know that during the time he went to his mill early in the morning around seven o'clock the mill was working on a ten hour day? A. Yes, sir.

Q. Do you know that later the mill did not begin work until eight o'clock when they had an eight hour day? A. I mean in place of going back in the afternoon—

Q. I am speaking of the morning? A. I don't know as I was ever there in the morning.

Q. Do you know whether or not up to within a few weeks of his death that he went to his mill every morning in the neighborhood of eight o'clock with few exceptions? A. No.

Q. Do you know about what time he came home for lunch from the mill up to within two or three weeks of his death? A. He came home before twelve o'clock.

Q. He always came home for lunch so far as you

know? A. Yes, sir, he was very punctual, he was the first one there and the last one out.

Q. I ask you, doctor, whether or not it had been his practice for a long period of time after the noon meal to take a rest? A. No, I didn't know that, not until the last half dozen months of his life.

Q. What time did you go to see Mrs. Ulrich? A. Different times.

Q. This practice of taking a rest after the meal might have been going on without you knowing it? A. No, I think we conversed about that.

Q. Do you know whether or not he went back to the mill after lunch? A. I presume he did.

Q. The times you went to see Mrs. Ulrich there were times when he was not at home? A. Yes, sir.

Q. Do you know what method he had of getting down to his mill? A. I think he went down in the car prior to using the automobile.

Q. Did you know whether or not he was able to climb in the automobile without assistance down to two or three weeks prior to his death? A. Yes, sir.

Q. He was physically capable of doing that? A. Yes, sir.

Q. He was physically capable of standing around the mill? A. Yes, sir.

Q. He was physically capable of examining the work done by the workmen? A. Yes, sir.

Q. Any work that he saw fit to do? A. I think so.

Q. And he knew the work when he saw it? A. I think so.

Q. So that his judgment on that subject was all right? A. I don't think he was able to do the work he was before.

Q. That was quite natural, was it not? A. I think it was wonderful he kept up physically and mentally, fully as long as he did.

Q. In talking did he have any mannerism with his hands? Would he put his hands on you when talking? A. Yes, sir, very forcibly.

Q. Was he the type of man who would not want to be opposed in what he wanted to do? A. I think up to the very last few months of his life he was. His judgment might not always be right but he was very forcible in carrying it out but towards the end he didn't to me exhibit the same amount of vigor.

Q. What kind of vigor did he exhibit in the mill or don't you know? A. No.

Q. You know where the mill is? A. Yes, sir, Ward and Dale Ave.

Q. They occupied three floors and the basement? A. Yes, sir.

Q. Was he able up to within a few weeks of his death go up and down three flights of stairs? A. I would imagine he would have trouble.

Q. Do you know whether or not when he went around the mill he laid aside the cane he usually carried? A. I don't know that.

Q. Did he ever tell you, doctor, that his son Frank had struck him? A. I don't recollect.

Q. If you turned back can you recall? A. My best judgment is that he never did, if he did it has entirely disappeared from my memory.

Q. Did he ever tell you during the last six months that Frank had gone out in a competitive business against him? A. He may have told me that but I don't recall it.

Q. Did he ever tell you that he did not expect such conduct from his son Frank? A. I have no recollection of it.

Q. Might he have done so? A. Very possible that he did, but I would recall it I think. I would not say positively that he did not but I have no recollection.

Q. Do you know what time he got up? A. Very early.

Q. He continued that practically up to the day he went to his bed to die? A. I would have to qualify that answer. His trouble would necessitate his getting up frequently through the night. I rather think a person suffering in that manner would be an early riser.

Q. His practice of getting up in the morning early, so far as you know, continued up to the time he took to his bed to die? A. So far as I know.

Q. This prostatic trouble is quite a common complaint among men? A. Old men.

Q. Young men too? A. I cannot say. It is not limited to old men.

Q. The gland at the mouth of the bladder becomes enlarged and irritated? A. Inflamed.

Q. All right, inflamed and that caused one to frequently seek to discharge the bladder? A. That is true. The process or effect of cystitis—

Q. Cystitis meaning inflammation of the bladder, I take it, that process is a gradual one? A. Yes, sir, gradually grows worse.

Q. He had had this trouble a great many years? A. Yes, sir.

Q. How many years? A. To the best of my

judgment probably fifteen or twenty years and gradually up to that time he was gradually getting worse.

Q. You don't remember whether or not that he said to you that his son Frank struck him? A. No, I have no recollection of that at all. If he did I certainly have no recollection of it.

Q. How far did he live from the mill about? A. I guess it is about a half a mile.

Q. Do you know what he did in the mill? A. No, but I knew he ran the mill.

Q. Do you know what he did in the evenings? A. No.

Q. Have you been there in the evenings? A. Yes, sir, I have.

Q. Did you ever see him playing cards? A. No, I did not.

Q. Do you know whether or not he looked after the details of the mill from day to day until he went home? A. I assumed he was in charge of the mill.

Q. He was the type of man that if he was in charge, knew he was in charge? A. He at least made himself believe he was.

Q. And he would try to make you believe so too? A. Yes, sir, I think up to the last few months of his life, he would.

Redirect Examination by Mr. Harding.

Q. Did you ever hear of his having two or three paralytic strokes? A. I don't recall it.

Q. Would that in any way, if he did, would that affect his condition as you saw it in the early part of nineteen hundred and twenty-one down to the time of his death? A. No, sir.

Q. You don't think that played any part in his condition? A. No, sir.

Q. Did the question of a surgical operation occur to you in his last days? A. No, it did not because I didn't think he would be able to stand it.

Q. You mean he was not in any condition as to health or physical condition to stand it? A. No.

Q. Is not this septic condition or poison, is that not what was the cause of death? A. Yes, sir, by that I mean the trouble that caused the septis caused the death.

Q. Although the beginning of this cystitis might date back for a long time, it would not necessarily affect the mind right away? A. No, sir, it does not necessarily affect the mind right away.

Q. When the mind is affected there are symptoms that clearly indicate it to you? A. It doesn't show signs of an active mental disease, it is usually a dulling of the mental faculties.

Q. This condition of the gland may exist for years without making any apparent trouble? A. Yes, it might not make any apparent trouble. It shows the trouble when the poison from it gets into the circulation.

Q. When it gets into the circulation it goes to the brain and deteriorates the brain? A. Yes, sir, but this condition is a gradual one and it gradually grows worse.

Q. This mental condition is apt to come on as the final result of all trouble? A. You are likely to have a mental collapse finally.

Q. I suppose in cases of that kind you have no right to say there is any mental trouble until the symptoms develop? A. That is so.

Q. The first symptom you saw was after the be-

ginning of nineteen hundred and twenty-one right down to his death? A. Yes, sir.

MELVIN ULRICH sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Harding.

Q. How old are you? A. Nineteen.

Q. Who is your father? A. Frank Ulrich.

Q. Your grandfather was Franz Ulrich that died a year ago last July? A. Yes, sir.

Q. Do you live at home with your father? A. Yes, sir.

Q. Did you work for your grandfather at one time? A. Yes, sir.

Q. When did you go to work for him? A. July, nineteen hundred and nineteen.

Q. You had an uncle Albert? A. Yes, sir.

Q. He died? A. Yes, sir.

Q. Do you remember when he died? A. I do.

Q. Was it before or after you went to work for your grandfather? A. Before.

Q. You went to work after your uncle Albert died? A. Yes, sir.

Q. Did you used to visit your grandfather pretty often? A. Yes, sir, I did.

Q. Before you went to work for him? A. Yes, sir.

Q. What did you do when you first went to work there? A. I worked in the shipping room and drove him.

Q. Mr. Burchill is your uncle by marriage? He married your aunt? A. Yes, sir.

Q. Was he working for your grandfather when you went to work there? A. Yes, sir.

Q. What did you say you did? A. Worked in the shipping room and drove the machine.

Q. You mean the automobile? A. Yes, sir.

Q. For whom? A. For grandfather.

Q. Whose machine was it? A. Grandfather's.

Q. How did you get along with your grandfather when you first went to work there? A. Very fine.

Q. What was your relationship with him? A. What do you mean?

Q. Was he very kind to you and how did he treat you? A. He was very kind to me and very good to me.

Q. How did your grandfather and your father get along when you first went there? A. Very good.

Q. Were you ever present when he talked with your father about the business when you first went there? A. Little things pertaining to the business, that was all.

Q. Some time after you went there did some trouble occur? A. Yes, sir.

Q. What was it? A. Why, about the gasoline.

Q. Just tell the Judge what it was? A. About October, grandfather, one day when I was riding him up accused me of using the machine and using too much gasoline and I tried to tell him I was not using the machine every night. I said, it was not true. I asked him who told him and he said Mr. Burchill and I said Mr. Burchill is not telling the truth but I could not convince him.

Q. Were you using it outside of business? A.

I never used it only a few times when I asked him for it.

Q. You did ask him for it a few times? A. Yes, sir.

Q. What did he say about that? A. He said yes, without a word.

Q. Did you tell him you didn't use any gas except what he told you to? A. Yes, sir.

Q. You had your head turned toward the Judge. I didn't hear all you said. Did you say that he said somebody told him that you used it? A. Yes, sir, he said Mr. Burchill said that I used it. I told him he was not telling the truth, I wasn't using it but that Mr. Burchill was using it himself.

Q. What do you know about that? A. I used to see him pulling out of the garage with the automobile.

Q. Where was the garage? A. In back of father's house.

Q. How far away from where the father lives? A. Right in the yard where father lives.

Q. I am talking about your grandfather not your father. How far away from where your grandfather lives? A. About five blocks.

Q. So anyone could take the machine out at night or other times without your grandfather seeing it? A. Yes, sir.

Q. Did you tell your grandfather he had taken it out? A. Yes, sir.

Q. That is a fact? A. Yes, sir.

Q. What did he say? A. He said it was not the truth. That it was a lie.

Q. How did he act to you on this occasion? A. He was very angry about it and he got up in a rage

and he was using curse words in German.

Q. Could you understand German? A. No, sir, but I could understand part of the words he was saying.

Q. He was all excited? A. Yes, sir, very excited.

Q. Had he ever treated you like that before? A. No, sir.

Q. When you told him finally you had not been doing this but Burchill had taken the car out was he satisfied with your story or not? A. He was not satisfied with my story.

Q. He didn't believe you? A. No, sir.

Q. Did you sometime after that have another incident about this gasoline? A. Yes, sir.

Q. What was that? A. One day he said that he was changing the gasoline from the Triangle Service Station—

Q. He—? Who do you mean? A. Mr. Franz Ulrich, my grandfather from the Triangle which Hayden owned down to the Oil Store which Lendrum owned and I asked why and he said because he didn't care for Hayden and I said, grandfather, if I put the two men along side of you you wouldn't know one from the other.

Q. Was Mr. Burchill there at that time? A. He was in the outer office.

Q. How far away from where the grandfather and you were was he? A. About fifteen feet.

Q. Were the doors all opened? A. Yes, sir.

Q. Then what happened? A. He said, "well it is going to be changed." I said "all right, it don't make any difference to me" and I went out and then I asked Burchill why the gasoline was being changed from the Triangle to the Oil Store and he said

there was too much gas being used and I said "you are using the car, not me," and he said, "You know you are using the car," and I said, "no, I am not" and he said. "well, if you are not satisfied with the job you can quit."

Q. How far away from the grandfather were you then? A. About fifteen feet.

Q. In what tone of voice did he say it? A. Quite a loud voice.

Q. Can you give me or do you know of any reason why the grandfather should not have heard it? A. No, sir.

Q. After that did you see the grandfather and have any more talk about the gasoline? A. Yes, sir, I did.

Q. Where was that? A. At his house.

Q. Was that after this incident you have spoken of? A. Yes, sir, this occurred in the evening and I had seen him in the afternoon.

Q. What took place? A. I went over there and tried to convince him that I was not using the automobile and I said that Mr. Burchill was using it. And then Mr. Burchill walked down out of up stairs and said, "You was using the car, you know you was," and then my grandfather fired me too.

Q. What did he say? A. He said, "Don't come to work any more, if you don't like it down there stay away."

Q. You were talking to the grandfather in the house, in his house in the evening and while you were telling him you had not used the gasoline at night, Mr. Burchill came down? A. Yes, sir.

Q. From where? A. Up stairs where he lived.

Q. Up stairs over the grandfather? A. Yes, sir.

Q. Just describe how he lived? A. Well, grandfather lived on the first floor and he lived on the second floor.

Q. Was your grandfather talking pretty loud to you or not when Mr. Burchill came down? A. Not so loud.

Q. Just tell us what you said to him. A. I said to him, "Grandfather I am not using the car" and he said, "Mr. Burchill said you are," and I said, "I am not. Mr. Burchill has the car out at night himself and he uses the car often," and then Mr. Burchill came in.

Q. Did he come in suddenly or not? A. He said, "you are—" he rushed in and said, "you are using the car," and I said, "I am not, you are the one using the car," and he said he was not. He said, "you are the one and you know it."

Q. What did your grandfather do? A. He wouldn't listen to me after Mr. Burchill came in and I said, "I am not going near the car any more," and he said, "You can quit and get out." So then I went home.

Q. Whom did you leave with him when you went out? A. I left Mr. Burchill and grandfather there.

Q. What was his treatment of you during that occasion? A. He didn't use any consideration at all. He was all up in a rage.

Q. How could Mr. Burchill come from up stairs where he lives down to this room? A. There were stairs in the back, I should judge around twenty steps and he came walking down the back hall into the kitchen and dining room.

Q. Did you tell your father of this incident? A. Yes, sir.

Q. Do you remember when your father went away from your grandfather's mill for some time? A. Yes, I do.

Q. Did you stay after your father went away during that time? A. Why, no.

Q. I mean when your father first went away, did you stay a few days or not? A. Yes, sir, I did stay a few days.

Q. Do you remember when your father went back to work some time in the early part of January, nineteen hundred and twenty-one? A. Yes, sir.

Q. Do you remember when it was? A. In January.

Q. Did you go back with him? A. I think I went back a day or so before my father.

Q. Did you see your grandfather, in the meantime, before you went back? A. Yes, sir.

Q. When was it? A. On Christmas.

Q. How did you come to do it? A. I went over to see Grandmother on Christmas Day as I always did and I went into the kitchen where she was and she said, "grandfather wants to see you," and I went into the parlor and he said, "I want you to come back to work." I said, "All right, I will come back in to work," and I went back to work for him right after.

Q. In the meantime had you seen him or met him face to face just before this time? A. Yes, sir.

Q. Where was it you saw him? A. Coming off of the truck which he rode on sometimes and I looked right at him and said, "hello grandfather" and he looked at me and didn't know me, I think.

Q. How near were you to him? A. Three or four feet.

Q. Did you speak loud to him? A. Yes, sir.

Q. And he looked you right in the face? A. Yes, sir.

Q. And you said, hello, grandfather? A. Yes, sir.

Q. And he never answered you? A. No, sir.

Q. Was that before the Christmas he told you to come back? A. On Christmas day he told me to come back.

Q. This time he didn't speak to you, was it before or after Christmas? A. I think after Christmas when I was out the second time.

Q. Did you go back? A. Yes, sir.

Q. When your father went back? A. Before my father went back, a day or two.

Q. How long did you stay? A. I stayed until the latter part of January or the first part of February.

Q. What happened then? A. I had the orders one night and as I was wrapping stuff to go to the Post Office as shipping clerk, my father ordered me to send a little Eversharp pencil to send it to the Eversharp people to be fixed and father gave me orders that it was to be shipped with the other stuff that night and Mr. Burchill came in and he said take them parcels, that parcel post and letters to the driver and have him take them to the Post Office and I said, "My father said he wanted me to send this here." I told him my father had given me orders to send it with the letters and I thought it ought to go that way. He wouldn't stand for it and finally he got mad and walked out and he knew at

the same time that the driver was delivering parcels to Kauffman Bros. and he walked out and walked home. He wouldn't even ride home as he usually did but he walked up.

Q. Your father was sending off a pencil to some one and he asked you to wait and take this pencil with you? A. Yes, sir.

Q. How long did this require you to wait? A. Not more than ten minutes.

Q. Was there any need to rush the stuff up to be mailed as you saw it? A. No, sir.

Q. Then Mr. Burchill came in and said this to you and you said your father wanted you to wait until you put the pencil in? A. Yes, sir.

Q. Then what happened after that? A. I walked up to my father and told him the situation and he said "You go tell it to your grandfather and he will fix it all right," so I walked over.

Q. Where was it you walked over to see your grandfather? A. Over to his house. I explained the situation and he said Mr. Burchill told him when he came in all about it and said that is a lot of lies.

Q. Are you telling what your grandfather said to you? A. I told him the situation about the pencil and what Mr. Burchill had said and what I said. He said, "That is a lot of lies. Mr. Burchill was up here before he went up stairs."

Q. What did he say? A. Well, he didn't exactly say—

Q. Didn't he say it was a lie? A. He said that I lied.

Q. Then what took place? A. Mr. Burchill came running down and he said you are telling a lot of lies and I said there is the driver and the bookkeeper and my cousin Frank Ulrich there to prove it and he said, "You are telling a lot of lies" and I said to my grandfather, "Who do I have to take orders from?"

Q. And what did your grandfather say? A. He stood up and patted himself on the chest and said, "I am the boss," and I said, "I came down there with the understanding that you was the boss."

Q. Then he patted himself on the chest and said "I am the boss"? A. Yes, sir, and then Mr. Burchill looked at him and said, "Who did you say was the boss?" and my grandfather looked at him and sat down and said Mr. Burchill was the boss.

Q. What did Burchill then say to you? A. Mr. Burchill said I was telling a bunch of lies and that I wasn't telling the truth.

Q. Then what happened? A. I said I wouldn't work down there with Mr. Burchill as the boss, and he said you can get out then if you won't work with him as boss and I took my hat and went home.

Q. Did you tell your father of this instance? A. Yes, sir.

Q. Mr. Burchill, when you first went in was up stairs and he didn't come in until your grandfather struck his hand on his chest and said, I am the boss.

Mr. McCran—He didn't say that at all.

Q. Where did you say Mr. Burchill came from? Where did you say he came from so far as you know? A. Up stairs.

Q. Could you hear him? A. I could hear him running through from the kitchen.

Q. He came in anyway? A. Yes, sir.

Q. After that did you go back to work the next morning? A. No, sir.

Q. Did your father go back after this incident? A. My father went down as much as I understood to have a talk with grandfather and get some papers and I walked down with him.

Q. I think your father has said that there was some disturbance took place between the father and the grandfather while at the office? A. Yes, there was.

Q. Did you go rushing in afterwards? A. Yes, sir, I did.

Q. Tell what you know about it? You were not in there but you came in? A. I was in the other office from where father and grandfather was and when I heard the noise I went into the private office where they were and found grandfather laying on the floor and I went to pick up grandfather and he wouldn't let me and I went out to tell Mr. Coogan.

Q. You hadn't seen what was going on before that? A. No, sir.

Q. You heard a noise going on in there? A. Yes, sir, there was a lot of hollering but I couldn't understand what was said.

Cross Examination by Mr. McCran.

Q. Did your grandfather have anything in his hand when you saw him on the floor? A. A red envelope.

Q. In which hand? A. The left hand.

Q. Did he have hold of it? A. Yes, sir.

Q. In the left hand and he was lying on the floor? A. Yes, sir.

Q. Where was your father when you came into the room? A. Standing over at his desk, at my father's desk.

Q. Who picked your grandfather up? A. Mr. Coogan.

Q. How long did you remain? A. What do you mean? After Mr. Coogan picked grandfather up? Well, I should judge around four minutes.

Q. Did your grandfather make any statement when Coogan picked him up? A. I heard him talk about something but I couldn't understand what he said. I don't understand German.

Q. What language did you converse with him at the house? A. English.

Q. At the mill? A. Always English when I talked to him.

Q. Are you sure he did not talk in English after Coogan picked him up? A. No, sir, not that I recall.

Q. Who did he talk to after Coogan picked him up? A. I don't know whether he spoke to anybody particularly or not.

Q. Did you hear him say your father had knocked him down? A. No, sir, not that I could understand him.

Q. He might have said that in German or some other language? A. I don't know.

Q. Did he make a statement or say something? A. I am most sure he did.

Q. How long did your father remain over at the desk where you say he was standing when your grandfather was on the floor? A. About three minutes.

Q. What did he do? A. He had the bottom

drawer of the desk opened and he was taking some papers out of that bottom drawer.

Q. You saw your father take these papers out of the drawer? A. Out of his own desk.

Q. That was after you came in? A. Yes, sir.

Q. What did the grandfather do with this envelope he had in his left hand after you saw him on the floor? A. I don't remember.

Q. Did he have hold of the envelope when Coogan picked him up? A. Yes, sir.

Q. Did he still have hold of it when you went out? A. As far as I recollect, yes.

Q. Was the grandfather still talking when you went out? A. Yes, sir.

Q. Still saying things? A. Yes, sir.

Q. What he was saying you don't understand? A. No, sir, I did not understand.

Q. To whom was he addressing these remarks? A. He might have been talking to somebody personally, I don't know.

Q. What was your grandfather's position on the floor? A. He was lying on the floor.

Q. When you came in there had been some trouble that was what brought you rushing in? A. Yes, sir, I heard a noise.

Q. What kind of a noise? A. Like somebody falling.

Q. Where were you? A. Out by Coogan's desk.

Q. Did it sound like somebody fighting or quarreling? A. It sounded like loud talking.

Q. There had been loud talking before the fall? A. Yes, sir.

Q. For how long? A. Between five and ten minutes.

Q. What language were they talking in? A. German.

Q. Was the language loud? A. Yes, sir.

Q. When you came into the inner office after you heard the fall of the body where was your father on the floor and tell us what his position was? A. My father?

Q. Your grandfather? A. My grandfather was lying about three feet away from the door that leads into the inner office right over by the closet of harness twine about seven feet away from where father was.

Q. Was he sitting or lying down? A. Lying down.

Q. Where was his head? A. Resting on his derby hat that he had there.

Q. On the floor? A. Yes, sir.

Q. Was the derby hat injured? A. That I don't know.

Q. Coogan, you say, came in and picked him up? A. Yes, sir.

Q. And your father remained four or five minutes afterwards? A. Yes, sir.

Q. When you saw your grandfather lying on the floor seven feet away from your father, your father was doing what? A. He was standing there and then he reached down for the papers.

Q. Your father did not pick up your grandfather? A. He attempted to.

Q. How do you know that? A. He said so.

Q. Your father was seven feet away when you came in? A. He might have walked over and then gone back.

Q. He could have, yes, but when you came in

your father was standing at his desk? A. Yes, sir.

Q. Whether he really did or not you don't know? A. No, I seen him walk over and try to pick him up and then he walked back but I don't know whether he really grabbed hold of grandfather.

Q. Which was it. Was he standing at his desk when you came in or walking back or towards your grandfather? A. When I was inside of the office he was at his desk. That was when I was outside.

Q. You couldn't see your father from the outer office at Coogan's desk? A. Why, certainly. If I was in front of the desk.

Q. Did you see your father from the outer office? A. Yes, sir, I could.

Q. Did you? A. Yes, sir.

Q. Where were you? A. In front of Coogan's desk.

Q. The door to the entrance of the private office is to the left of that desk? A. Yes, sir.

Q. What part of the room did you see your father in when grandfather was on the floor? A. Over near grandfather.

Q. What part of the room? A. The left.

Q. To the left of your grandfather? A. He went to grab him.

Q. You said your grandfather's head was within three feet of the door? A. Yes, sir.

Q. Was your father between the door and your grandfather's head? A. No, on the other side.

Q. Why didn't you pick your grandfather up? A. He wouldn't let me.

Q. What did he say? A. "Leave me alone."

Q. Did he say that in German or English? A. English.

Q. Then he did talk some English? A. Yes, sir, to me.

Q. He didn't want you to help him up? A. No, sir.

Q. The other remarks he made was not in English but in German? A. Yes, sir.

Q. Who else was in the room when this happened? A. The stenographer.

Q. Where was she when you rushed in? A. She was sitting at her desk.

Q. Near your father's desk? A. Yes, sir, right along side of father's desk.

Q. What was her name, do you know? A. No, I really don't remember her name.

Q. What car did you drive before you finally left the mill? A. The Buick.

Q. Who did that belong to? A. Grandfather.

Q. Not your father? A. No, grandfather.

Q. Do you say, Melvin, you never had that car out alone driving it yourself? A. Yes, sir, I was out two or three times when I asked him.

Q. When did you ask him? A. I asked him down at the shop or maybe home.

Q. To use it for what purpose? A. To take a little ride.

Q. With whom? A. Maybe one of the fellows, some fellow or something.

Q. With whom? A. I don't recollect the fellow I took out with me.

Q. Don't you remember who were your companions in those days? A. Yes, sir, I had quite a few.

Q. Tell us their names? A. Joe Bustard, Bill Shaw, Pierce Rosenthal, and Mort. Rosenthal.

Q. You took the car out at night? A. Yes, sir.

Q. Did you ever take the car out when it was put in the garage after your grandfather had used it? A. Not that I can recollect, no.

Q. What is the trouble with your recollection? A. Nothing that I know of.

Q. Don't you know that the gas bill for the Buick car were larger than the other car that your grandfather used and owned? A. Not exactly, no, sir.

Q. Do you? A. Yes, I knew one.

Q. One month it was more? A. Yes, sir.

Q. When was it? A. I think that was August. For the month of August it was more.

Q. What year? A. Nineteen hundred and twenty.

Q. That bill would come in when? A. Around September.

Q. Do you know what the bill was for September? A. I do not.

Q. Do you know whether it was large or larger than the August bill for the car? A. No, I don't.

Q. Were you supposed to sign a slip when you got gas? A. Yes, sir.

Q. Was anybody charging up gas to Mr. Ulrich for a different car? A. No, sir.

Q. Let me put it this way. Did anybody charge up gas to Mr. Ulrich other than yourself? A. Yes, sir.

Q. Do you know a party by the name of Bannigan? A. Yes, sir, I do.

Q. Did he ever charge any gas against the car? A. No, sir.

Q. Did you ever take a slip away from the office with E. B. on it? A. Not with E. B.

Q. How did you come to take a slip away? A.

The bill read so many gallons and the memorandum more.

Q. Why did you take the slip away? A. To go up and have it rectified.

Q. Are you sure it was not to go up and have it paid by one of your companions? A. It was not or it was not paid by anybody else. It was just rectified.

Q. When your grandfather changed from the Triangle to Lendrum for gas you had a conversation with him, you say? A. Yes, sir.

Q. Your grandfather was complaining because the bills were too large? A. Yes, sir.

Q. The gas bill for the Buick car was out of proportion? A. Yes, sir.

Q. It was out of all proportion? A. No, sir.

Q. Are you sure? A. Yes, sir.

Q. Did you tell him that? A. Yes, I did.

Q. What did he say to you? A. He didn't believe me. He said I was a liar.

Q. He looked at the bills, didn't he? A. He did, sometimes.

Q. I am talking of the time he was talking about the gas? A. No, sir.

Q. You don't know as a matter of fact the bills were too large? A. Well, I heard it mentioned.

Q. Did you know yourself? A. Not outside of being told.

Q. When your grandfather told you he was going to change the station from the Triangle to Lendrum what did you say? A. I asked him why.

Q. Yes, go on. A. I asked him why he was changing the gasoline.

Q. What else? A. When he told me he liked Mr. Lendrum better than Mr. Hayden I explained to

him that if I put them both together in front of him he would not know one from the other.

Q. How did you know so that you could talk in that form to grandfather? A. I knew.

Q. How did you know? A. I knew he didn't know.

Q. How did you know he didn't? A. He told me one day on the truck.

Q. He told you what? A. He asked me if this is Lendrum's place and I said, "yes."

Q. When was that? A. I don't know when. It was sometime when I was taking him home in the Spring.

Q. You told your grandfather he would not know Hayden or Lendrum if you brought the two men into the office? A. Yes, sir, I did.

Q. He didn't get excited about it, did he? A. He flew up in a rage.

Q. What did he say to you when you told him that, young man? A. What do you mean?

Q. What did your grandfather say when you said, "You wouldn't know Hayden from Lendrum if you brought the two men into the office"? A. He didn't say anything. He said he was changing the gas station and that is all.

Q. I thought you said he flew in a rage? A. He did. He was in a rage before.

Q. You told me a moment ago that when you told him that he flew into a rage? A. He was in a

rage before and then he flew into the same rage again.

Q. The same rage again when you told him that? A. Yes, sir.

Q. Now didn't you use your own father's automobile instead of your grandfather's? A. I used it once in a while.

Q. Why didn't you take your father's out at those times? A. I took it out the majority of times but father happened to be going some place and I went over to ask grandfather for a loan of his car.

Q. You say you had a conversation with your grandfather about the Eversharp pencil? A. Yes, sir, I did.

Q. When did your father tell you to take the Eversharp pencil to the Post Office? A. What time of day?

Q. Yes. A. I should judge around half past four.

Q. Do you know? A. No, but I think around half past four.

Q. Had your grandfather gone home? A. Yes, sir.

Q. Who had taken him home? A. I did.

Q. What time did you take him home? A. Between ten minutes of four and four o'clock.

Q. Then what did you do? A. Came back to the shop to put up the stuff I had to ship out.

Q. Was your father there when you got back? A. Yes, sir.

Q. What were the instructions your father gave you? A. To send out this pencil and to take it together with the mail to the Post Office.

Q. The pencil was a small writing pencil? A. Yes, sir.

Q. Was it wrapped up? A. I was wrapping it up.

Q. Was the letter written? A. The letter? Well, the girl had taken the letter. I don't know.

Q. What did Burchill want you to do? A. He wanted me to send the driver up to the Post Office right away and I told him it was my father's orders to keep the things there until the pencil was ready.

Q. Until what? A. The pencil and letter.

Q. There were other packages to go out? A. Yes, sir.

Q. What time did they go to the Post Office usually? A. Quarter to five, five o'clock sometimes after five.

Q. Who had been accustomed to taking the Parcel Post to the Post Office? A. The driver sometimes and I took it up sometimes.

Q. The driver did as a rule, didn't he? A. He might have been doing it.

Q. Where was the driver all this time? A. Inside.

Q. Doing nothing? A. Yes, sir.

Q. The driver could have gone on to the Post Office and come back for you if necessary? A. What do you mean. Why come back for me?

Q. The driver could have taken the stuff up to the Post Office while you were waiting for the pencil? A. He could have but my orders were not to do it that way.

Q. Was there any reason why it should not be done that way? A. My orders were to take the letter and the parcel up together.

Q. Was there any stuff to go out that evening to other people? A. Yes, sir.

Q. Did it have to be shipped by a certain time? A. It had to get there before five.

Q. Wouldn't the shipment be delayed there if you held back? A. I didn't hold back.

Q. The shipment would be delayed there if you held the truck? A. I didn't hold the truck up from making the delivery of that stuff before five. I held it up from going to the Post Office.

Q. How long did it take you to take your grandfather home? A. I should judge around fifteen minutes.

Q. What time did you go out? A. A quarter to four or four o'clock.

Q. What time did you get back? A. A little after four.

Q. Wasn't the trouble because you didn't come back after you took your grandfather home? A. Nothing that I recall, no.

Q. Wasn't it because you remained away an unusually long time for the time it would have taken you to take your grandfather home and return to the mill. Wasn't that why Mr. Burchill spoke to you about that fact? A. No, sir, it was not.

Q. Wasn't there a shipment to go to Kaufman's that evening? A. Yes, sir, Kaufman Bros.

Q. What time did that go out? A. I don't know. It got there before five.

Q. Are you sure the truck was back before five? A. The truck was back about five o'clock.

Q. From where? A. From Kaufman Bros.

Q. Did you take the truck to the Post Office with the Eversharp pencil? A. Yes, sir, I took the truck up there, no, I didn't take the truck up. The

driver took the truck up there.

Q. What was there about that incident, young man, that caused you to get all het up? A. I did not.

Q. You went around to your grandfather to complain of the situation? A. Yes, sir, I did.

Q. What was there about it that caused you to go around to see your grandfather? A. To see who I took orders from, to see if I have to take orders from Mr. Burchill.

Q. Didn't you want to take orders from Mr. Burchill? A. No, sir.

Q. Then that was the reason? A. What do you mean?

Q. Because you didn't want to take orders from Mr. Burchill? A. No.

Q. That is the reason you went to your grandfather? A. Yes, sir.

Q. You went around there to protest to the grandfather that Mr. Burchill had made a suggestion? A. It was not a suggestion. It was an order.

Q. And you felt that Mr. Burchill could not give any orders? A. No, sir.

Q. What time did you reach your grandfather? A. Between half past five and six.

Q. Did you see your father in the meantime? A. Yes, sir.

Q. And he directed you to go to your grandfather? A. Yes, sir. He told me to go over and have a talk with him.

Q. That night your father went to your grandfather and protested also? A. I think he did.

Q. And the following day your father had this

squabble with the grandfather? A. What do you mean?

Q. The following morning? A. Yes, sir, he went down to see him.

Q. The following morning your grandfather was on the floor in his private office? A. Yes, sir.

Q. When did you leave the mill finally? A. In January.

Q. The day your father left? A. Yes, sir.

Q. Did you go out with your father? A. I went out of the mill in the morning when we came down there and I was with my father.

Q. When your father went out of the mill that morning did you go out with him? A. I walked out with him.

Q. What are you doing now? A. Working for father.

Q. In what business? A. The Reed and Harness business.

Q. The same business as Ulrich Co.? A. Yes, sir.

Q. How long have you been working for your father in that business? A. Over a year.

Q. When did you begin to work for your father in this new business? A. That I don't exactly know. About May, I think, a little after May. I am not yet sure.

CATHERINE HANDWERK, sworn as a witness for the caveators and testifies as follows

Direct Examination by Mr. Harding.

Q. You are a daughter of Franz Ulrich? A. Yes, sir.

Q. How old are you? A. In the forties.

Q. What is your husband's name? A. Mr. Otto Handwerk.

Q. What is his business? A. Manager of the Manhattan Laundry in Passaic, the Manhattan Shirt Company of Paterson is a branch.

Q. When were you married? A. June thirtieth, nineteen hundred and three.

Q. Since you were married where have you lived? A. In New York City for a while then out on twenty-third street and then next door to father and mother.

Q. How long have you lived next door to where your father lived when he died? A. Fourteen or fifteen years. I don't know which.

Q. Has your father lived in the same place where he died for the last fifteen years? A. No, sir, longer.

Q. How long has he lived there where he lived when he died? A. I guess over thirty years.

Q. Over thirty years? A. Yes, sir, but then it was a one family house and then he had it made into a two family house.

Q. Then you lived next door to him for fourteen years? A. Yes, sir.

Q. Immediately adjoining? A. Yes, sir.

Q. Are the houses right close together? A. Yes, sir.

Q. About how wide is the alley? A. The regular size.

Q. Two or three feet? A. Yes, sir.

Q. Do you own that house? A. I do, now. I have owned it for a couple of years but grandfather always took the rent and everything from it.

Q. Did your father give you the house? A. Yes, sir, in my name.

Q. How long ago did he give it to you? A. Nearly four years now, going on four years.

Q. How much is that house worth, do you know? A. I cannot say.

Q. Where does Mr. Langley Burchill live, your brother-in-law? A. Up stairs over father and mother.

Q. That is next to you? A. Yes sir.

Q. How long has he lived there? A. About sixteen years, I think.

Q. Who owned that house where they and your father live? A. Father.

Q. Did he own it when he died? A. No, sir, my sister owned it at that time. He gave her that the same as he gave me the other house in my name.

Q. Your father also gave a house adjoining to your sister, Mrs. Burchill, and the Burchills lived up stairs and your father down stairs? A. Yes, sir.

Q. That has been going on that way for some sixteen years? A. Yes, sir.

Q. Your father and mother lived down stairs alone all during this time? A. Yes, sir.

Q. I say alone I mean they were living together? A. Yes, sir.

Q. And up stairs in the same house were the Burchills? A. Yes, sir.

Q. How did the Burchills get from their house down? A. They can get in the front way and the back way. They can go up the front stairs, they have separate entrances and then there is a door so they can go in that way.

Q. Are the houses cut off in any decided way so you have to go outside of one to get to the other? A. Yes, sir, it is a regular two family house.

Q. Do you remember when your brother Albert died? A. I guess it must be four years now. I think in November.

Q. I didn't ask you to fix the time but you remember the occasion of his death? A. No, it was in February, February ninth or tenth.

Q. From the up stairs of Mr. Burchill's house is there a stairway comes right down in the hallway in the down stairs hall? A. Yes, sir.

Q. Then you were mistaken when you said you have to go outside? A. But it does not go into father's place.

Q. The stairway goes down into the hall. There is communication between the two flats without going outside? A. Yes, sir, they have separate entrances, then there is one front door and then two doors on the outside.

Q. I ask you if you remember the occasion of your brother's death. The fact that he died? A. It was in February about four years ago, yes.

Q. You say how many years ago? It is nineteen hundred and twenty-two now. You think it is about four years ago? A. I think so, maybe more or less. I am not positive. I know it is in February either the ninth or tenth, because it was on my husband's birthday.

Q. Do you remember Mr. Burchill going to work for your father in your father's mill? A. Yes, sir.

Q. Did you hear whether that was before or after your brother Albert's death? A. After my brother died.

Q. Do you remember that Frank and your brother Albert were always with your father until Albert's death, in business with him? A. Yes, sir. He always thought a lot of Frank and Al.

Q. I am glad you stated that to me, you say he always thought a lot of Frank and Al. What have you heard him say, what was the relations between the father and Frank and Al? A. Always that they should have the business, the business was to be theirs.

Q. What did he say about it in your presence? A. He used to always say that.

Q. Have you had many talks with your father and mother and conversed about what he was going to do about his business when he died? A. That was understood that way.

Q. He often talked about it? A. Yes, sir.

Q. Altogether? A. Yes, sir.

Q. How long have you heard him say that with respect to Albert's death. How near up to Albert's death have you heard him talk that way about turning over his business to them? A. After my brother Al died he didn't speak so much about it after that.

Q. Up to Al's death did you hear him say that right up to the last, right up to Al's death? A. Certainly.

Q. How long before? A. It was really understood it was to be their business.

Q. Was it to be understood that it was to be their business before he died or after he died. The law says I cannot make suggestions or lead you. I want you to tell just what you heard your father say in talking with your father and mother when

you had conversation after Al's death? A. After his death?

Q. See if you cannot do that. See if you cannot do it without having me put the question to you that way. Up to the time that Mr. Burchill went to work for your father in his mill what has been the relations between your father and Frank up to that time? A. They always got along good together.

Q. Have you ever heard him talk business with Frank? A. Yes, sir.

Q. Have you ever heard him say anything indicating what reliance he placed upon Frank's judgment in the business? A. He always depended on him and afterwards when brother Al died then he talked to Frank about it.

Q. He seemed to be dependent upon him, did he, asked his advice upon the business? A. Yes, sir.

Q. Do you remember when your father died? A. Yes, sir.

Q. He died in July, nineteen hundred and twenty-one? A. Yes, sir, on the twenty-fourth.

Q. Do you remember what his condition was say the beginning of the year nineteen hundred and twenty-one and for six or seven months before he died? A. Sometimes when he was walking and then he would sit down he would go to get up again he would say he was stiff, he was always stiff. His legs were stiff and his arms were stiff and he carried a cane to help himself.

Q. What have you to say about his condition shortly before he died? A. Just before he died everything would be going fine and then suddenly he would go down, of course, he had three strokes, he had one and his face was knocked over one way and

then he had another one and it went back that way. Of course, mother told me about these.

Q. He did have these strokes? A. Yes, sir, these three strokes I heard of then and one time it was in the winter he fell in front of the house, walking on the ice and he fell down and I got so excited in my house that I ran over to get Mr. Burchill and my sister to go out and pick him up and bring him in and with that he quick got up and came in and I said, "Oh, mother, father is lying out in the street."

Q. In these family conferences you used to have before Albert's death your mother takes part in them generally? A. Yes, sir.

Q. Did your father confide in you and your mother about what he was going to do with the property after he died? A. No, sir, I didn't go over very much when he was talking to him about those things.

Q. Did you hear of some trouble occurring between your grandfather and your brother Frank and Frank's son some time after Burchill went there? A. Yes, sir.

(At this time an adjournment was taken until 10 A. M. October 10, 1922.)

CATHERINE HANDWERK, recalled to the witness stand and testifies as follows:

Direct Examination by Mr. Harding:

Q. You will recall an occasion when you were out riding with your father? A. Yes, sir.

Q. Who else was present? A. Melvin and Mr. Handwerk and mother and I.

Q. About when was that? He died in July, 1921, about how long was it before he died? A. A couple of months before he died, perhaps more than that, I am not positive as to date.

Q. Before we come to that, I wanted to ask you first— A. I didn't mean a couple of months before father died, father has been dead a year, I didn't mean that.

Q. Before coming to that I wanted to ask you something else, taking the last six or eight months before he died did you see very much of your father? A. Well, on and off.

Q. You lived next door? A. Yes, sir.

Q. Up-stairs? A. No, sir, downstairs.

Q. Prior to that time the relations with your father were quite intimate? A. With me?

Q. Yes. A. I would go occasionally. I live next door, I only went over when mother was home and then when father came home I would go home to fix my supper because mother would start to get his, and she would tell us to go home and get our own supper, in the morning I would go over when father was out and sit with mother and in the afternoon and then I would go home and get my own meal when she would start to get his.

Q. Did you hear of the occasion of your brother, Frank, leaving the Company, that he was no longer employed with the Company for a while? A. Yes, sir.

Q. You heard about his going away? A. Yes, sir.

Q. Did you hear about the cause of his going away? A. No, sir, not at first.

Q. Did you at any time hear about the cause? A. Yes, sir.

Q. Did you hear, I don't want you to tell what you heard, but did you hear of his going away on account of a dispute about an order of The Bethlehem Ribbon Company?

Objected to by Mr. McCran.
Question withdrawn.

Q. Did you hear about what the cause of it was? A. Yes, sir.

Q. Then did you hear of your brother, Frank, going back again afterwards? A. Yes, sir.

Q. Did you hear of any dispute about gasoline? A. Yes, sir, I heard of it.

Mr. McCran—Are we to bring the four winds of the city into this case? I hear lots of things.

Q. Did you hear a conversation between your father and Mrs. Burchill? A. Yes, sir.

Q. When was it? A. A couple of months before he died.

Q. How long? A. A couple of months.

Q. Where was that conversation you heard? A. In my mother's kitchen.

Q. Will you state what that conversation was? A. Father came in and she says to father "Father they want to, mother and Kate want to throw us out" and he says he would fix it so he could throw them all out.

Q. Was anything said about Mr. Burchill? A. About Mr. Burchill?

Q. Yes. A. She meant that they wanted to throw Burchill out.

Mr. McCran—I object to what she meant, and ask that it be stricken out.

The Court—Strike it out.

Q. What did she say? A. That is what she said, she said that they wanted to throw them out.

Q. Who did you mean by them? A. Well, Mr. Burchill.

Q. What did your father say? A. My father said he would fix it so Mr. Burchill could throw us all out.

Q. You heard that, did you? A. Yes, sir.

Q. Where were you when you heard it? A. In my bedroom window when I heard the loud talking.

Q. Did you say anything? A. I said, "Don't say anything about mother, Rose."

Q. Why did you say that? A. When she says that to father.

Q. The question is, why did you bring your mother's name in, was anything said before that in which she had reference to her mother? A. No, she mentioned no names but she said that "all of us were" and I said not to say anything about mother.

Q. Was your mother's name mentioned by Rose to the father? A. We all were.

Cross Examination by Mr. McCran.

Q. You couldn't hear that conversation, Mrs. Handwerk? A. They were talking very loud and the houses are built very close together.

Q. Were the windows closed or open? A. When I heard the loud talking I opened the windows and listened.

Q. Were their windows open? A. No, sir.

Q. Their windows were closed? A. Yes, sir.

Q. When was that, Mrs. Handwerk? A. While Frank was out.

Q. Yes, but I mean when? A. I don't remember the date, father has been dead so long.

Q. Do you remember when your father died, he died on July 24th. A. Yes, July, but that is a year ago.

Q. How long prior to your father's death was it? A. Four or five months.

Q. Then it was not a couple of months? A. That would be about the same, four or five, I am really not positive when it was, I didn't keep track of it at the time, I didn't know that it was necessary to keep track of things like that.

Q. You cannot really swear to it? A. No, but I know it was when Frank was out that it happened.

Q. Your windows were closed? A. Yes, sir.

Q. And the windows of your father's house were closed? A. Yes, sir.

Q. And there is an alley-way between? A. Yes, sir.

Q. How many feet are there between your house and your father's house? A. Three feet.

Q. Do the windows face each other? A. Yes, sir, the dining room window faces my bedroom window.

Q. Where does this kitchen window of your father's house face? A. Below my window.

Q. You cannot tell us what they were talking about, can you, at that distance, with the windows closed? A. Yes, sir, if you were standing by my window you could tell what they were saying.

Q. How long were they talking? A. Not very long, only when they said that.

Q. What else did they say? A. I don't know, they said so many things I can't remember them.

Q. Who was there? A. Mother.

Q. How do you know mother was there? A. Because I called her to the window and asked her what was the matter, and she says "Never mind."

Q. Who else was there? A. My sister.

Q. Rosina? A. Yes, sir.

Q. Who else? A. And father.

Q. What were the names you heard mentioned? A. That is just how it was said, she didn't mention any names, she said, "they want to put us out." We people wanted to put them out.

Q. Who were we? A. Mother, and me and suppose my brother.

Q. How can you suppose that from what you have told us? A. Who else could they mean if they didn't mean us?

Q. They want to put us out? A. That is what she said, yes, sir.

Q. Was there a quarrel over it? A. When Frank left the place at the time he was out, he came up and told me how he was getting treated.

Q. Told who? A. Told mother how he was treated down at the factory.

Q. Was Frank there? A. Yes, sir, he came to see mother.

Q. At the time this conversation took place? A. No, sir, after we went home.

Q. After who went home? A. We went home, I went home and my brother went home.

Q. You and your brother went to your home? A. Yes, sir.

Q. Where were you? A. I went over to see my mother for the afternoon.

Q. And Frank was there? A. Yes, sir.

Q. What time of day was that? A. When he went home?

Q. No, when you went to see your mother? A. Right after mother was through sleeping, I went over with mother and sat with her, and father used to come in about four o'clock and Frank came in after I did, I cannot say exactly what time after I came in, I cannot say.

Q. Was Frank there when your father came home? A. No, sir, Frank went home. Mother was used to getting the meals and she would say to us we should go home and get our husbands' meals and that was when father came in and I went home.

Q. Did your mother speak to Frank about going back to the mill? A. Not while I was there.

Q. Had your mother spoken to Frank about going back to the mill? A. I don't know. I guess she did, I couldn't swear to it.

Q. How long after you had gone out did this conversation take place in the kitchen? A. I don't know. I didn't notice the time, I don't know how long it was after that he came in after I went out he must have been a little while after, a short time after.

Q. You heard her say, "they are trying to put us out"? A. Yes, sir.

Q. No names used? A. I couldn't swear to that.

Q. And your father said what? A. That he would fix it so they, he only said they, he never came out with any names, that is all he said was "they" but of course, you knew who he meant, because they were going on like that.

Q. What did your father say? A. ——.

Q. Why do you hesitate so long? A. Well, he did say it, and I knew he meant Mr. Burchill.

Q. Did say what? A. He would fix it so he could put us all out.

Q. Did he say you or them or what? A. He said all.

Q. He said, "put them all out"? A. Yes, sir.

Q. He would fix it so they could all be put out, tell us the exact words? A. I just said he would fix it so that he could put us all out.

Q. He would fix it so he could put you all out? A. Yes, sir.

Q. Your father was there? A. Yes, sir.

Q. Your father was very good to you, Mrs. Handwerk? A. Yes, sir, at times.

Q. What did your father give you? A. He gave me money.

Q. How much? A. Twenty-two.

Q. Twenty-two thousand? A. Yes, sir.

Q. When did you get the twenty-two thousand? A. In June.

Q. In June, a month before your father died? A. Yes, sir, I didn't get it from father. I got it from mother, but it was father's money put in for me.

Q. It was your father that put it in? A. Yes, sir, when he insisted it was to be mine.

Q. The money was in the name of your mother? A. Yes, sir.

Q. Did your father not open a bank account in the name of your mother and then deposit money in that from time to time and that money was to be given to you by your mother and you got it? A. Yes, sir.

Q. Is that about the time Mrs. Burchill got a similar sum? A. She got hers before.

Q. How much before? A. In May.

Q. Some weeks before? A. Yes, sir.

Q. Who gave you your home? A. Father.

Q. Did he give you any stocks or bonds? A. Yes, sir.

Q. What did he give you in the way of stocks and bonds? A. He gave me stocks in the Franklin Trust and he gave me bonds.

Q. How many shares of Franklin Trust Co. stock? A. Ten.

Q. Did he give you stocks in any other Company? A. That is all.

Q. What else did he give you in the way of stocks or bonds? A. Liberty Bonds.

Q. How much in Liberty Bonds? A. First he gave me two, that is when they first came out.

Q. When they first came out, did he give any Liberty Bonds to any other children? A. Yes, sir.

Q. To what children? A. To all of us.

Q. Did he give Liberty Bonds to Frank? A. Yes, sir.

Q. To Al? A. Yes, sir, and to Al's children and to my sister.

Q. How much in Liberty Bonds, did he give to you and Frank and Al? A. I cannot say how much

Al received and I don't know what Frank got, I got two first and then after a while I received another one, father gave me one and then he gave me two and that made three.

Q. How much? A. A thousand dollars each.

Q. All together how much did you get in Liberty Bonds? A. Three thousand dollars.

Q. You are the wife of Mr. Otto Handwerk? A. Yes, sir.

Q. Is Mr. Handwerk a man of means financially? A Yes, sir.

MRS. ROSINA ULRICH, sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Harding.

Mr. Harding—If the Court please, as you see, Mrs. Ulrich is a very old lady, and quite feeble, and she speaks broken English, I don't know whether we will be able to understand her or not without an interpreter but I will try it if satisfactory to your Honor.

Q. How old are you, Mrs. Ulrich? A. Eighty-five years old.

Q. You are the widow of Franz Ulrich, the testator? A. What is it?

Q. You are the widow of Franz Ulrich? A. Yes, sir.

Q. Where did you live when your husband died? A. What did you say?

Q. Where did you live with your husband when your husband died? A. Over in the old place where I lived all the time and I been with him until he died.

Q. Was your son, Frank, with your husband in business at one time? A. Yes, sir.

Q. Do you remember when Frank went away from the business? A. Yes, sir, he said he could stand it no more.

Q. Up to the time that your son Frank went away from the business how did he and the father get along? A. Well.

Q. Well, did you say? A. Yes, sir.

Q. Can you say whether or not they were friendly up to the time that Frank left? A. Well, I don't know, Frank is a good boy and Frank said—

Q. What did you say? A. Frank is a good boy, he would like to stay in the mill.

Q. Before Frank went away, how did your husband feel towards Frank? A. I have told you I see my husband.

Mr. Harding—I think we will have to have an interpreter.

SAMUEL W. BERNSTEIN, sworn as an interpreter and interprets the testimony of the witness as follows:

Q. When Frank used to work for his father long before he left how did he get along with the father? A. He never told me anything, they were getting along together, Frank didn't want to work or be obedient to my daughter's husband.

Q. Do you remember when your daughter's husband went to work in the mill with your husband? A. Yes, sir.

Q. Was there any difference between your hus-

band and Frank after Mr. Burchill went to work in the mill? A. They would fight and fight.

Q. Do you remember one night when you heard Mr. Burchill talking to your husband about Frank? A. Yes, sir.

Q. Where were you? A. In bed.

Q. What did you hear? A. That Frank used too much gasoline.

Q. Who said that? A. Lang said this.

Q. Lang said the boy used too much gasoline? A. Yes, and I told him to stop that.

Q. Who did you tell to stop that? A. To my husband I said to stop that, I could hear because I had my bed next to the kitchen in the room there.

Q. What did Burchill say? A. Nothing.

Q. Did they stop talking then, when you told them that? A. No, then they spoke of something else.

Q. Did you hear what else they said? A. No, I did not.

Q. You were in bed were you? A. Yes, sir.

Q. When you heard this talking did you get out of bed and go to the door? A. Yes, sir.

Q. Were they in another room? What room were they in? A. They were in the kitchen and I was in the bedroom.

Q. Was Burchill and your husband together much during the last year of his life? A. Yes, sir, all the while, all the time.

Q. What would they do when they were together? A. I didn't follow him, I didn't see, I haven't heard.

Q. Where would they be when they were together? A. In the yard and all over.

Q. Did they speak in secret together or was anybody else present when they were talking together? A. They didn't speak where people heard what they were speaking about.

Q. Did your husband used to tell you about his business and confide about his business to you? A. He spoke to me very little about his business.

Q. What time of the day would your husband and Mr. Burchill be together? A. They would be home in the night time when the shop time was over.

Q. Is there a yard there at your place? A. Yes, sir, we have a yard.

Q. Did they go there some times? A. Yes, sir.

Q. They used to drink together too? A. Yes, sir.

Q. Did your husband ever talk to you about his work? A. I told you, very little.

Q. Well, did your husband ever talk to you about making a will or wills? A. I was with him when he made the will for his son, but after that he didn't say anything to me.

Q. When was that will made? A. I can't tell that.

Q. Who was the lawyer, if any, that you went to? A. Lawyer Weiss and we left everything to Frank, the whole business and all.

Q. In that will, you mean? A. Yes, sir.

Q. Did he tell you what he was going to do about it? A. With the business?

Q. Did your husband tell you before he made the will he was going to leave it all to Frank, the business, I mean? A. I told him to do it and so he did it.

Q. You talked it over with your husband, did you? A. The girls got the bank book and the house and I guess it was all right.

Q. That is the will that Mr. Weiss made? A. Yes, sir.

Q. Did you ever know that any other will was made except this Weiss will? A. I didn't know it not a word.

Q. Did he ever tell you he had a will drawn up by Mr. Dunn? A. He never told me, he never said anything.

Q. When he died did you suppose that—

By Mr. McCran—I object to anything that she supposed.

Q. That the will had been drawn up by Mr. Weiss was still in force?

Mr. McCran—I object to it.

The Court—Where is that question effective?

By Mr. Harding—That is perfectly proper; it shows the relation, the changed relations between Mr. Ulrich and his wife, he went and had a will drawn which shows that there was not the close association and communication between himself and wife and the very fact that her husband kept this will secret from her indicates a change.

The Court—I shall sustain the objection.

Q. When was the first you ever knew a will had been drawn by Mr. Dunn? A. After Mr. Ulrich died, I heard nothing before.

Q. Did Mr Burchill ever say anything to you about a will having been made up by Mr. Dunn? A. No, sir.

Q. Did you hear him say whether or not that he knew anything about the will made by Mr. Dunn? A. I never heard anything.

Q. Since your husband's death you have been living in the same house where you had lived before? A. Yes, sir.

Q. How much money have you received from your husband's estate since his death?

Mr. McCran—May I ask the purpose of that question?

Mr. Harding—To show an unnatural and inadequate allowance under the will for the widow.

Mr. McCran—How can that affect this case? The will, the estate is in the hands of administrators pendente lite, and what authority have they got to pay over to Mrs. Ulrich any money at all, therefore what has the question to do with the matter under eamination no matter what will Mr. Ulrich may have made? I shall object to the question.

The Court—There has not been any distribution under the will and I shall sustain the objection.

Mr. Harding—My offer is to show by this witness that she has only been able to receive from this estate One Hundred and Twenty Dollars a month since his death, and I propose to show that she needs more money.

Mr. McCran—May I say that the administrators have been making these payments—

Mr. Harding—I object to counsel making a statement—

Mr. McCran—I also object to counsel making statements in this case that are not in evidence; I now object to his making a statement regarding this witness.

Mr. Harding—All I have done is to make an offer on this record.

The Court—Proceed with the examination, gentlemen.

Cross Examination by Mr. McCran.

Q. How long has Mr. Burchill and his wife lived in the same house with you? A. I guess ten years.

Q. Has he and his wife lived in the same house with you since the time they were married? A. Yes, sir.

Q. Isn't that about eighteen or nineteen years ago? A. Yes, sir, oh no, not so long as that.

Q. They have lived in the same house with your family since the time they were married? A. Yes, sir.

Q. On different floors of the house? A. They had the upstairs floor and we had the downstairs floor.

Q. How did Langley Burchill treat you and your husband from the time he got married up to the time of the death of your husband? A. He would treat well my husband.

Q. What did Langley Burchill do for yourself and Mr. Ulrich about the house? A. When they were first married we used to live together and after Mr. Burchill lived by himself.

Q. Tell me, what did he do for you and Mr. Ulrich? A. I don't know.

Q. Did he help about the house? A. They were always together, he and Mr. Ulrich in the yard.

Q. Was he kind? A. Yes, sir.

Q. Always kind? A. Yes, sir.

Q. Always willing to do things for you and Mr. Ulrich? A. Sure.

Q. He did these things before he went to work for your husband? A. Yes, sir.

Q. What time would Mr. Ulrich get up out of bed in the morning? A. Seven o'clock.

Q. When the mill opened at seven o'clock what time did he get up then? A. Sometimes earlier and sometimes later.

Q. What time did he go to the mill in the morning? A. He always used to go in the mill for what the opening time was set for.

Q. Would he leave the house bofore the hour of the beginning of work in the mill? A. I didn't look after these things.

Q. Did he go to the mill every day? A. Yes, every day.

Q. When did he stop going to the mill? A. Three weeks before he died.

Q. What time would he come home from the mill? A. The time when the shop is out, the driver used to bring him home.

Q. Would he come home for dinner at noon? A. Yes, sir.

Q. Would he go back again in the afternoon after dinner to the mill? A. Sure.

Q. And then he would come home about what

time in the afternoon? A. When the shop was out he used to come home.

Q. So that he looked after his business until three weeks before he died? A. Yes, sir.

Q. Did he get on the truck or automobile, that would call for him, himself? A. Most of the time, yes.

Q. When he wouldn't get into the automobile or truck how would he go to work? A. We had two automobiles.

Q. Did he sometimes take the trolley car down to work? A. Not much toward the last.

Q. Do you remember him walking on foot to his mill in a big snow storm in the winter of 1920? A. I don't know.

Q. Did he ever tell you he had walked in a snow storm to the mill? A. I don't know that.

Q. Did he ever play cards in the evening? A. Yes, sir.

Q. How long before he died did he stop playing cards? A. I stopped two years before and he also stopped about that time.

Q. Are you sure that Mr. Ulrich didn't play cards up until a month before he died? A. No.

Q. Did Mr. Ulrich play cards with Mrs. Ulrich at the house and with Mr. Burchill and other people until shortly before he died? A. No.

Q. How long was it before he died that he played cards the last time? A. I cannot tell.

Q. What is your best recollection? A. I will say about a year.

Q. Do you remember Mr. Egg coming to the house and playing cards? A. Yes, sir, that is a long time ago.

Q. Yes, but how long before the father died? A. More than a year.

Q. Was Mr. Ulrich interested in flowers? A. Yes, sir, he used to buy always, he always bought flowers for the yard, he had the yard filled up with dahlias.

Q. Did he buy flowers for the yard in the spring before he died? A. No, I don't think so.

Q. Do you know whether he did or not? A. I don't know.

Q. You had a bank account in your name? A. What Mr. Ulrich left to me I got.

Q. Did you have a savings account in your name for your daughter, Katherine Handwerk? A. I had no savings account; we sold some lots and when we sold off the lots then some money came into the bank account.

Q. Didn't the father have a bank account in your name for his daughter, Katherine Handwerk? A. Yes, sir.

Q. What did the father tell you that money should be used for? A. What do you mean?

Q. When did the father tell you that that money should be turned over to his daughter? A. I said it before.

Q. Did you know he had turned over a bank account to his daughter Rosina? A. No, sir.

Q. Did your husband give you money to put in the bank account of your own? A. No, sir, he didn't need to do it.

Q. Did he do it? A. No.

Q. What bank account did you have? A. We had by Mr. Weiss.

Q. You had what by Mr. Weiss? A. The money.

Q. How much money did your husband have in the bank for you, in the savings account? A. I cannot tell.

Redirect Examination by Mr. Harding.

Q. When your husband died you had a bank account of how much? A. I don't know positively how much.

Q. Was that money that your husband gave you? A. Yes, sir.

Q. Did you ever give your husband any money before that? A. When we got married I had twelve hundred dollars.

Q. Did you give that to your husband? A. Yes, sir.

Q. This money you had in your own name when your husband died or before your husband died you had given over to your daughter? A. The bank book of course.

Q. You gave the bank book over to your daughter before your husband died? A. Yes, sir.

Q. Did your husband require you or request you to do that? A. I told him I wanted to do that.

Q. He knew that you were going to do that? A. Sure.

Q. At the time of your husband's death did you have any other money of your own except what you have mentioned? A. No.

Q. Did you have any other property of any kind? A. We have lots on Park Avenue and lots in Lakeview.

Q. Who has? A. We.

Q. I am asking you what you had yourself if you had anything? A. I have my money.

Q. How much money have you? A. I don't know.

Q. About how much have you got of your own now? A. I only had it for my house, what I need to take care of my house.

Q. Is that what you get from your husband's estate? A. Yes, sir.

Q. Is that all you have got? A. Yes, sir.

Q. That is all you had when your husband died? A. He left me something.

Q. He left you something in the will, didn't he? A. I—

Mr. McCran—I object to that form.
Question withdrawn.

Re Cross Examination by Mr. McCran.

Q. The money that was in the bank that you gave your daughter Katherine, was the account in which your husband put the money? A. Yes, sir.

Q. Did you have any other bank account of your own other than the bank account you gave to Katherine at the time of your husband's death? A. No, sir.

MAURICE LAUCHER, sworn as a witness for the caveators and testifies as follows:
Direct Examination by Mr. Merrey.

Q. What is your business? A. At present I am retired.

Q. What business were you in? A. I used to be superintendent of a silk factory here.

Q. Did you know Franz Ulrich? A. Since 1887.

Q. Did you have business dealings with him? A. Quite some.

Q. What language did you speak? A. We spoke always Swiss together, he was not Swiss but it is the same language about.

Q. How often did you see Mr. Ulrich? A. I have seen him maybe half a dozen times a year, sometimes more, sometimes on business and sometimes on a friendly visit.

Q. Where did you see him mostly? A. At the mill.

Q. Do you remember when he died? A. I don't remember exactly but I seen him shortly before he died.

Q. You remember going to the mill shortly before he died? A. I was there every two months, sometimes more.

Q. Do you remember seeing him at the mill three or four months before he died? A. I have seen him every three or four months.

Q. Did you notice anything peculiar about him? A. I have found he was not in a sound state of mind for the last months.

Q. For how long before he died? A. I will say the last year.

Q. What did you observe about him? A. He sat in the office in a state he should not have been.

Q. Just describe what you mean? A. He looked helpless.

Q. In what way? A. He was not clean.

Q. Just describe more fully what you saw? A. I have seen him when his pants were not exactly what they should have been.

Q. Was he standing up working? A. Well, not much, he was mostly sitting or sleeping when I came in.

Q. Who were present at this time? A. Frank Ulrich, the son, Mr. Burchill was there the last few months when I was there.

Q. Did you ever have any conversation with the old gentleman when Burchill was present? A. The last time I went there when Mr. Ulrich was in the mill I was in the office and Mr. Ulrich went off like in a faint and I helped put him in the chair and it took quite a while before he knew me and we were old friends, and then he started to talk to me but I couldn't understand him.

Q. Why not? A. I couldn't understand, it was no language at all.

Q. Will you fully describe that incidence? A. Mr. Burchill came in to me and explained what he said or what he wanted to say.

Q. What did he say? A. He wants to tell you how Frank knocked him down.

Q. Did you say anything to Burchill then? A. I told Burchill and Mr. Ulrich "I don't believe that."

Q. Could Burchill understand what he was saying? A. I couldn't understand him and he always talked Swiss to e, I don't know if Burchill spoke Swiss or not.

Q. At this time you speak of did he speak Swiss or English? A. I cannot tell you.

Q. Was it English? A. I couldn't understand it. I cannot tell you.

Q. Was the talk in Swiss at that time? A. No, I couldn't understand him.

Q. Did you ever speak to Mr. Burchill about him being there, about Mr. Ulrich being in the shop? A. We spoke together often.

Q. Did you ever speak to Mr. Burchill in Ulrich's presence about him being in the shop? A. Yes, sir, I often said "A man like this don't belong here" I said that in the presence of Mr. Ulrich and he started to cry, I said to Burchill, "That man should not be here, that man is dead, look at his eyes" and then Mr. Ulrich started to cry and then we walked out into the outer office.

Q. That was the occasion in which Burchill tried to tell you what he was saying. A. That was some day, I didn't seen him after that, say, that was four or five weeks before he died.

Q. When had you seen him before that? A. A couple of months before that.

Q. What was his condition two months before that? A. I always found every time I came again that he gets lower and lower.

Q. Could you talk business to him? A. The last year you couldn't talk business to him, you would talk business but you could never get a clear answer.

Cross Examination by Mr. McCran.

Q. Are you and Frank friendly? A. I got nothing to do with Frank.

Q. Are you and Mr. Frank Ulrich friendly? A. We are friendly through business.

Q. You do business together? A. No, not now, I am retired.

Q. Before you retired did you do business with him? A. When he came to me for orders and I have orders to give I have given them to Frank.

Q. That was the last year, or first tell me when was the last order you gave to Frank? A. It is over a year and a half that I am retired.

Q. In other words you were doing business with Frank's new firm? A. No, I never did business with Frank since he was in business for himself.

Q. Who asked you to come here as a witness? A. He asked me.

Q. Who asked you? A. Frank.

Q. Did you continue doing business with the Ulrich Company after Frank left Ulrich Company? A. Yes, sir, whenever we had an order for something we would give the order to him.

Q. Did you give any orders to the Paterson Reed and Harness Company? A. We also gave orders to the Paterson Reed & Harness Company, we have given orders to other firms, wedid not only do business with one firm.

Q. Didn't you give orders to the Paterson Reed and Harness Co., for the things you used to buy from Ulrich Co. after Frank left? A. When we gave orders out we always split the orders.

Q. Did you give Ulrich & Co., any orders after Frank left? A. I think we did.

Q. Do you know? A. I did not give all the orders.

Q. Did you give any orders to Ulrich Co. after you learned that Frank had left his father? A. I cannot remember, I cannot tell, it is a year and a half since I have retired, I was there only a short time when Mr. Burchill was there.

Q. On these occasions that you visited the Ulrich Co., what was the purpose of your visit, business?

A. I used to come in to see the old man about the orders.

Q. Your purpose in going to the Ulrich Co. on these occasions was in reference to work they were getting out for you? A. Yes, sir.

HENRY SMITH, sworn as a witness for the caveators and testifies as follows:

Direct Examination by Mr. Merrey.

Q. Did you know Franz Ulrich? A. I did.

Q. How long had you known him? A. Since, oh, I should say, 1896.

Q. Did you do business for him? A. Some business.

Q. What did you do for him? A. Collected claims, making proofs and things like that.

Q. Did you do any other business for him as a lawyer? A. I cannot recall whether I did or not.

Q. Did you prepare any bills of sale for him? A. Yes, sir, later I did, in the last few years.

Q. What bill of sale was that? A. The bill of sale for the Allentown Mill.

Q. Who was that from? A. From the Estate of Albert Ulrich and from Frank Ulrich.

Q. Was that one bill of sale, or two? A. Two bills of sale.

Q. From Frank Ulrich the son? A. Yes, sir, and the Estate of Albert to the father.

Q. Were you ever called in by Mr. Ulrich to consult about disposing of his property? A. I was

there and he also called at my office in regard to some matter a number of years back.

Q. Did you talk that over with him? A. I did at different times.

Q. Did he tell you what he wanted done with his property? A. Yes, sir.

Q. What did he say he wanted done? A. On the first occasion?

Q. Yes. A. On the very first occasion he spoke to me in regards to his property, he wanted to give the business to his son, Frank, he said he had made other provisions for his daughters.

Q. That was when, do you remember? A. Really, I cannot; I am uncertain, it might have been ten years ago and it might have been five years ago.

Q. Did you have a later conversation with him? A. Yes, sir.

Q. Can you fix the time? A. Not definitely.

Q. Can you fix it with reference to any event, such as his death? A. The last I recall talking to Mr. Ulrich at all was, I am almost positive, some months, maybe a year, after the death of his son, Albert. I think a telephone call came to my office asking me to call at the office, I got the information in some way that it was in regard to a will.

Q. Did you go down there? A. I did, immediately upon getting the message.

Q. Did you see Mr. Ulrich ? A. I did, he was in his private office at the time I went in.

Q. You saw him there? A. Yes, sir.

Q. Did you talk about the matter with him? A. Yes, sir.

Q. What did he want to do? A. It was very hard for me to ascertain any facts, in fact I didn't

ascertain what he wanted, after wasting considerable time getting down to business. I had great difficulty in getting him to tell me himself just what he wanted.

Q. Did you have that kind of difficulty before in your dealings? A. Nothing of that kind, he was never an easy man to deal with but he never was as difficult to deal with as on that occasion, it was very noticeable, he was very positive, he had his own mind made up as to how he wanted to do it without taking advice from anyone, I recall he said he wanted to give a bill of sale to Frank for the business and upon inquiring I think I understood him to mean that he wanted to retain possession of the bill of sale to put it in his own safe and keep it there so in case he should die the business would become the property of the son. I told him that that was not the way to dispose of property at death, that it should be and must be by a last will and testament. It was very difficult for me to satisfy myself that he understood me but he finally got up and walked out and I waited for him for some time when I finally left without seeing him again. I don't think I saw him again to talk business to but I have seen him passing on the street.

Q. You say you saw him on the street after that? A. I saw him on the street or at the door of his mill.

Q. Did you pass the time of day with him? A. I don't recall that I have.

Q. Did you get close enough to observe his condition and so on? A. He always looked to me as if he was going down very fast, I did not see him much.

Mr. Harding—I was about to produce this bill of sale and counsel says they have it but it is not here to-day, it is admitted however that that is the bill of sale referred to here.

Cross Examination by Mr. McCran.

Q. I understood that you drew a bill of sale from Mr. Ulrich to the father? A. Yes, sir.

Q. On the Allentown matter and then a bill of sale from the son to the father. A. As I recall it, there were two different bills of sale.

Q. On this occasion you refer to, you said you got the information some way about a will? A. I am not positive how I got it.

Q. Did you get it from Frank, the son? A. I think that possibly the message came from the bookkeeper.

Q. When you talked the matter over with the father that he wanted to talk abou for which you went there, he didn't want to relinquish his control of he property during his life? A. No, that is what I gathered.

Q. And the result of that was that he walked out and there was nothing done? A. Nothing.

Q. Do you know who called you to come to the mill? A. I think it was the father who gave the directions for me to come there.

Q. You don't know? A. No, I have no way of knowing.

Q. Did you have any talk with Frank on the subject before you went there? A. Not at that time.

Q. Did you have a talk with Frank on the subject after you went there about what the father wanted you to do? A. Possibly I did.

Q. Are you Frank's counsel? A. Not that I know of, he has never consulted me about anything, not that I can recall.

Re-Direct Examination by Mr. Merrey.

Q. How long have you been admitted to the bar? A. February, 1896. Mr. Ulrich I might add made it very clear to me that he wanted this business to go to the son Frank but he had his own way of doing that and when I tried to advise him that it was not the proper way he did not do it.

Mr. Merrey—We had a witness from Connecticut who was here the last time the matter was on but not being able to call him he promised us to come down here when this case was on. We have sent for him to be here yesterday but we did get a reply that business matters were of such a nature that it was absolutely impossible for him to come here. We would like to call him later; we would like to reserve that right to call this witness.

The Court—The court has no objection.

Mr. McCran—I have no objections.

(Caveators rest)

FRANK QUINN, sworn as a witness for the proponents and testifies as follows:

Direct Examination by Mr. Pomfret.

Q. Where do you live? A. 40 Haledon Avenue.
Q. Paterson? A. Yes, sir.

Q. How old are you? A. Thirty-two.
Q. Where are you employed now? A. The Ulrich Company.
Q. What department? A. The quill shop.
Q. What is your position in the quill shop? A. Foreman.
Q. How long have you worked for the Company? A. Fifteen years.
Q. You knew Mr. Franz Ulrich in his lifetime? A. I have been in his employ.
Q. Do you remember about when he died? A. Yes, sir.
Q. Did you come in close contact with Mr. Franz Ulrich? A. Every day.
Q. Just tell us generally, Mr. Quinn, what his habits were when he came into the mill regarding business and paying attention to business that you observed? A. He used to come in early in the morning and look over the help and if he had any faults to find he would come to me and tell me. He always could pick out the good work from the bad work and he always looked over the stock that we had on hand and always knew when we needed new stuff and that was that way every day, every morning, every afternoon, and I used to think he was a little cranky about telling me what I had to do and that went on that way until two or three weeks before his death.
Q. Can you give us any special instance of these occurrences that you have just mentioned going through the shop and finding fault? A. He used to do it often, it happened every day, he would find a little fault with different things, of course he was old and I overloked a lot of things.

Q. How long did these things go on, that is, I mean, how long did these actions of Mr. Ulrich's continue? A. Always happened the same since I have been there.

Q. How long before he died, did he leave the mill? A. Two and a half weeks or three weeks.

Q. From the observations you made, Mr. Quinn, can you say whether or not Mr. Ulrich was careful and attentive to the work carried on in the shop? A. He was very careful of all the work.

Q. Up to the time that he quit? A. Yes, sir.

Q. During all the time you were there, Mr. Quinn, did you notice any particular change in the mental condition up to the time he left the shop? A. No, sir.

Q. Did he seem to you to have a knowledge of his affairs of the business and of what he was doing around the mill? A. Yes, sir.

Q. Up to and during the last year was there any change in that condition from what his previous condition had been? A. I never noticed any difference.

Q. Up to the end did he make the same examination of the work and the same criticism? A. Yes, sir.

Q. And the same tours through the shop? A. Yes, sir.

Q. And did he make the same complaints if there was a waste of materials or any bad work? A. Yes, sir.

Q. I am referring now, right up to the end before he left? A. Yes, sir.

Cross Examination by Mr. Merrey.

Q. Where are you working now? A. The Ulrich Company.

Q. For Mr. Burchill? A. Yes, sir.

RHINEHARD GIGER, sworn as a witness for the proponent and testified as follows:

Direct Examination by Mr. Pomfret.

Q. Where do you lve? A. 108 Sheridan Avenue.

Q. How old are you? A. Seventy-two.

Q. Where do you work? A. I work for the Ulrich Company.

Q. How long have you worked there? A. Five years.

Q. You knew Mr. Franz Ulrich? A. Yes, sir.

Q. How long had you known him before he died? A. I knew him for forty-two years.

Q. Did you see Mr. Ulrich frequently while he was at the shop just before he died? A. I saw him nearly every morning, he was talking to me nearly every day.

Q. What did he used to do generally when he came into the shop? A. He went to the shuttle-maker and looked over the work and then after he went to the quill shop and looked the quill work over and once he says to me "Look here, look at all that wood, that broken wood." He always had his eye on the wood-pile to see that you made the wood go as far as it would.

Q. How many times a day did he go through the shop? A. I seen him every day eight or ten times,

he looked at the work and the men and then he went out again.

Q. Did he come to work early or late? A. He came to work early. I was in the shop every morning early and he beat me sometimes.

Q. How long before he died did Mr. Ulrich leave the mill? A. I guess about a week and a half, I seen him come in and look at first one man and then the other to see that they were working.

Q. Did he do that towards the end? Up to about a week and a half before he left? A. That was the last time I seen him, about a week and a half in the morning.

Q. Was there any difference in the way he acted then and the way he used to act? A. He was just the same when he was talking to me like he did always, and I knew him forty-two years.

Q. There was no change in him mentally towards the end? A. I couldn't make out any change in him.

Q. You couldn't make out any change? A. No, he was always the same.

Q. What kind of a man was Mr. Ulrich, a positive man? A. He was always a little hot tempered, cranky a little bit, but I got along with him all the time.

Q. Did he have his own way. Could you tell him what to do? A. He wanted his own way in everything, everything he did he had his own way.

Q. He had his own way in everything? A. Yes, sir.

Cross Examination by Mr. Merrey.

Q. Where are you working now, Mr. Giger? A. For the Ulrich Company.

Q. Who is your boss there? A. Frank Quinn.

Q. Who is the head boss? A. Burchill, Mr. Burchill.

OSCAR EGG, sworn as a witness for the proponent and testifies as follows:

Direct Examination by Mr. McCran.

Q. Where do you live? A. 415 Graham Avenue, Paterson, N. J.

Q. How old are you? A. Fifty-eight.

Q. Did you know Mr. Franz Ulrich in his lifetime? A. For about thirty years.

Q. Did you know him very well? A. I did.

Q. Were you intimate with him? A. I was.

Q. What kind of a man was Mr. Ulrich? A. In what respect?

Q. In reference to whether he was positive or negative, a strong man or a weak man? A. A strong-minded man, a positive man.

Q. Did you visit his home? A. I did.

Q. Many times? A. Well, five or six times a year.

Q. How long did that continue? A. For quite a number of years.

Q. With reference to the year he died did it continue during that year? A. I think I was there the last time about the May before he died.

Q. When were you there before that? A. Af-

ter New Year's or about New Year's.

Q. I believe you played cards with him after New Year's? A. I did.

Q. Who was it, on the occasion of your last visits that played cards with you, that played at the house? A. It was Mrs. Ulrich, Mr. Ulrich, my wife and myself.

Q. What game did you play? A. Pinochle.

Q. Did Mr. Ulrich understand the game when you played it? A. He did.

Q. Did he understand it well or otherwise? A. He played as my partner.

Q. Did he play a good game? A. He was a good anchor.

Q. On this last occasion how did he play, what kind of a game of pinochle did he play the last time? A. Just the same as he always played.

Q. How was his memory in playing cards? A. Very good, he knew every card.

Q. Did he know the cards that had been played? A. He did.

Q. And the cards not yet played? A. He did.

Q. Did he show that in the game that he played with you? A. He did.

Q. Did he count his own cards? A. He did.

Q. Correctly or otherwise? A. Correctly.

Q. Was there, Mr. Egg, on that occasion, any indication to you compared with the other times you had played cards with him whether or not he was mentally in the same condition or changed? A. He was the same man all the time as far as his mental condition is concerned, he was weak physically but as far as his mind is concerned, he was clear.

Q. How long did you play cards with him on that

last occasion? A. Probably an hour or two hours maybe.

Q. When did you see him after that? A. I met him on the street in February one time, 1921, right after the big snow storm.

Q. After what snow storm? A. It must have been February, about.

Q. Did you say February 1921? A. Yes, sir, February 1921.

Q. In 1921? A. Yes, sir.

Q. Where was it you saw him? A. On the street.

Q. Where? A. The corner of Eighteenth Street and Park Avenue.

Q. Did you have any conversation with him? A. I did.

Q. What was his condition then, his mental condition at that time? A. Just the same as he always was.

Q. Was he alone or with somebody? A. He was alone.

Q. What was the nature of your conversation with him? A. We spoke about business, about business conditions.

Q. You spoke about business conditions, you say? A. Yes, sir.

Q. What did he say to you about business conditions? A. That I cannot recall.

Q. Was there anything about the conversation, Mr. Egg, that indicated he didn't understand what he was talking about? A. No, sir.

Q. Did you have any conversation with him or first how long did that conversation last? A. Fifteen minutes.

Q. What other subject, if any, did you discuss on that occasion with him? A. Well, he complained to me.

Q. About what? A. About his son, Frank.

Q. What did he tell you about his son, Frank? A. He says he is trying to get everything away from him.

Q. Did you have any conversation with the father in reference to any quarrel they had had? A. He told me he had some trouble with him at the office.

Q. What did he tell you the trouble was? A. He said that he pushed him, like this, he went like this.

Q. Did he tell you what happened after he pushed him? A. He fell down.

Q. How did he speak in reference to Frank when he told you he had pushed him and he fell down? A. He felt very bad about it, he was very much hurt.

Q. Did you have any conversation with Mr. Ulrich in reference to Frank having gone in business?

Mr. Harding—I think that is very leading, Your Honor.

The Court—I will admit it is a little leading but I will admit it.

Q. Did you or not? A. I think we were talking about that as far as I can remember.

Q. What did he tell you about it? A. That he was going to go in business for himself.

Q. Was the father pleased? A. No, very much hurt about it.

Q. What did he say, tell us, Mr. Egg? A. Nothing in particular but he was mad about it, there was nothing special said about it.

Q. When did you see the father after that? A. It was in the early spring, it must have been April or May, he was sitting out on the back stoop and I sat down with him and we talked business and then he kind of collapsed and we took him into his bedroom and laid him on the bed and afterwards he revived again and was very much excited and I left him there he was in bed yet. The next morning I telephoned to Mrs. Burchill, I wanted to know how he was and I learned he was down in the shop.

Q. Did you have any conversation with the father in reference to the bonus? A. He told me—

Q. Who told you? A. Mr. Ulrich told me he gave each of his sons Five Thousand Dollars bonus the year before but the following year the business didn't justify it and he couldn't do it any more and that is when the trouble commenced between him and the young Mr. Ulrich because Frank Ulrich wanted the bonus.

Q. That is when the trouble commenced? A. Yes, sir.

Q. Where was that conversation? A. That was that time on the street I guess if I remember right.

Q. Did you have any conversation with Mr. Ulrich concerning Mr. Burchill? A. He told me that Frank Ulrich wanted him to put Mr. Burchill out of the business.

Q. He told you Frank Ulrich wanted him to put Mr. Burchill out of the business? A. And he said he needed Mr. Burchill.

Q. What else did he say if anything? A. He said, "I am old, I am feeble, I have got to have somebody now that I am all alone"

Q. Did he ever speak about Frank's conduct towards him? A. He said he was trying to get everything away from him and he complained about that.

Q. Can you tell me with reference to February 1921, when it was the father told you that Frank wanted him to put Burchill out? A. I think that was on the occasion I met him on the street that time.

Q. In February 1921? A. It must have been around that time, it seems to me that was the reason Frank left the shop, it was a question of either Frank or Mr. Burchill, he said Frank wanted him to put Mr. Burchill out or else he was going out himself, that is the way I understood it.

Q. You understood that from the father? A. Yes, sir.

Q. Did he ever speak of what he had done for his children? A. What Mr. Franz Ulrich had done for his children?

Q. Yes. A. Well, he gave each of them a house.

Q. Did he ever speak to you about it? A. Yes, sir.

Q. What did he tell you he had done? A. He said he had given a house to Albert and Frank and a house to each of the girls.

Q. Did he speak of what he had done for Frank? A. He gave him his house and he told me he gave him stock in the Franklin Trust Company and the United States Trust Company.

Q. Did he speak of whether Frank was grateful or not? A. Well, he didn't mention that.

Q. The last time he spoke to you about Frank, what was his demeanor? A. I think that was the last time in February and he was mad that Frank

was going to go in business for himself, that is my impression, he said he couldn't stand that.

Q. Did he ever tell you, what, if anything, Burchill had done for him? A. He said that Burchill helped him in the shop and in the house.

Q. What did he tell you Burchill had done for him, if anything? A. In what way?

Q. What did the father say about it? A. That he helped him in the house and he helped him in the shop.

Q. Did he ever contrast the treatment of his son, Frank, and the treatment he received from Burchill? A. No, he never made any comparison so far as I remember.

Q. Up to the last time you saw Mr. Ulrich and during each occasion that you saw him, was there, on any occasion, any indications of any change in the mental condition of Mr. Ulrich up to shortly before he died? A. No, sir.

Q. Did he talk as intelligently as he had years past? A. Yes, sir.

Q. Was he a man that had ideas about things? A. He had very, very positive ideas.

Q. In what way, give us an illustration? A. Well, politics for instance, he was a Democrat but he was down on the Wilson administration.

Q. Was he a man that could express himself? A. If he could not in English he could in Swiss-German.

Q. Was he a man that gave reasons for his opinions? A. He did.

Q. How long did that continue? A. The whole time, I could not see any change.

Q. Was he a vigorous man in talking or a quiet man in talking? A. He got excited, if there was something he objected to very strongly he got excited about it.

Q. Was he a man, from your association and observation, a man that could be easily influenced? A. I don't think so, he had his own mind and what he wanted to do he did.

Q. How long did that continue? A. The whole time.

Q. Up to the last time you saw him? A. Yes, sir.

Q. When was the last time you saw Mr. Ulrich? A. Two days before he died.

Q. He was in bed then? A. Yes, sir, he could not speak any more.

Q. At that time he was a very sick man, wasn't he? A. Yes, sir.

Cross Examination by Mr. Harding.

Q. On the first particular occasion that you referred to, when you visited Mr. Ulrich as I recall it, was when you played cards with him, you didn't fix that date, tell me, as near as you can, when that was? A. The last time?

Q. When you played cards with him, this time you referred to in answer to Mr. McCran's question, when was the first time you referred to? A. There was only one time.

Q. You played pinochle once with him? A. Many times with him.

Q. You spoke of one occasion to Mr. McCran of playing pinochle with him? A. Yes, sir.

Q. And you spoke of the parties present, you said Mrs. Ulrich? A. Yes, sir.

Q. Was that the old lady? A. Yes, sir.

Q. Who else played? A. My wife.

Q. Your wife, yourself and Mr. and Mrs. Ulrich? A. Yes, sir.

Q. Tell me as near as you can when it was? A. After New Year's of 1921.

Q. Was it about New Year's Day? A. After New Year's.

Q. How long after New Year's? A. Maybe two weeks as far as I can recollect.

Q. When was the next occasion you spoke of meeting him after that? A. When I met him on the street in February after the snow storm, I don't remember when the snow storm was, I only know it was after the snow storm.

Q. In February 1921? A. Yes, sir.

Q. How long after this time that you played pinochle with him did you meet him? A. Three weeks or four weeks.

Q. What street did you meet him on? A. Eighteenth Street, the corner of Park Avenue.

Q. When you went to play pinochle now did you happen to go there? A. We went there often for years.

Q. How did you happen to go on this particular occasion? Were you invited there? A. I went to see him every New Year's morning for years and I went over this New Year's morning and then we made an appointment.

Q. Did you go there at his invitation or of your own accord? A. We made an appointment.

Q. With whom did you make the appointment? A. Between Mrs. Ulrich and my wife.

Q. How did they make the appointment, what manner did they make it? A. My wife went to see Mrs. Ulrich.

Q. Purposely to ask if you could come and play cards that evening? A. We were invited to come there.

Q. Who invited you? A. The old gentleman and lady.

Q. Did you hear them invite you? A. Yes, sir.

Q. Where were you when they invited you? A. In their house.

Q. Before New Year's? A. On New Year's.

Q. You were there on New Year's? A. Yes, and it was arranged later on.

Q. Did you hear Mrs. Ulrich's testimony here this morning? A. Yes, sir.

Q. You heard her say she didn't play pinochle with you? A. She didn't.

Q. What do you mean? A. She didn't say she never played pinochle with me.

Q. Well, who asked you? A. As far as I remember it was after New Year's that we played cards, we always did that, we went there every New Year's.

Q. How long were you there on that occasion? A. I think we went about seven o'clock and stayed there until probably half past nine or ten.

Q. Did you have anything to eat there? A. As far as I remember, yes.

Q. Did you eat or didn't you eat? A. I think we did.

Q. Before or after you began to play cards? A. I think after we played cards.

Q. You had refreshments? A. Yes, sir.

Q. Who prepared them? A. The women.

Q. Do you mean by that Mrs. Ulrich? A. Yes, and my wife together.

Q. Was Mrs. Burchill there any time that evening? A. No.

Q. Was Mrs. Handwerk there? A. No.

Q. Was Burchill there? A. No, not as far as I remember.

Q. You stayed there how long? A. Until half past nine or ten o'clock.

Q. Did you talk about anything special any more than playing cards? A. Nothing special that I can remember.

Q. He didn't say anything to you about Frank on that occasion? A. Not as far as I remember.

Q. Then he wasn't finding fault with Frank? A. He always did.

Q. On that occasion? A. I cannot recall it.

Q. Then he didn't always do it? A. As a rule he did.

Q. On that occasion he didn't do it? A. I cannot recall it.

Q. Did you know whether Frank was away at that time, away from the old man's business, on New Year's of 1921? A. That I don't know, I don't know when he left.

Q. He didn't say a word to you then about Frank's leaving. You don't recall that he said a word? A. I don't recall.

Q. He didn't tell you there was any trouble with Frank then on this occasion. You don't recall? A. I don't recall on that occasion, no.

Q. When did you next see Mr. Ulrich after that time on the street, after there was a snow storm? A. Yes, sir, that is the time.

Q. How do you recall there was a snowstorm? A. Because he told me a few days before that there was a snow strm and he went to the store and on crossing Eighteenth Street in the middle of the street he fell down and was nearly run over by an automobile and a woman came and picked him up.

Q. You saw him on the street that time? A. Yes, sir.

Q. What street? A. The corner of Park Avenue and Eighteenth Street.

Q. What time of day was it? A. Half past five.

Q. Night or morning? A. Evening.

Q. What was the first thing you said to him? A. I went across the street and said "How do you do" and he said "How do you do."

Q. What was he doing? A. Waiting on the corner of Eighteenth Street and Park Avenue for someone to help him across the street.

Q. What did you do? A. I saw him over there and I went and helped him across the street.

Q. Well, what happened after that? A. I asked him how everything was.

Q. How his private affairs were going on? A. No, his business.

Q. His business? A. Yes, sir.

Q. That is what you meant by things? A. Yes, sir.

Q. What did he say to you? A. I don't remember that either, I don't know whether business was bad or whether it was good.

Q. That you think was in February? A. Yes, sir.

Q. What part of February? A. After a snow storm.

Q. The early part or the latter part, do you remember, Washington's Birthday that is the 22nd, is it not? A. I cannot commit myself to that, if the snow-storm was in February it was after that.

The Court—I understood the witness to say, "if the snow storm was in February."

Q. Was the snow-storm in February? A. I don't know.

Q. Why do you say this occasion you spoke of meeting Mr. Ulrich was in February? A. Because I think the snow-storm was in February.

Q. It was sometime after the snow-storm that you spoke to Mr. Ulrich? A. Yes, it was after, there was no snow on the street.

Q. Then it must have been some days after? A. Probably a week or two.

Q. You simply asked him about business and you don't know what he said? A. No.

Q. When next did you see him to talk with him. That is all that took place on Eighteenth Street and Park Avenue. You asked him how business was, that is all that took place then? A. No, that is not all that took place.

Q. Did anything more take place? A. Yes, sir, a lot more did.

Q. Let us see, what did he tell you? Did it take this length of time, fifteen minutes to tell what he told you? A. That is the time he told me that Frank treated him very bad and that he wanted to get everything away from him and he was very much

excited and mad because Frank went in business for himself, he didn't like that at all.

Q. He said Frank had gone in business for himself? A. Either going or gone.

Q. I want you to tell what he did say? A. I don't know whether he said going or not.

Q. If you can recall any part of it why can't you recall that part? A. Those small points I cannot recall.

Q. Did he say Frank had left him? A. Yes, sir, at that time he told me that there was some trouble at the mill, "he wanted me to put Burchill out of the mill" he said, or he would go himself.

Q. He said this to you in reply to your asking him how business was? A. And in the course of the conversation.

Q. Where did he tell you all this, right on the street? A. Yes, sir.

Q. How long did it take to tell you all this? A. Fifteen minutes.

Q. What happened then? A. I took him, took him up to the steps and to the door.

Q. What did you stand there fifteen minutes for? A. He was rather feeble and I wanted to help him.

Q. Why did you stand in the street? A. Well, we talked when we met in the street.

Q. You stood there on the corner discussing this? A. We walked from the corner up to his house, sometimes we talked a little while and then we would walk a little while.

Q. You mean to say you just strolled on the corner there for fifteen minutes? A. He was on the corner, on the southwest corner of Park Avenue and Eighteenth Street, and I came over Eighteenth Street and saw him across the street.

Q. Did you stand out there in the street with him conversing fifteen minutes and hear all this story? A. Yes, sir.

Q. What were you standing there for? A. We were standing there talking.

Q. After you got through talking you walked home with him? A. I walked home, it was right near his house, he lived right near there.

Q. How long did it take you to walk down to his house? A. Oh, it is about fifty feet from the corner.

Q. You cannot give me any reason why you stood there talking on the corner of this street? A. Yes, sir, I met him there and I talked to him.

Q. That was all he was standing there for, talking with you? A. I happened to meet him there and I always talked to him when I met him on the street.

Q. Did he tell you there had been a row between him and Frank? A. He did.

Q. What was it? A. He said he knocked him like this. (Witness indicates by putting his hand on his chest.)

Q. You said on your direct examination that Mr. Ulrich said to you his son Frank pushed him like this and then he fell down? A. Yes, sir.

Q. Now you say, he pushed him, and knocked him down? A. There is no difference between the two.

Q. You think a push and a knock is the same thing? A. Yes, sir.

Q. You think if Mr. Dempsey came up and knocked you in the face it would be just the same

as if I went up and pushed you in the face? A. That is carrying it too far, that is going too far with it.

Q. Is that your conception between a push and a knock? A. Everybody knows that.

Q. You went home with the old gentleman? A. I took him home, yes, he was feeble and I took him across the street and helped im up the stoop.

Q. He was feeble? A. Yes, sir.

Q. That is the first time he told you of any trouble between him and Frank? A. Yes, sir.

Q. But you say that you do remember that he told you about having been pushed or knocked on that occurrence? A. Yes, sir.

Q. Did he say anything about whether he wanted Frank to come back with him? A. I don't remember that he said anything about that, I don't remember that.

Q. Did he tell you whether or not Frank pushed him or hit him, that he had discharged Frank or did he tell you that Frank was not there any more or what? A. What do you mean?

Q. Did he tell you he had discharged Frank? A. He did not.

Q. Not a word? A. No.

Q. Did he tell you why Frank pushed him or hit him? A. Not as far as I remember.

Q. Did he say to you that Frank had refused to take orders for the business? A. That Frank had refused to take orders for the business?

Q. Yes. A. No, sir.

Q. Did he say that Frank had refused to take an order from the Bethlehem Silk Co.? A. Not as far as I remember.

Q. He never said anything to you about that? A. No, sir.

Q. Did he say anything about the Miesch order being refused by Frank? A. No.

Q. He said nothing to you about it. Did he say anything to you about there having been trouble because Mr. Burchill told him Frank's son had used gasoline and charged the father with it? A. I don't think there was any such conversation, I heard all these things through other parties.

Q. I am asking you what you heard through the old man? A. Not as far as I know.

Q. When he spoke about Frank pushing him did he give you the causes that lead up to Frank's pushing him on that occasion, did he state what the causes were? A. No.

Q. Not a word, he didn't tell you Frank was going to send a pencil up to be fixed and that Frank had asked his son to wait before he sent the packages to the Post Office and to send this pencil with it and that Burchill had directed the boy to go off with the mail without mailing the pencil? A. That is the first time I heard the story.

Q. In all your talk with the old gentleman he never told you about any of these things at all? A. Not about this pencil business, he never told me that.

Q. Did he ever tell you at any time anything about the gasoline or the refusal of Frank to take an order? A. Not as far as I remember.

Q. You never heard the old man speak of that at all in all of his complaints? A. No.

Q. He never, then, gave the real reasons from his standpoint as to why Frank left. The old gen-

tleman never gave them to you? A. The reason was that he couldn't get along with Mr. Burchill and he wanted him to put Mr. Burchill out.

Q. He didn't tell you why he couldn't get along with Mr. Burchill? A. No, I didn't ask any questions and we didn't go into details.

Q. You were quite interested in this conversation while you stood there on the street and heard it all for fifteen minutes. Why didn't you ask him more specifically? A. There was nobody there to hear it.

Q. Nobody but you, why didn't you ask about it? A. If there is any trouble I take it the way it is given to me and ask no questions.

Q. I suppose it was an annoyance to you that you had to stand there and listen to his story? A. I wanted to hear it but I didn't want to hear any more than he wanted to tell me.

Q. You did hear that? A. Yes, sir.

Q. Didn't that strike you peculiar or doesn't it strike you peculiar now, that he should go over his story and not tell you the particulars of what caused the trouble? A. He talked to me in a general way.

Q. Don't it strike you peculiar that he did not specify and tell you in more particulars the whole trouble between Frank and Burchill? A. I don't know why he should. I always let him talk, I never asked any questions, I didn't want to know any more than he told me.

Q. Did you show to him any disinclination to hear his story? A. I treated him like a gentleman, I wouldn't walk away from him.

Q. Did he ever say anything to you about his

grandson, Melvin, Frank's son, on any of these occasions? A. He mentioned him but I cannot recall in particular about it.

Q. Did you hear about this time that Frank had left the mill apart from what you heard from Mr. Ulrich? A. I did.

Q. You heard he had left? A. Yes, sir.

Q. Did you hear he left way back in October or November, 1920? A. That was the second time he left.

Q. Did you hear about the first time he left? A. He left twice.

Q. You heard of it when he left each time, did you, at the time he left? A. Yes, sir, about the time.

Q. That was several months before this pinochle game you had with Mr. Ulrich that Frank first left? A. We had games right along.

Q. The pinochle game you referred to after New Year's time? A. Yes, sir.

Q. That pinochle game occurred several months after he left the first time? A. Yes, quite some time.

Q. Frank was away from the mill when you had this game on the first of January? A. I think so.

Q. Did you know Frank had gone back? A. Had gone back where?

Q. Gone back to work after he left shortly after the first of the year? A. That is the first time I heard it.

Q. Didn't you know there was a reconciliation and Frank had gone back and stayed until early February? A. After he left the second time?

Q. No, the first. A. Oh, yes.

Q. You knew about that at the time? A. I knew he went back again, yes.

Q. Did you hear that the trouble about his going away was on account of Mr. Burchill charging Frank and his son with using gasoline? A. I cannot recollect that.

Q. You heard there was some trouble? A. I heard there was trouble but what the cause of it was I don't know.

Q. When the old gentleman was talking to you as you say in February some time, all this time on the corner of Park Avenue and Eighteenth Street, you knew all these things about Frank. By the way, why didn't you ask him what the real cause of the trouble was? A. I don't want to know anybody's troubles but if somebody wants to tell me I will listen. I don't want to know other people's troubles. I've got troubles of my own.

Q. You tried your best to keep out of it? A. Absolutely.

Q. Have you talked at all about these things you knew? A. Only to my wife.

Q. That is to say, you have not discussed with any one but your wife what Mr. Ulrich told you? A. I don't think so.

Q. She is the only one you spoke to about it? That is literally so, is it? A. Yes, sir.

Q. When did you talk with her about it? A. That is hard to tell.

Q. When did you talk it over with her last? A. I cannot tell you that correctly for I cannot recollect that.

Q. Did you take any sides in it one way or the other? A. One side is just the same as the other to me.

Q. You got through with this incident in February, now when was the next time you had a talk with Mr. Ulrich? A. As far as I can recollect it was when I went to see him one evening and found him—

Q. Can you fix the date? A. April or May, it was warm already and he was sitting on the back stoop.

Q. Did you go to call—on him? A. We did.

Q. Who was we? A. My wife and I, we went there as we always did with the intention of playing cards, but that time he took sick.

Q. He was sick when you were there on that occasion? A. He was not sick when I went there.

Q. He was taken sick after you got there? A. Yes, sir.

Q. What was the nature of the sickness? A. He was sitting in the chair and his head went down on his chest and he went like that.

Q. That was about April? A. April or May.

Q. Did you talk to him? A. I had quite a conversation with him.

Q. How long did you talk to him? A. About a half an hour.

Q. What did you talk about? A. General conditions and politics.

Q. Did you talk anything about his family affairs? A. No, not a word.

Q. Was Mrs. Ulrich present? A. No, she was in the parlor with my wife.

Q. You and he were in there talking on general topics? A. Yes, sir.

Q. And he suddenly collapsed? A. First it

looked just as if he went to sleep and then I watched him and I saw he was sick.

Q. Was he unconscious? A. He was for a time.

Q. For how long? A. Five or ten minutes.

Q. Were you there when he regained consciousness? A. Yes, he got excited then he thought he was going to die.

Q. What did he say? A. He said I give Two Thousand Dollars to this and two thousand dollars to that, and so on.

Q. That was not sensible talk? A. It was not.

Q. It didn't seem to be sensible? A. He was afraid he was going to die, that was my impression.

Q. I want to get as near as I can how that occurred, as soon as he became conscious he immediately spoke out this way? A. No, not immediately, after a while.

Q. How soon? A. Two or three minutes, maybe more.

Q. And he said what? A. As far as I remember, he said "I give two thousand dollars to Rose, I give two thousand dollars to Mr. Burchill and I gave him some Liberty Bonds. That is as far as I can recall it.

Q. Are you telling us exactly all he said on that occasion? A. That is what I remember particularly.

Q. How did he say he gave it by will or how? A. He didn't say anything about that.

Q. Did he seem to be perfectly conscious when he said this to you? A. Yes, sir.

Q. It strikes me as being extraordinary for a man to say to talk that way and yet you consider

him sensible and conscious? A. He was absolutely conscious.

Q. And knew what he was talking about? A. He did absolutely.

Q. Did you ask him anything about it, how he gave it to him? A. No.

Q. What reason can you give me now that he should make that statement to you? A. He was afraid he was going to die.

Q. How did you get that? A. That was my impression.

Q. You got that impression from the statement he was making? A. Yes.

Q. Did he say he gave anything to Frank? A. No, not on that occasion.

Q. He didn't say a thing about Frank? A. No.

Q. He didn't say anything about Melvin? A. Not as far as I remember.

Q. Did he say anything about the other grandson? A. No.

Q. On this occasion, as I understand it, he never said a word about Frank in any respect? A. No, not as far as I remember.

Q. That was in— some time around when? A. April or May.

Q. I just want your opinion about it since you have been called as an expert.

Mr. McCran—This is not an expert.

Mr. Harding—Anyone who gives an opinion is an expert.

Q. Do you think that just at that time for instance, when Mr. Ulrich had regained his consciousness that he was perfectly fit to do business and make a will? A. Absolutely.

Q. So then, there was nothing in that that would affect your opinion as to his ability? A. He could make a will right afterwards.

Q. When was the next occasion you talked with him? A. I went to see him two days before he died, I might have seen him between that but I don't recall that here.

Q. What was his condition then? A. He was in bed and he was moaning, he couldn't speak any more.

Q. As far as his mind goes he was all right? A. I am sure he recognized me but he had his hand this way.

Q. You didn't say there was anything the matter with his mind then when you saw him last? A. His expression didn't signify it.

Q. You wouldn't say there was anything wrong with his mind? A. He signed a check the same day yet.

Q. How do you know that? A. Mr. Burchill told me.

Q. When did he tell you that? A. On the same occasion.

Q. How did Burchill come to tell you that he had signed checks on the day of his death. Did Mr. Burchill tell you that in the presence of the old man? A. Yes, sir.

Q. Do I understand you to say that you went to see him two days before his death and that Burchill told you he signed a check that day? A. Yes, for paying things in the mill.

Q. He was there when you went to see the old man? A. Yes, sir.

Q. Burchill was right there and he told you Mr. Ulrich had signed the check? A. He admitted me in Mr. Ulrich's bedroom.

Q. Mr. Burchill was present when you went to visit Mr. Ulrich two days before his death. When you found Mr. Ulrich lying there with his hands crossed? A. Yes, sir

Q. Mr. Burchill was the one to receive you? A. He was present.

Q. He talked to you and he took you into the bedroom? A. Yes, sir.

Q. Where was he when you first went in? A. The old gentleman was very sick and everybody was around there.

Q. Who was the first person you saw? A. Probably Mrs. Ulrich as far as I remember. Mrs. Handwerk was there too.

Q. You did see Burchill and he took you in the bedroom where the old man was lying and he recognized you and spoke to you? A. No, not speak to me.

Q. Then Burchill told you that the old man had signed checks for paying things in the mill on the same day? A. Yes, sir.

Q. How did Burchill come to tell you that? A. He wanted to tell me that he was all right.

Q. Mr. Burchill wanted to show you that he was all right, hey, I suppose in his right mind? A. Yes, sir.

Q. Did he say that to you? A. No.

Q. What did he say to you? A. That he signed the checks this morning.

Q. I want you to tell me just exactly what Mr.

Burchill did say and what led up to it? A. Well, Mr. Ulrich couldn't speak—

Q. You said that before, was Mr. Burchill near his bed when he said that Mr. Ulrich signed a check for paying the help and could Mr. Ulrich hear him say that? A. If his hearing was good he could.

Q. Mr. Burchill wanted to show you that his mind was all right? A. I don't know why he told me he was all right a few hours before that same morning.

Q. Do you say you don't know why Mr. Burchill told you? A. He was nothing special.

Q. He did tell that Mr. Ulrich was all right in his mind, that is what Mr. Burchill told you in the presence of Mr. Ulrich? A. Yes, sir.

Q. Can you think of any reason why Mr. Burchill should make that statement to you? A. No.

Q. Have you ever talked to him since about making that statement? A. No.

Q. I think you said you had not spoken to anybody about what you knew about this case? A. You mean about knocking him down in the office, yes, sir.

Q. Yes. A. I only spoke to my wife about that.

Q. You didn't speak to Mr. Burchill, Mr. Dunn, Mr. McCran or anybody else? A. I made a statement.

Q. You say you may have made a statement? A. I made a statement.

Q. What did you say in response to that question, did you say you may have made a statement about what you knew about this case, did you just

say to me you may have made a statement? A. I said I made a statement.

Q. To whom? A. To the lawyer.

Q. What lawyer? A. Mr. Pomfret.

Q. When did you make it? A. About three or four months ago.

Q. Did you go down there of your own accord and make it? A. No.

Q. Have you been subpoenaed in this case? A. No.

Q. Have you ever called on Mrs. Ulrich since Mr. Ulrich's death? A. I did.

Q. Did you ever talk with her about the trouble between Frank and Burchill? A. I did.

Q. Did you ever talk to Burchill about the trouble between himself and Frank? A. Sometimes I did.

Q. Did you ever talk with him about it before Frank went away the first time? A. No.

Q. When did you first talk to Burchill about the trouble between him and Frank? A. After it happened.

Q. Right after it happened? A. I don't know.

Q. The first trouble happened in the fall of 1920? A. I don't think I saw Burchill at that time at all.

Q. Did you talk to Burchill about the trouble that happened when the old man told you Frank had pushed him down? A. I don't remember you that.

Q. I am going to ask you once more. Tell me as near as you can when it was that the old gentleman told you that Frank had left him or was going to leave him? A. That was right after that snowstorm.

Q. Did he ever tell you that more than once? A. He told me on that occasion.

Q. Is that the only time he ever told you? A. As far as I can recollect.

Q. You were very intimate with the old man? A. I was.

Q. You talked with him about his private affairs a great deal before he had this trouble with Frank? A. I talked about business.

Q. Did you ever talk to him about his private affairs when his son Albert was alive? A. Sure.

Q. Did he tell you it was his intention to leave Al and Frank his business? A. No.

Q. He never told you that? A. No.

Q. You never heard that? A. No.

Q. Did he ever tell you he made a will? A. He talked to me about a Will.

Q. When did he talk to you about a will? A. When Albert Ulrich was sick when he met with an accident coming from Greenwood Lake and I went to see him on a Sunday morning the old gentleman was there and we walked home together and on that occasion then he spoke about making a will and he says "I guess I will have to leave more to the boys than to the girls." I says "I don't think so, in my estimation it is share and share alike, they are all your children."

Q. When was that? A. When Albert Ulrich was sick, while he was sick.

Q. His last sickness? A. No, when he had an accident coming from Greenwood Lake.

Q. How long before Albert died was that? A. Two years, I think, I don't know exactly.

Q. On any of these occasions when you met him or talked to him in the last year of his life, did Franz Ulrich, the testator, ever tell you he had made

a will? A. No, he didn't talk to me of making a will in the last year.

Q. The last two years of his life? A. The last he was talking to me—

Q. The last two years? A. It might have been the last two years.

Q. He never told you he had made a will? A. No.

Q. He never told you whether he had given anything to Burchill? A. No.

(After recess)

OSCAR EGG, recalled to the witness stand and testifies as follows:

Redirect Examination by Mr. McCran:

Q. What is your business? A. The silk business.

Q. How long have you been in the silk business? A. Forty years.

Q. With whom are you connected? A. The Empire Silk Co.

Q. In what capacity? A. Assistant to the manager.

Q. Is that a large concern? A. Yes, sir.

JACOB P. BROWN, sworn as a witness for the proponents, and testifies as follows:

Direct Examination by Mr. Pomfret.

Q. Where do you live? A. 134 Lawrence Street.

Q. How old are you? A. Forty years old.

Q. Are you employed at present? A. Yes, sir.

Q. Where are you employed? A. By the All-American Warping & Winding Company.

Q. Were you formerly in the employ of Ulrich Company? A. Yes, sir, I was.

Q. How long ago were you employed there? A. Two years this last time.

Q. When did you leave the employ of the company last? A. About a week ago.

Q. For two years before that you were in the employ of the Company? A. Yes, sir.

Q. At any time before that were you employed by the Ulrich Co.? A. About twenty-five years ago.

Q. How long were you in the employ of the company at that time? A. About two years.

Q. Altogether then, on the two occasions that you worked for the Ulrich Co., you were there four years? A. Yes, sir.

Q. In what department were you employed? A. The harness department

Q. The last time where were you? A. The harness department.

Q. And the first time where were you? A. In the block department first and then the harness department.

Q. In what part of the mill is the Harness department? A. On the third floor including the cellar or basement.

Q. Did you have occasion to come in contact with Mr. Franz Ulrich frequently while you were there? A. Yes, sir.

Q. Do you know what his habits were around the mill during the day? A. Looking after the business as far as I could see.

Q. What doing? A. Looking after the work, seeing that the work is turned out.

Q. He seen that the work was done? A. Yes, sir, not every day, sometimes a week, sometimes two weeks you would see him.

Q. How long did he continue to do that? A. As long as I worked there and he was there up to about three or four weeks before he died.

Q. Did you have any conversation about the business with him in your department? A. Yes, sir, at different times.

Q. What would be the general subject? A. Sometimes he would tell me the harness was smooth and sometimes he would tell me it was a little rough.

Q. Did you find he was right or wrong? A. Most of the time he was right, as far as I could find out.

Q. That continued how long? A. Up to three or four weeks before he died.

Q. Do you remember any particular conversation you had with Mr. Ulrich regarding some work done in your department? A. We had some ribbon harness that we had to turn out and I was not absolutely sure how it should be done or how to do it and I asked him how it should be done and he told me how it should be done and it was all right.

Q. Where did you have this talk with him? A. In the office.

Q. Did you have a sketch? A. There was one with it.

Q. What did he do? A. Took it and figured it up and showed me how it was to be done.

Q. You were puzzled about it? A. Yes, sir.

Q. How long did you say you have been in that business? A. About twenty-seven or twenty-six years.

Q. When Mr. Ulrich explained this to you, did you go ahead and work the harness? A. Sure.

Q. How did it turn out? A. All right.

Q. Did you make it according to his instructions? A. Yes, sir, just what he told me to make.

Q. About when was that? A. That is pretty hard to say, it might have been six or eight months before he died.

Q. During the time you worked for Mr. Ulrich, the time twenty-five years ago and the last two year period, did you notice any change in Mr. Ulrich's mental condition? A. Not towards the business, he got a little more cranky, that is all.

Q. Was there anything about his conduct around there to indicate there was any change in him mentally? A. Not to me.

Q. Was that true, as long as you worked there and he was there? A. As long as I have been there he was always the same.

No Cross Examination.

MARGARET ULRICH, sworn as a witness for the proponents and testifies as follows:

Direct Examination by Mr. McCran.

Q. Where do you live? A. 828 Madison Avenue.

Q. Are you the widow of the late Albert Ulrich A. Yes, sir.

Q. The son of Franz Ulrich? A. Yes, sir.

Q. When did you marry Mr. Ulrich? A. Thirty-two years ago.

Q. What children did you have? A. Five children, two girls and three boys.

Q. How many children are alive? A. Two.

Q. What are their names? A. Viola, Frank.

Q. How old is Viola? A. Twenty-four.

Q. How old is Frank? or Francis? A. Thirty.

Q. Is your daughter married? A. Yes, sir.

Q. What is her present name? A. Viola Kern.

Q. When did she get married? A. Three years ago the 19th of November.

Q. To whom is she married? A. Oscar J. Kern.

Q. Where does she live? A. Lindbrook, Long Island.

Q. Did your father-in-law give anything to your husband during his life? A. Yes sir, he gave him the house we live in.

Q. What is that house worth, Mrs. Ulrich? A. I should judge about twenty-thousand or twenty-four thousand dollars the property itself, that is what I value it at.

Q. What is the number of that property? A. 828 Madison Avenue, there is four lots there.

Q. Consisting of what kind of a house? A. A two-family house.

Q. And garage? A. Yes, sir.

Q. What improvements are there in the house? A. All improvements.

Q. How near is that house to the home of Mr. Frank Ulrich Jr.? A. Right across the street.

Q. What kind of a house is that compared with his home? A. I should judge both are around the same order.

Q. When was it that house was given to your husband? A. About thirteen years ago.

Q. What else did the father give to your husband? A. He gave him stocks and bonds

Q. Stocks in what? A. In the Second National Bank and the United States Trust Company and the Franklin Trust Co.

Q. What bonds did he give him? A. Ten shares in the Second National Bank, eight in the United States and seven in the Franklin Trust.

Q. These are the stocks he gave him? A. Yes, sir.

Q. Do you know whether or not any stocks in the Second National Bank was given to Frank? A. I always understood what was given to one was given to the other.

Q. What bonds did he give? A. I think One Thousand Dollars Liberty Bonds.

Q. Do you know whether or not the father gave the son Frank any bonds? A. That I don't know but I should judge he gave one he gave the other.

Mr. Harding—I object to that and ask that it be stricken out.

The Court—Strike it out.

Q. During your married life were you in touch with the father-in-law, Mr. Ulrich? A. Yes, sir, we generally visited there once a week.

Q. Beginning when? A. We generally used to

go on Sunday, my husband and I and spend Sunday afternoon and have dinner there.

Q. How long did that continue? A. Quite a while until the children grew up.

Q. When your children grew up, what then? A. We would generally go up-stairs and have dinner up-stairs and play cards in the evening.

Q. Up-stairs with whom? A. With Burchill and his wife.

Q. Then you visited your father-in-law and his wife every week? A. Yes, sir, every week.

Q. How long a time would you spend in the home of your father-in-law? A. I generally went to a card party in the afternoon and on the way back I would stop and have dinner up-stairs and then go down stairs and play cards until half-past seven or half-past eight in the evening.

Q. You played cards with whom? A. The father-in-law, mother-in-law, Burchill and myself.

Q. How long did the playing of cards continue? A. Until half-past eight or say from half-past seven until about half-past nine.

Q. When did you stop playing cards at the house with Mr. Ulrich? A. Three weeks before he died we did, and he could memorize the cards as good as you could, as good as I did, in fact he memorized the cards just as good if not better than I could.

Q. Up to what time? A. Three weeks before his death.

Q. These card games I understood lasted how long? A. In 1921 after my husband died I made a practice of going over there every Thursday afternoon after my card-party and I would go up-stairs and have dinner and go down-stairs.

Q. How long did you play cards on these occasions? A. Sometimes when he would sit down he would say, "only one game" and before we got finished we would play two games.

Q. How long would the game take? A. From half-past seven to half-past nine, sometimes a quarter after nine he would stop.

Q. Do I understand in 1921 this continued, that is the year Mr. Ulrich died? A. My husband?

Q. No, the father? A. The father, yes, sir.

Q. You played cards with him weekly until three weeks before he died? A. Every Thursday night.

Q. What game would you play? A. Pinochle.

Q. When you say he could memorize if not better than you could, what do you mean? A. I always played with the old lady and Mr. Burchill played with the father-in-law and if I played the cards and drew his ten out he would say "Now listen here, Maggie, you must have looked in my hand to take my ten away from me like that." Then in counting cards he would know what cards to play all right and after the cards would be all finished and we would have to count our score he could count as well as I could.

Q. Would he count correctly? A. Yes, sir.

Q. What kind of a man was Mr. Ulrich with reference to temperament, was he a positive or a negative or a strong or weak man? A. He was a very strong and strong-willed man, whatever he said you would have to do.

Q. Was he a man easily influenced? A. No, he would have his own way whatever he said he would do it, he wouldn't let anybody influence him in any way.

Q. During these card games extending up to three weeks before he died in which Mr. Burchill took part did Mr. Burchill attempt to influence or control him in any way? A. I never heard anything only conversation about cards while in their presence.

Q. Was he a man of judgment or not? A. He certainly did have good judgment.

Q. Can you give us an illustration of that? A. He was a man that when he said he wanted a thing done he would see that it was done.

Q. Would he see that it was done? A. He certainly would, he would see that it was done.

Q. Did you have any transactions with him? A. I had an offer given to me for my house and I went over to see him, I thought it was no more than justice to ask him and consult him about selling the property.

Q. When was that? A. 1921.

Q. Last year? A. Yes, sir.

Q. What time last year? A. Exactly I could not say, a party came to me and made me an offer and I thought I will go over and consult my father-in-law and see what he has to say about it, and he advised me not to sell the property just then, he said, that he had some lumber up there in the garage and he would have to move it away from the garage to another place and if I sold my property he had no place to put the lumber. I thought everybody out for himself and he was looking after his own interest at first. He said to keep the house and when I died to give the house to my son because Viola had a house.

Q. When you say there was some lumber on your property where was that? A. In the garage, it was across the street in Al's brother's place and then he removed it from there across the street to my place.

Q. When he said he had no place to keep it, that was a fact? A. Yes, sir, if I sold my place he would have to take it out.

Q. Can you tell us what month that was, about when, was it about New Year's? A. No, after the Holidays, quite a little while after the Holidays.

Q. About how long after the Holidays? A. I cannot just say.

Q. When did you see him, in the daytime or the evening? A. Daytime, about four o'clock in the afternoon, he just came in from business and was sitting down and he turned around and made a remark to me, he said, "Did Mr. Burchill tell you sell that place?" I said "No, I haven't seen him to consult him about selling it."

Q. He was opposed to you selling the place? A. Yes, sir.

Q. Was he a stern or gentle man? A. He really at times did get into a terrible temper.

Q. Was that common? A. It was usually no matter what he had to say, you wouldn't know whether he was angry or pleasant, because he had that way of talking and putting his hands on you.

Q. How did he use his hands in speaking? A. He always tapped you on the shoulder and on the chest, always.

Q. Was he always that way? A. Yes, sir, always.

Q. Had he always used his hands? A. He had a great way of using his hands whenever he talked.

Q. He would place them on the person to whom he was talking? A. Yes, sir.

Q. Did you consult him on any other small matters or large matters? A. No, I did not.

Q. What were you offered for your place at that time? A. Twenty-four thousand dollars.

Q. Did you tell him that? A. Yes, and he said, "Maggie, the condition of things now you had better keep your property, because if you moved now it may cost you more to live and in not as nice a place and you would have to pay just as much." I took his advice and kept it, but since I am really sorry I did not dispose of it.

Q. Shortly after your husband's death did you speak to your father-in-law in reference to raising the salary of your son, Frank? A. Yes, sir, I did, about eight months after my husband died and he turned around to me and said "Do you take any beard off the boy?"; I said, "Yes, I do" and he said, "Don't take it, let him have it, and if Frank watches himself after I am gone he will be a self-made man and whatever you have give to the girlie."

Q. Who did he mean by the "girlie"? A. My daughter, Viola, he never called her Viola, he always called her "girlie".

Q. Did you have any conversation with him shortly after that on the occasion of Burchill's daughter coming into the grandfather? A. When she came in she handed him some change and he says, "Here, I have enough" and I put my hand out fooling and said "Where is mine?" and he said "You have enough and what you have give to the girlie

and what little bit I am going to give I will give it to Frank when I die."

Q. To which Frank? A. He meant my brother-in-law Frank, he said I had enough and the girl—

Q. Just tell me what the father said? A. She had gone to the store and when she came back she handed him the change and he handed her some pennies and I put my hand out and said "Where is mine?" And he said "You have enough and the girlie has enough" he says "My son Frank says that, and what little I should give I should give to Frank."

Q. To what Frank? A. My son, Frank.

Q. Do you know whether or not Mr. Burchill and his son, Frank, had differences at times? A. No, I don't know, they didn't get along but they didn't say anything about it.

Q. Did you learn that Frank had gone out of the mill sometime in November of 1920? Yes, sir, I heard it spoken of over at the house.

Q. Did you learn why he went out? A. I heard the conditions was on account—

Mr. Harding—I object to it.

Q. From whom did you learn why Frank had gone out of the mill? A. We spoke over it in the house, in my mother-in-law's.

Q. Who? A. The old gentleman and my mother-in-law and I, and we were speaking there and she said that Frank and the old man were on bad terms on account of a bonus.

Q. He said it was a bonus, it was caused by a bonus, who said that? A. The old gentleman.

Q. Where did you do that? A. Down in Mr. Smith's office.

Q. In the presence of Mrs. Ulrich? A. In the presence of his mother and his own wife.

Q. Your husband left a will, I presume? A. Yes, sir.

Q. Leaving everything to you? A. Yes, sir.

Q. You were appointed the sole executor? A. Yes, sir.

Q. Did you make a transfer to anyone concerning the Allentown property? A. Yes, sir, I did to my father-in-law.

Q. Did you receive any money? A. I received a check Mr. Burchill brought me.

Q. Who was it that paid that money to you? A. My father-in-law.

Q. How much was that check for? A. Twenty-six Hundred Dollars.

Q. Did Frank Ulrich, your brother-in-law, ever speak to you, about you transfering your interest which your husband had in his lifetime in the Allentown Mill? A. To me?

Q. Yes. A. No, sir.

Q. Did he speak to you about the Allentown Mill at any time? A. No.

Q. Are you sure of that? A. I am sure, I remember going over to visit his wife one evening and she said—

Q. You cannot tell us what she said, I am talking about Frank himself, did Frank himself speak to you? A. No, he never spoke of the Allentown Mill.

Q. Did he speak to you at any time of the Allentown Mill? A. No, sir.

Q. Did Frank ask you what you wanted to do with the Allentown mill? A. No, sir, my father-in-law sent word for me—

Q. Did Frank ever say that to you? A. No, sir.

Q. Did Frank ever ask you that, and did you tell him that you didn't have enough money to continue the business? A. No, sir.

Q. And did he ever say to you that you should transfer your interest to him that you could have the Twenty-six or Twenty-seven Hundred Dollars which was in the bank and he would be satisfied for you to transfer the Allentown property over to him? A. No, sir.

Q. Do I understand that Frank never spoke to you at all on the subject? A. He never spoke of that mill at all, I didn't know anything about it nor I didn't know what was up there until after my husband died.

Q. You transferred whatever interest your husband had in the Allentown concern to whom? A. My father-in-law.

Q. From you to whom? A. Mr. Burchill brought—

Q. To whom did you transfer whatever interest you had in the Allentown Mill? A. To Franz Ulrich.

Q. Your father? A. My father-in-law.

Q. You knew Mr. Burchill? A. Yes, sir.

Q. How long had you known Mr. Burchill? A. About seventeen or eighteen years.

Q. I believe Mr. Burchill lived in the same house as your father and on the second floor? A. With my father-in-law.

Q. Where his father-in-law lived? A. Yes, sir.

Q. What was Mr. Burchill's conduct toward Mr. Ulrich throughout the time you had been going to the house of Mr. Burchill or Mr. Ulrich? A. Everything respectable, and respectful.

Q. Do you know whether or not Mr. Burchill done things about the father-in-law's home? A. He did practically all of the work that was to be done, he tended to the furnace and while that was for his own use too he did it.

Q. How long had he been doing that? A. For at least four or five years.

Q. Did he do that before he went to the mill? A. Yes, sir.

Q. Can you tell us if he did anything else? A. I know I have often been there at dinner and they would knock on the pipe for him to come down.

Q. Who would knock on the pipe? A. The father-in-law and sometimes he would have to go down to pare his corns and toe-nails and when he came back he couldn't finish his dinner.

Q. The father-in-law would call him down from upstairs? A. Yes, sir.

Q. How long had that been going on? A. For the last year anyway.

Q. How did Mr. Burchill act towards Mrs. Ulrich, the old lady? A. Always respectful.

Q. Did the father ever speak of Burchill in your presence? A. No, never.

Q. When was the last visit you made to your father-in-law before he died? A. About three weeks before he died and the following week after

we went away into the country and we stayed there awhile and while we were there he was taken ill.

Q. Did you play cards on the occasion of the last visit? A. Three weeks before he died.

Q. That was the last visit before he died? A. No, I visited twice after that.

Q. When was the last time you saw Mr. Ulrich? A. We came back from the country and he was very ill, he wasn't able to talk at all and he died on the following Sunday and that was on Saturday.

Q. During the year you made calls at his home down to three weeks within the time of his death what change was there in his mental condition? A. I never saw any change at all.

Q. There was nothing to indicate to you that you could observe or see to indicate that there was any change in his mental capacity? A. No difference. Only after my husband died I remarked one day to my daughter, "Grandpa is going down slowly, he is starting to look bad." That was because of his age and not because his mind was affected in any way.

Q. Down to within three weeks of his death was he the same man mentally that you had known for years before? A. Yes, sir, the same as ever.

Q. Was he a man down to that time capable of understanding his business? A. Yes, and he could talk on things that had happened for the last forty years.

Q. Up to how long before his death? A. About six or seven months before he died he could talk on anything.

Q. Would you say from your observation of him that until three weeks before he died when he last played cards with you? A He had very little to say then.

Q. But was he a man that understood his business? A. He certainly did.

Q. Understood who his relatives were and family? A. Yes, and wanted you to understand he was boss.

Q. How long did that attitude continue? A. I believe up until the breath was out of him.

Q. So long as you saw him was that his mental attitude? A. Yes, sir.

Q. Was he a man who could be easily influenced? A. No, I don't think so.

Q. Did you see any changes in him mentally that would lead you to believe he could be more easily influenced toward the end than he was years before? A. No, not at all.

Q. When you returned from the country on Saturday was that the Saturday before he died? A. Yes, sir, he died on Sunday.

Q. Where did you see him? A. In bed.

Q. Did you speak to him? A. He was not able to speak.

Q. What times of the day did you see him? A. I could not exactly tell you that.

Cross Examination by Mr. Merrey.

Q. You say, Mrs. Ulrich, you visited your father-in-law about once a week? A. Yes, sir.

Q. And that you played cards with him? A. Yes, sir.

Q. You went first to the house of Mr. Burchill? A. Yes, sir.

Q. The apartment of Mr. Burchill? A. Yes, sir.

Q. How often did you visit Mr. Burchill? A. I stopped there first and would have dinner and then come downstairs and play cards in the evening.

Q. Then Mr. Burchill would come down too? When you came down he would come down too? A. Yes, sir.

Q. That was your general routine of life so far as visiting your father-in-law was concerned? A. Yes, sir.

Q. You always went to Mr. Burchill's first? A. Yes, sir, that is only since my husband died.

Q. Since that time I suppose you have been visiting Mr. Burchill right along? A. Right along.

Q. You say after your husband died you went to your father-in-law's and spoke to him about a raise in salary? A. Yes, sir, for Frank.

Q. The boy worked in the mill? A. Yes, sir, he was only getting Twenty Dollars a week and that is all he is getting now; and he is a boy thirty years old.

Q. What did you say he said? A. He said "Do you take board off the boy?" and I said "Yes" and he says, "For what little board you get off him you give it to him and if Frank watches himself after I am gone he will be a self-made man, and what little I have I will give."

Q. Who will give? A. What little I had I should give to the girl, he said to the "girlie."

Q. That was right after your husband died? A. About eight months after.

Q. You say Mr. Ulrich had a very strong will? A. Yes, sir.

Q. He had a strong mind of his own? A. Yes, sir.

Q. He didn't change his mind once he made it up? A. No, sir.

Q. Again later, then you went to speak to him about selling your house? A. Yes, sir.

Q. Then you had another talk about that, what did he say? A. He advised me not to sell my property.

Q. What was it he said about it? A. He said "You keep the house and give it to the boy because Viola had a house."

Q. Then he had changed his mind about that proposition? A. What?

Q. You said after your husband died he wanted you to give everything to the "girlie"? A. No.

Q. Didn't you say that? A. No.

Q. Didn't you say he said to leave everything to the girl? A. He had that fixed, he had everything fixed for the boy he said; I had to take care of the girl and told me to leave what I had to her but he told me to leave the building to the boy.

Q. That was on another occasion? A. Yes, sir, at the time I went but these were the only two occasions I went to speak to the old gentleman in my life.

Q. Then he told you to give the house to the boy? A. Yes, sir.

Q. Before that, he said for you to give everything to the "girlie"? A. Yes, sir.

Q. Then he changed his mind? A. Yes, sir.

Q. About the time you spoke to him about the raise in Frank's salary that was shortly after your husband's death? A. Yes, sir.

Q. You say he suggested then if the boy behaved himself he would be all right? A. He would 'tend to the boy, that was his idea.

Q. You spoke about the place at Allentown? A. Yes, sir.

Q. Where did you sign the papers? A. Over in Smith's office.

Q. Did you know what it was? A. I read it before I signed it.

Q. Did you read it carefully? A. Yes, sir.

Q. You knew what you were selling then? A. My husband's share.

Q. What share did your husband have? A. Him and brother-in-law were supposed to go in that place in Allentown together.

Q. They were supposed to be in it together? A. They started it together and took some of the machinery from the mill; that is what I understood my husband to say.

Q. You understood that you owned his share as executor of your husband's will and as legatee that you owned this property at Allentown? A. Yes, sir, some part of the mill.

Q. Then you undertook to dispose of this? A. Yes, sir, to my father-in-law, he was the one that put the money in it.

Q. I thought you said your brother-in-law and husband owned that? A. My husband came home and said—

Q. You can't tell us what he said. What did you understand? A. I understood my brother-in-law and husband was to run the place.

Q. You understood he owned half of it? A. I did not until after he died.

Q. After he died? A. Yes, sir.

Q. Did your father-in-law ask for a Bill of Sale? A. Yes, sir.

Q. You went down and signed it at Mr. Smith's office? A. Yes, sir.

Q. You say that Bill of Sale gave this property to your father-in-law? A. Yes, sir.

Q. Are you sure of it? A. Yes, sir.

Q. You say Mr. Burchill brought you the check? A. Yes, sir.

Q. Do you remember seeing the check? A. I remember seeing the check; I cashed it at the Franklin Trust Co.

Q. Wasn't the check signed by Frank Ulrich? A. It was signed by Franz Ulrich.

Q. I just wish to show you this Bill of Sale and ask you if that is the paper you signed at Mr. Smith's office? A. When I read that paper it was not Frank Ulrich on there; it was Franz Ulrich.

Q. Are you sure of that? A. I am sure for I would not have signed it if I had known it was Frank Ulrich.

Q. Is that the paper you signed at Mr. Smith's office? A. I can say that when that paper was given to me by Henry Smith I went home and never looked at it after because I took it for granted it was all right.

Q. You say you took that paper home? A. Yes, sir, I did.

Q. What did you do with it? A. I put it in the drawer.

Q. Have you kept it ever since? A. I gave it into the hands of my lawyer.

Q. Who was the lawyer? A. Mr. McCran.

Q. Did you read down that paper now? A. I read as far as Frank Ulrich's name.

Q. Did you read it there, the business was owned by Frank Ulrich and Albert, your husband? A. Yes, sir, I read that at the time.

Q. So you did know your husband had a half interest? A. I understood from my father-in-law that he put the machinery up there and it belonged to him and that that is what the argument was over.

Q. You signed that paper, didn't you? A. He said if I did not make a settlement he would take it anyway.

Q. Just show us where this paper was changed in any way? A. The only change is "Frank Ulrich."

Q. Will you mark it? A. I can read. I wouldn't swear a lie on that for anybody or for all the Twenty-Six Hundred Dollars we have.

Q. Can you show me where that has been changed in any way? A. There.

Q. Don't you think that is the exact paper you signed just as it is? A. I never would have signed it if it was. Even Mr. Burchill read it over in the office that day.

Q. You are still sure the check you got was a check signed by the old man? A. Yes, sir.

Q. And not by the son, Frank? A. Yes, sir.

Q. If you are mistaken about that, would it change your mind about that? A. It certainly would, I would think if the place was of benefit to him why shouldn't it be a benefit to me, the way it was explained to me, the business was being run by them and I had to dispose of the business to my father-in-law.

Mr. Merrey—Will the proponents produce the check referred to by Mrs. Ulrich?

Mr. McCran—It is not here at present but we will produce it.

Redirect Examination by Mr. McCran:

Q. To whom, did you believe, you were transferring any interest in the Allentown Mill?

Mr. Merrey—I object to it on the ground that it is irrelevant to state what her belief is and it is immaterial in this case.

The Court—The fact is, the instrument is before us and she read it thoroughly before she signed it and further stated that the check was made out by Franz Ulrich.

Mr. McCran—When Mr. Smith was on the stand this morning, Mr. Smith is the gentleman that drew this paper, and Mr. Smith testified the paper he drew transferred Mrs. Ulrich's interest to the father.

Mr. Merrey—But he corrected that statement.

Mr. Harding—I object to it as immaterial and irrelevant what her belief was. The only object in referring to the instrument is to show what the transaction was. What this woman thought about it makes no difference.

Mr. McCran—The testimony is that Mrs. Ulrich never spoke to Frank. Frank never spoke to her about the transfer of her interest to him, the entire transaction was for a transfer of any interests she had to the father. And this morning Mr. Smith said he drew a paper from Mrs. Ulrich to the father.

The Court—That is what I recall. I will will admit it.

Caveators except. Exception allowed and signed and sealed accordingly.

Judge.

Q. To whom did you believe you were transferring whatever interest your husband had in the Allentown Mill? A. To my father-in-law.

Q. Franz Ulrich? A. Yes, sir.

Q. Did you at any time have any conversation with Mr. Frank Ulrich, the son, concerning your interest or your husband's interest in the Allentown property? A. I did not. He is there; he knows whether I did or not.

MRS. CAROLINE BARNES, sworn as a witness for the proponents and testifies as follows:

Direct Examination by Mr. Pomfret:

Q. You reside where? A. Three thirty-two Belmont Avenue, Haledon.

Q. You are married now? A. Yes, sir.

Q. What was your maiden name? A. Caroline E. Courter.

Q. You were formerly employed by the Ulrich Co.? A. Yes, sir.

Q. In what capacity? A. Stenographer.

Q. When did you go with the company? A. In June, nineteen hundred and nineteen.

Q. And you stayed until when? A. October, nineteen hundred and twenty.

Q. During your employment there at the company did you come in daily contact with Mr. Franz Ulrich? A. Yes, sir.

Q. How early did he get down to work in the morning? A. Some mornings he would be there at seven, some mornings he was there when I doubt it was more than half past seven.

Q. What did he used to do when he came in in the morning? A. He would make a trip through the shop and see if the men were starting to come in.

Q. What else did he do? A. Go through the departments and then come in and sit in the office and wait until the whistle blew and by that time the men should be in and he would go through again and see that they had started on the work.

Q. How long did he continue to do that? A. To the time I left.

Q. When did you leave? A. October, nineteen hundred and twenty.

Q. What else did he do after going through the mill, soon after the day's work had started, what else did he do? A. He would come in the office again and wait for the mail to come in every morning, and then he would give it to his son.

Q. Who opened the mail? A. Franz Ulrich.

Q. What did he do with the mail? A. He would read it and if there was anything in it he did not understand he would call it to the attention to his son Frank and then pass it to his son Frank to answer the letters.

Q. What else? A. Well, about the time he got finished it would be ten o'clock and then he would make another trip through the mill and see that the

men were doing the work right and looking the work over.

Q. Did he make any comments after having made this trip? A. Yes, sir, if there was anything he didn't like he would come in and call it to his son's attention or Burchill's attention.

Q. How long did he continue doing that? A. Till I left.

Q. Did he pay any attention to the stock around the place? A. Yes, sir.

Q. In what way? A. If anything should run out he wanted to know why it wasn't got and he would see that it was ordered.

Q. Did he have anything to say about the order? A. Yes, sir. Naturally he wanted the orders to come in and he would send his son and Mr. Burchill both out to look for orders.

Q. This continued for how long? A. Until I left the company.

Q. Were you obliged to make out statements? A. Yes, sir.

Q. How often? A. Once a month.

Q. At whose request? A. Well, it was the custom when I went there.

Q. What did you do with the statements? A. The statements? Well, I handed them to Frank Ulrich and he gave them to his father, and of course, if Frank wasn't around I would pass them on to Mr. Franz Ulrich.

Q. What would these statements show? A. What was manufactured in each department during the month.

Q. Would he make any comments about the

statements? A. Yes, sir, if they were very low he certainly would.

Q. Did he make any comment about the statements being on time? A. They had to be ready for him right on the first of the month.

Q. Did these statements show the cost and sales of each department? A. No, we had the sales book separate from them.

Q. From these statements could you get an idea of the amount of business done in the department during the month? A. I had to make each department separate and then he compared them and then I had to make a compound statement of all the departments.

Q. Did you hear any conversation or argument between Mr. Franz Ulrich and the son Frank after you started to be employed there? A. Yes, sir.

Q. About how long after you were there? A. Shortly after. About a month after I was there that first argument took place.

Q. What was the occasion for that dispute? A. The transfer of money in the Allentown Bank.

Q. How did it come about? A. When I went there the checks for the Allentown Bank were made out Ulrich and Co. per Frank Ulrich and Frank Ulrich signed them without the knowledge of his father. His father thought he, himself,—

Mr. Harding—I would ask that the statement be stricken from the record, the statement this girl made to the effect that it was without the knowledge of the father. That is only her own conclusion.

The Court—Strike it out.

Q. Just tell us, if you will, the conversation that took place about this Allentown incident? A. I don't know what you mean. Do you mean about the check that caused the trouble?

Q. Tell us what it was? A. There was trouble started over a check that came in from one of our customers.

Q. That is the incident. Tell us of it? A. That was the cause of it. This check came in amounting to a considerable sum and was made out to Ulrich Co., and of course, both places were run in the name of Ulrich Co., Mr. Frank Ulrich ordered me to send it to Allentown to be deposited in the Allentown Bank.

Q. Did you send it there? A. I did.

Q. Then what took place? A. Well, in a few days after Mr. Franz Ulrich asked me where it was.

Q. A few days after Mr. Franz Ulrich wanted to know where it had gone? A. Yes, and I told him I had deposited it in Allentown and Mr. Franz Ulrich asked why and I said because I had been ordered to by Frank Ulrich, then Mr. Franz Ulrich took the matter up with Frank Ulrich.

Q. While you were there? A. Yes, sir. But of course, they spoke in a Swiss German and it was hard for me to understand. He asked him why it was deposited and he said he had deposited it there because he wanted to; then Mr. Franz Ulrich had the matter looked up and he found out that the money in the Allentown bank was in Frank Ulrich's name and not Franz Ulrich, therefore, Mr. Franz Ulrich ordered this transfer to him immediately. Of course, Frank Ulrich objected to that proceeding and for three or four days they were pretty bad and finally

Frank Ulrich ordered me to send to the Cashier of the Allentown National Bank for a transfer card and Mr. Frank Ulrich signed the money in the bank over to the father and the father gave it to me and stood right at my elbow while I put it in the envelope.

Q. Who signed this card? A. Frank Ulrich signed it over to Franz Ulrich.

Q. During this dispute what was the attitude of Mr. Frank Ulrich towards the father? A. Everything but what a loving son should have been to his father.

Q. Just tell us how? A. He cursed and he couldn't be pleasant with anyone around the place let alone his father.

Q. In what way, what did he say to you? A. When he signed it over everything was all right. As they say there is a calm after the storm.

Q. What language did he use himself, Mrs. Barnes, in talking to the father in this dispute over the Allentown account? A. He couldn't see why he ought to turn the money over to him because there would not be a God damn cent left for him.

Q. Then what happened after that, was everything all right after that? A. Yes, sir, things went along very smoothly.

Q. Was there any other trouble between Frank and the father later on? A. Yes, sir, things went on smoothly until the bonus question, no, the five dollar raise came first.

Q. Just before I take up these other incidents do you remember any dispute between Frank and the father regarding two checks? A. It was not exactly a dispute.

Q. Tell us the occasion? A. His father drew up two one thousand dollar checks in the name of his wife and of course, naturally Frank made all the checks out for the father and then the father would sign them and he said, "There he is now throwing away two thousand dollars more for the God damn girl."

Q. Who made this statement? A. Frank Ulrich and he said, "There won't be a damn cent left for us if he keeps on giving it to them."

Q. What kind of language did he use on this occasion? A. Why, everything but what he should have.

Q. Do you remember any dispute between Frank Ulrich and Mr. Franz Ulrich regarding Mr. Burchill's salary? A. Yes, sir.

Q. Can you give us an idea when that was with reference to your leaving the employ of Ulrich Co.? A. Well, the argument about the bonus was just before I left, so that must have been shortly before I left.

Q. Mr. Franz Ulrich and his son Frank had some words about that salary. Tell us what it was? A. Mr. Franz Ulrich said that Mr. Burchill was worthy of a five dollar raise and he told Mr. Frank Ulrich to give it to him. He told him to tell me as I was under the instructions of Mr. Frank Ulrich and he was not pleased at the suggestion and he wanted to know why he should get five dollars more and not him. Mr. Franz Ulrich said he is here long before you are here in the morning and he is here after all the employees have gone out of the shop at night and he is worthy and deserving of it.

Q. As a result of that dispute between them did Mr. Burchill get his raise? A. Not that pay.

Q. Why not? A. Mr. Frank Ulrich did not give me instructions so I could not pay it on that pay.

Q. Was that brought to the attention of Mr. Franz Ulrich later on? A. Well, he asked me about it later on. He asked me if Lang had received his raise and I said, "No," and he asked me why and I said because I had not been instructed to by Mr. Frank to give it to him and when Mr. Frank Ulrich came in he started at Mr. Frank and he asked him why he had not been given the raise and they had a dispute and Mr. Frank said that Mr. Burchill was only there for trouble and he also said that Mr. Ulrich had been out riding with Mr. Burchill and that they were plotting against him and Mr. Burchill came in and asked him to prove that and he told him a certain party's name and at the end of that argument Mr. Frank said, "To hell with all your business, I am through."

Q. Who did he say that to? A. To the father. He said, "To hell with your business, I can get along without you," and then he went out.

Q. How long did he stay out that time? A. Two or three days about.

Q. Did he come back again? A. Yes, sir.

Q. How did he come to come back? A. Mr. Burchill sent for him with his own son for him to come back to the office where his place was and not to stay home any longer.

Q. That is a message, you say Mr. Burchill gave to Melvin Ulrich to tell to the father? A. Yes, sir.

Q. When Frank was working there again what

was his attitude towards the father, respectful or otherwise? A. Far from respectful.

Q. Did Mr. Franz Ulrich ever speak to you about Frank Ulrich's conduct towards him? A. Yes, several different times, especially when they would have these arguments. It would naturally make poor Mr. Ulrich feel bad.

Q. What did he say to you about it? A. He said all he had done for Frank and now Frank didn't care from the way he was treating him.

Q. Did he indicate to you how he felt about it? A. He certainly did at different times.

Q. Did he ever speak to you about what Burchill had done for him? A. He said Lang had done a great deal for him and he said the one I have done the least for he is the one to do the most for me.

Q. Did he ever make any statement about a comparison about what Frank would do around the place and what Burchill was doing? A. He often said that Frank would sit there and not get out to look for business and that Lang would and that he went out and looked for it.

Q. You made some reference to a dispute over gasoline bill. First, can you give us any idea when that was with reference to the time you left? A. No, I could not, you must realize I have been out two years now.

Q. Was it shortly before? A. Two or three months.

Q. What was it? A. The whole dispute on the gasoline was over one bill and that was on the Hudson touring car.

Q. Before you start on that did the bills come in to you or do you know anything about the bill? A. For each car a separate bill came in.

Q. How many cars were there? A. The Hudson, the Reo, the Ford and later on the Buick.

Q. And there was a separate gasoline bill for each car? A. Yse, sir.

Q. What did you do? A. I had to check them against the memorandum.

Q. Where did you get the memorandum? A. Each one that purchased anything during the month always put on a separate file for me the memorandum and at the end of the month I checked them.

Q. You checked up the monthly statement with the memorandum you had? A. Yes, sir.

Q. What was this dispute about? A. The whole affair was one time when the monthly bills came in and Mr. Franz Ulrich looked them over and one bill exceeded by far the others and Mr. Franz was pretty much worked up over it and he said to me, "What car is this." I said, "That is the Hudson," and he said, "It is higher than all the others, even the business cars," I said, "I don't know about that, that is Mr. Frank's private car, I don't know anything about that." When Frank came in he asked Mr. Frank what was the cause and Mr. Frank Ulrich became a little dissatisfied because Mr. Franz Ulrich told him that he wanted a full explanation, he got at Mr. Frank for an explanation and of course, Mr. Frank couldn't give any explanation as to why it was so high.

Q. What did he do or say? A. He couldn't' say anything, he couldn't do anything. He sat there and took it all in and finally Mr. Frank Ulrich said, "I will pay my own bills and you pay yours;" and he went home noon hour and when he came back again to the shop there was war in the air and he

started in but Mr. Franz Ulrich kept at him as to why the gas was so high and he said, "I will pay my own God damn bills and to hell with you. You can keep your own God damn business and I will go by myself," and he went out.

Q. How long did he stay out that time? A. Three or four days.

Q. Did he come back again? A. Yes, sir.

Q. Do you know how he came to come back? A. Mr. Burchill sent word with Melvin the same as before.

Q. What did he say? A. He said to tell him that it was no place for him to stay home, that his place and duty was here in the shop.

Q. What became of that bill? A. Mr. Frank paid his own gasoline bills from then on.

Q. When he came back again was there any later trouble? A. No, only for some time I had quite a little trouble with Melvin about not bringing in memorandums at different times and I called the attention of his father, Mr. Ulrich, that I couldn't check the bills if Melvin wasn't going to bring the memorandums in and then the next month when checking them over I noticed the wrong initials.

Q. On what? A. On the memorandum.

Q. Did you call it to Melvin's attention? A. Yes, he said, "That is all right, I let a fellow sign it for me while I stood there. Pass it up."

Q. Did it happen again after that? A. It happened several different times. I took his word, he gave me his word that it was O. K.

Q. Then what did you do? A. I didn't draw it to his father's attention because I felt sorry for him.

Q. Did you speak to any one else? A. Yes, sir,

I drew Mr. Burchill's attention on account of the driver did not make a couple of slips and I wanted them and he spoke to the driver for me.

Q. From the observation you were able to make of Mr. Ulrich and the conversation you had with him in connection with your employment and noticing his routine from day to day, can you tell us whether or not when you left the employ of the company whether there was any change in his mental attitude as compared with when you went there? A. Positively not.

Q. What sort of a man was he? A. A very positive man.

Q. Did he seem to be able to exercise judgment about the things pertaining to his business? A. He certainly did.

Q. Did he seem to be a man who could be easily led? A. No.

Q. Was he a man who could give reason for statements he made? A. Positively.

Q. Did he give reasons? A. Yes, sir.

Q. Was your desk in Mr. Franz Ulrich's private office? A. Yes, sir.

Q. How far away from his desk was yours? A. From here to your table.

Q. To Franz Ulrich's desk? A. Yes, sir.

Q. Where was Frank's desk? A. Right next to mine.

Cross Examination by Mr. Harding.

Q. What is your age? A. Twenty.

Q. Are you married? A. Yes, sir.

Q. Is your husband living? A. Yes, sir.

Q. You went into the employ of Ulrich Co. in June, nineteen hundred and nineteen? A. Yes, sir.

Q. Who employed you? A. Mr. Frank Ulrich.

Q. Was his brother Albert living at that time? A. No, sir.

Q. He was dead? A. He was already deceased.

Q. Where did Mr. Frank Ulrich employ you? A. I went there to the office.

Q. You were seeking employment? A. Yes, sir.

Q. And he was the one who employed you? A. Yes, sir.

Q. How long were you there before you noticed any trouble? A. Shortly over a month, between a month and two months.

Q. You spoke about Mr. Frank Ulrich treatment to you. What did you say about that? A. No, I spoke of his treatment to his father.

Q. You also spoke about his treatment to you? A. At these times when they were having the arguments he could not be pleasant to anyone.

Q. Wasn't he pleasant to you? A. He had no respect at these times for a young lady. If he had he would not have talked the way he did.

Q. When did he show disrespect? A. I call it disrespect when he cursed and swore to his father in front of me.

Q. You spoke of his actions towards you too? A. The only time was when he argued with the father, then he was nasty to everyone.

Q. You took a dislike to him on that account? A. I didn't think he acted the way a man should.

Q. You took a dislike to him? A. No, I have no dislike to him.

Q. You feel perfectly friendly towards him? A. I have told nothing but the truth.

Q. After all you have said you feel perfectly friendly to him? A. I feel I have done my duty.

Q. That is the only way you will answer my question? A. That is the only way I can.

Q. You won't tell me whether you feel friendly towards him or not? A. That is the only way I can answer you.

Q. I want you to tell me again the first thing that you ever heard between Mr. Ulrich and his son Frank that wasn't friendly? A. The trouble over the money in the Allentown Bank.

Q. That was a month after you went there? A. Around a month, between a month and two months.

Q. Had Mr. Ulrich and his son Frank been perfectly friendly so far as you could see? A. Yes, sir.

Q. He relied somewhat on Frank in the business? A. Naturally he would, thinking Frank would help him.

Q. I noticed you every once in a while talk about naturally, I only want you to answer as a fact.

The Court—I question if that is not a figure of speech.

Mr. Harding—I want you to tell us what you saw and not what you naturally think.

Q. Did you observe that Mr. Ulrich and Frank were friendly during this month? A. Yes, sir.

Q. Frank employed you? A. Yes, sir.

Q. He was the general manager? A. Yes, sir.

Q. He had the say of most of the things? A. Yes, sir.

Q. When the orders came there would he take them? A. When the orders came they went to the father first and then to him.

Q. He and the father consulted about it? A. Yes, sir.

Q. The father seemed to rely upon his advice about matters? A. Yes, sir.

Q. Then the first thing that occurred was over something about checks, I want you to tell me again what that was. What this first trouble was about? A. The Allentown Bank do you mean?

Q. Whatever the first trouble was? A. When I went there the money in the Allentown Bank was in the name of Frank Ulrich.

Q. How do you know that? A. He signed the checks.

Q. How do you know that? A. I was the one who mailed the checks.

Q. Did you ever see Frank Ulrich sign checks? A. I did.

Q. The first thing occurred that you heard was something about a check? A. Yes, sir.

Q. What was the first thing? A. The first trouble arose over a check being deposited—

Q. I ask you to state to me the first words said about it by anybody? A. Mr. Franz Ulrich asked me where the check from this customer was deposited.

Q. What customer? A. One of our large customers.

Q. That check, you say, was drawn to whom? A. It was made out to Ulrich Co.

Q. By whom? A. One of our large customers.

Q. Then Mr. Franz Ulrich asked you where that check was deposited? A. Yes, sir.

Q. Did you know? A. Yes, sir.

Q. Where was it deposited? A. In Ulrich Co.'s account, Allentown.

Q. Did you know the check was actually deposited? A. It was sent to that bank.

Q. It came to the office down here and was sent there? A. Yes, sir.

Q. Then you heard Mr. Franz Ulrich ask Frank Ulrich about it? A. After he had talked it over with me.

Q. Just what did he say to Frank about it? A. He asked Frank why it was deposited in the Allentown Bank and Frank said, "Well, because I felt it should go there," and Mr. Franz Ulrich said, "That was a check for a considerable amount and I would like to have had it deposited in the Paterson Bank instead of Allentown."

Q. He told Frank because it was a large check he thought it ought to be in Paterson? A. Yes, sir.

Q. If it had been a small one he did not object to it? A. Yes, sir.

Q. You understood this business in Allentown was done in Frank's name? A. It was done in the name of Ulrich Co.

Q. Frank was running it? A. All I ever knew was that he signed the checks.

Q. You knew it was for work done at the Allentown Mills? A. What do you mean, it was not done at all for the Allentown Co.

Q. Mr. Franz Urlich objected because it was large? A. He objected because it paid for a Paterson account.

Q. Did Frank say he would change it? A. It was deposited in the Allentown Bank.

Q. Was there a change made about it afterwards? A. No.

Q. After that I understood you to say Frank and his father were perfectly friendly? A. They were.

Q. Just as they had been before? A. Yes, sir.

Q. Did the old gentleman consult Frank? A. Just like father and son.

Q. He seemed to think a good deal of him, they seemed to think a good deal of each other? A. Yes, sir, both.

Q. Mr. Ulrich and Frank are both rather quick-tempered? A. Yes, sir, both.

Q. And they got over it very quick? A. That is what I say, there was a fire and then nothing.

Q. Then they were just as great friends as ever? A. Yes, sir.

Q. You have heard of a man and wife having an argument and then making up? A. I know all about it, I am married.

Q. This was something like that? A. It certainly was.

Q. They were just two rather explosive people? A. Yes, sir.

Q. And they were just as friendly as before? A. Yes, sir.

A. The old gentleman was just as friendly with Frank after that incident happened as he was before? A. Yes, sir.

Q. What was the next trouble you ever heard.

The next thing you ever heard that you spoke of was about the gasoline? A. No.

Q. What was it? A. Mr. Burchill getting a five dollar raise.

Q. Mr. Burchill was given a five dollar raise? A. Yes, sir.

Q. Speaking of Mr. Burchill how did you and Mr. Burchill get along? A. The same as I got along with Mr. Ulrich, very pleasant.

Q. Is he an explosive man too? A. No.

Q. You never saw him lose his temper? A. No, I did not.

Q. He was always a gentleman? A. Yes, sir.

Q. And very particular about how he treated you? A. Yes, sir.

Q. He was rather a suave gentle sort of man? A. Toward a young lady, yes.

Q. He is very careful how he treats a young lady? A. Yes, sir.

Q. He has got your respect? A. Yes, sir.

Q. He has it yet? A. Yes, sir.

Q. Much more than Frank has? A. Yes, sir.

Q. A good deal could be said to Mr. Burchill and he wouldn't take offense? A. No, but if he saw he was the least bit excited he wouldn't bother him until he came down.

Q. He was a little careful? A. Yes, sir.

Q. You never saw any exhibition of temper on the part of Burchill while you were there? A. No, sir.

Q. Well, the old gentleman then on this one occasion had spoken about raising Burchill's salary? A. He did.

Q. Just what did you hear about that? A. Mr. Franz Ulrich said that he considered that Mr. Burchill was entitled to a five dollar a week raise.

Q. Who said that, Frank? A. No, Franz Ulrich said that to Mr. Frank.

Q. In your presence? A. Yes, sir, and Mr. Frank said he didn't see where or why Burchill should get it.

Q. He said that to the father? A. Yes, sir.

Q. What did the father say to that? A. He said he was worthy of it, and he explained what time he would get there in the morning and what time he would leave.

Q. Did Franz Ulrich, the father, ask his son Frank if he thought he was entitled to it? A. No.

Q. Then why did he say anything to Frank about it? A. He told him so he could tell me to put it in the payroll.

Q. Why was is necessary to tell Frank to tell you when you were there? A. Because I went under the instructions of Mr. Frank Ulrich.

Q. You mean you did when the father wasn't there? A. Never once did I take any instructions from Franz Ulrich.

Q. Why not? A. Because he thought Mr. Frank Ulrich should handle that. He would give Mr. Frank Ulrich the instructions and then Mr. Frank would give them to me.

Q. You mean when you were present Frank's father would tell Frank something you were to do? A. At different times.

Q. You understood Franz Ulrich, the father, was your employer, the boss? A. Yes, sir.

Q. If you were present on this occasion when Frank Ulrich and his father were there and Franz Ulrich told Frank that Mr. Burchill was entitled to five dollars raise in salary why did you consider it necessary for Frank Ulrich to tell it to you? A. Because there was a dispute over it, and I did not—

Q. A dispute over what? A. Over the five dollars raise.

Q. How was there a dispute? A. Frank said, "Lang should not have it."

Q. Did the old man take Frank's advice? A. No, he gave his instructions that Lang should have it.

Q. Why in the world was it necessary that you should consider that Frank would have to tell you if you were there when they were talking over it? A. Because I had always taken instructions from him right along.

Q. The father said he wanted Lang to have it.

The Court—The witness has already said that, Mr. Harding.

Q. On this occasion Frank's father was present and he said right in your presence, "I want Mr. Burchill to have five dollars more," he said that in your presence? A. Yes, sir, I was at my desk.

Q. After that was said and you knew that Mr. Franz Ulrich was your employer why didn't you, yourself make the check out? A. Because.

Q. Because why? A. Because I didn't consider Mr. Franz Ulrich my employer, I considered Mr. Frank because he was the one who hired me.

Q. I understand that had been your custom but when Mr. Ulrich, the father, told you right in your presence? A. He did not tell me.

Q. He told Frank? A. But he didn't speak to me personally.

Q. Did you say anything about it? A. No.

Q. The talk went on as if you were not there? A. Yes, sir.

Q. Did you ever say anything to Mr. Ulrich about the check not being drawn? A. No, I never mentioned it.

Q. Did he learn the check was not drawn? A. He asked me whether Lang had received his raise and I said, "No," and he said, "Why"; I said, "Because Frank didn't order me to do it."

Q. Did Lang say anything about the raise to you? A. No, sir.

Q. You didn't say anything about it to anybody? A. No.

Q. Did you speak to Lang? A. No.

Q. Why? A. I didn't consider it my affair to do so until I got instructions.

Q. He had already given instructions? A. Not to me.

Q. Why didn't you ask Frank Ulrich, the son, about it? A. Because the dispute was still going on.

Q. What dispute? A. Frank didn't see why Lang should have it and the father insisted he should and for a couple of days the thing just stood that way.

Q. I cannot see why there should be any dispute, Mr. Franz Ulrich was boss and owner of everything there, I don't see why there should be any dispute. A. Just before you, yourself, said that the father looked upon Frank to manage the affairs and the trouble was when he gave Frank instructions to tell me.

Q. You mean to say for two or three days the

question went on whether Mr. Burchill should be paid five dollars more? A. Yes, sir.

Q. What was the result? A. Finally Frank left the business and told his father to run it himself.

Q. Then Frank came back? A. Yes, sir.

Q. Up to this time you had never said anything to Mr. Burchill about it? A. No, sir.

Q. Did you ever talk to Burchill about the trouble between Frank and the father up to the time Frank left? A. No, sir.

Q. Did Burchill know anything about it so far as you know? A. I didn't talk it over with anyone.

Q. Have you talked it over since with anyone? A. Yes, sir.

Q. When did Burchill, so far as you know, first know of it? A. Well, naturally he could see.

Q. How do you know? A. He was there in the office.

Q. Was he present when these disputes took place? A. Sometimes.

Q. Was he present when the dispute took place about him? A. You mean about the five dollar raise?

Q. Well, first about the Allentown mill? A. Not that I remember.

Q. Do you remember whether Mr. Burchill was there? A. Not that I remember.

Q. When was the first Mr. Burchill knew anything about it so far as you know? A. I don't know when he knew, he might have known of the trouble, he could have been in the office then but I couldn't swear to it.

Q. What is your best recollection? A. When, on the five dollar raise?

Q. No, I am speaking of the other subject when this dispute arose about the deposit of a check at the Allentown Mill. You say Mr. Burchill might have been present? A. He might have been.

Q. What is your best recollection? A. I am not sure.

Q. Do you think he was there? A. I am not sure.

Q. Did he discuss with Mr. Franz Ulrich about that transaction? A. Who do you mean, Mr. Burchill?

Q. Yes. A. Not in my presence.

Q. So far as you know when did Mr. Burchill have any knowledge of the trouble between Frank and the father? A. When the five dollar raise occurred.

Q. Burchill knew it then? A. Yes, sir.

Q. How do you know? A. Because Mr. Frank Ulrich accused Mr. Burchill of being out with the father during that affair and they stopped at a certain place and talked about it.

Q. What place? A. Some hotel.

Q. You heard Frank accuse Burchill of that? A. Yes, sir.

Q. Where? A. In the office.

Q. When was that? A. During the time of the dispute of the five dollar raise.

Q. Give us the date? A. I cannot give you any date at all.

Q. I think you said the discussion about the Allentown Mill occurred a month after you went there in June? A. Yes, sir, a month or so. But

the five dollar raise happened, I should say, four or five months before I left.

Q. What did Frank say to Burchill? A. He accused Mr. Buchill of being out with Mr. Franz Ulrich and they stopped at this place and talked about him and plotted against him.

Q. He said Burchill had tried to put the father up against him? A. Yes, sir.

Q. You heard Frank say that? A. Yes, sir.

Q. Was old Mr. Ulrich present? A. Yes, sir.

Q. What did he say? A. He said, "It wasn't Lang, we didn't talk against you."

Q. They didn't talk against him? A. And it was not Lang.

Q. Do you remember whether or not that hotel was at Sells? A. Yes, sir.

Q. He said Lang wasn't with him? A. Yes, sir.

Q. What was done actually about Burchill's salary? A. Frank Ulrich left the business and Mr. Ulrich took things in his own hand and told the bookkeeper.

Q. Told what? A. He said in the presence of the bookkeeper that Lang was to have a five dollar raise next pay.

Q. After Frank went away? A. Yes, sir.

Q. For how long? A. Two or three days.

Q. Then he came right back? A. Yes, sir.

Q. You said, I think, you heard Mr. Burchill say something to Melvin about coming back? A. Yes, sir.

Q. What? A. Mr. Burchill told Melvin to tell his father to come back to the business where he

belongs, it was his duty to be there and not to stay home any longer.

Q. Where did he tell Melvin this? A. In the office I heard him say it.

Q. In what office? A. In the outer office.

Q. What office were you in? A. In both.

(At this point a recess was taken until 10 A. M., October 11th, 1922.)

Fifth day, October 11th, 1922.

CAROLINE BARNES, recalled to the witness stand and testifies as follows:

Cross Examination continued by Mr. Harding.

Q. With reference to the check you spoke about on direct examination where you said there had been a charge which had been given to the credit of the Allentown Mill in which, you say, as I understood there was considerable work done for Paterson. That was a check, was it not, where work had been done for both mills, the mill at Allentown and the mill at Paterson and bills had been sent out to the customers for each mill separately but the customer had sent in a check for an amount covering both bills? A. Yes, sir.

Q. It was customary, was it not, when work was done for one customer at both mills for you to keep two accounts, one for each mill, and to send the bills out to the customer for the separate mills but sometimes the customer only sends a check in for one amount? A. Yes, combined.

Q. When that check came in that way it would be credited to either one or the other mill? A. It would be deposited in one or the other bank to the credit of both places on the book.

Q. And it would be adjusted finally? A. Yes, sir.

Q. The checks, sometimes, would be deposited in the account of one mill and afterwards when looking over the open account for the company if one mill was over in a case of that kind it would be adjusted and they would pay the account of the other mill? A. At the present time, both mills would give this party credit for that check.

Q. But it was finally adjusted after the check was deposited in one mill whether the work was done in another one and it would afterwards be adjusted? A. Yes, between the two Ulrich Co.'s

Q. That is right? A. Yes, sir.

Q. As a matter of fact this particular check I have referred to where it was deposited to the account of the Allentown Mill, whatever work was done in the Paterson mill it was afterwards adjusted in that way? A. Yes, sir, in the Ulrich Co. account.

Q. You were speaking yesterday evening about the conversation between Mr. Burchill and Melvin Ulrich, I think you said that Frank had left for a day or so? A. Yes, sir.

Q. And that you heard this conversation between Mr. Burchill and Melvin? A. Yes, sir.

Q. Just what did Mr. Burchill say? A. He said for him to tell his father to come back to the office, that that was his place and his work called him there.

Q. That was in your presence? A. It was.

Q. Was it in the presence of anyone else besides you and Burchill and Melvin? A. Not to my knowledge.

Q. Who was in the office first, Melvin or Mr. Burchill on that occasion? A. That is hard to say.

Q. Can you recall whether Melvin was there first or Mr. Burchill was there first? A. To my knowledge Mr. Burchill was there first.

Q. And Melvin came in? A. Yes, from some place else.

Q. What is there to fix that in your mind? A. The talk of Mr. Burchill. Mr Burchill proved himself to be a gentleman there. That is what fastened it in my mind.

Q. That is why it was fastened in your memory? A. Yes, sir.

Q. What did Melvin say? A. Melvin said, "All right."

Q. Did you have any conversation at all with Mr. Burchill before this incident? A. None whatever.

Q. Not a word being said preliminary to that, just Mr. Burchill said this to Melvin, "Go home and tell yur father to come back." A. Yes, sir.

Q. You recall when you first said it you said something about his duty? A. His business or he said that was his duty.

Q. Do you recall the exact words that was said? A. To the best of my knowledge that is the way he put it.

Q. How long had Frank been away when this conversation took place? A. I imagine about two days before.

Q. You imagine? A. As a rule I did not keep track of what day he stayed out, but it was two or three days the different times he went out.

Q. How many times did he go out? A. Twice while I was there.

Q. When did he go first? A. The first was about the trouble on account of the five dollar bonus.

Q. The bonus? A. No, the raise I mean.

Q. When do you think that was? A. I cannot give you any exact date.

Q. Can you say whether it was July or September or when? A. I cannot give you any month.

Q. All you know is sometime that took place while you were there? A. Yes, sir.

Q. You don't know whether it was the first month you were there or— A. No, quite a while after I was there the five dollar raise occurred.

Q. Can you tell how long it was before you quit? A. The gasoline affair was shortly before I left and that was before that.

Q. After that Frank came back? A. Yes, sir.

Q. How long did he stay before he went away the second time? A. Quite a while.

Q. About how long? A. I imagine things went along smoothly for around four months, I should say.

Q. How long did Frank stay away the second time? A. Two or three days.

Q. What was the occasion of his going away this time? A. The gasoline affair.

Q. That was the question arising about the gasoline? A. Yes, sir.

Q. How long was that time, the last time Frank

was away, before you went away? A. Shortly before I left. I would imagine about a month.

Q. When did you go away? A. I went away in October.

Q. What time in October? A. About the middle of October.

Q. You say the gentlemanly conduct of Mr. Burchill impressed you so much that that is why you remember it so well? A. Yes, sir.

Q. His conduct in general was quite different from Frank? A. Yes, sir.

Q. Frank was not a gentleman? A. At times he was.

Q. Do you think he was gentlemanly to you when you were away from the place, away from work about a week before you left? A. I left in October.

Q. Did you stay away a week from work some time in July? A. No.

Q. Where were you living in July? A. I was living with my aunt.

Q. Before you left working for the Ulrich company you stopped staying with your aunt? A. Yes, sir.

Q. You had trouble there? A. No, I got married.

Q. Didn't you tell Frank you had some trouble with your aunt? A. Not at that time.

Q. When did you tell him that? A. At one time when I was asking for a raise.

Q. Did you tell him then? A. I told him I could not get along on what I was making, I had to pay so much board to my aunt that was why I had to ask him.

Q. Well, what happened? A. He gave me my raise.

Q. He did? A. Yes, sir.

Q. How much? A. Two dollars.

Q. When was it you had that conversation? A. I could not give the exact date.

Q. Didn't you on one occasion after you had gone to work there, don't you recall that the people you were living with sent word down to the office that you were not well and had to stay out for about a week? A. Yes, sir.

Q. When was that? A. That would be in September.

Q. Wasn't it in July? A. In between the last part of July and September.

Q. You knew there was an Italian girl taking your place? A. Yes, sir.

Q. What was her name? A. Kate Bedetto.

Q. How did you hear she had taken your place? A. She came to my house.

Q. You had a conversation? A Not me personally.

Q. Did you see her? A. I did not.

Q. What did she come to your house for? A. She came to see if I was sick.

Q. Did you know her? A. Yes, sir, I was personally acquainted with her.

Q. Did she come to you before or after she was employed by Mr. Ulrich? A. After.

Q. She came to Mr. Ulrich and she was employed by Mr. Ulrich without your knowledge? A. Yes, sir.

Q. And she came to your house and told you? A. Yes, sir.

Q. And you rebuked her for going and taking the place? A. I did not.

Q. Did you criticize her? A. I did not.

Q. After you came back did Mr. Frank Ulrich speak to you about the fact that this Italian girl had been in your place? A. Not to my knowledge at the present time.

Q. Do you think it might be to your knowledge at a future time? A. I cannot remember whether he spoke to me about it or not.

Q. No matter what the fact was about what took place between this Italian girl and Mr. Ulrich did Mr. Ulrich tell you you had found fault? A. I didn't speak to the Italian girl. How could I find fault with her when I did not speak to her.

Q. Did you understand the question I put to you? A. From what I understood you asked if I found fault with the girl for taking my place.

Q. I ask you without regards to whether you did or not whether after you went back whether Frank Ulrich told you the Italian girl told him you had found fault about it? A. I don't remember.

Q. You don't remember? A. I don't remember.

Q. You won't deny he did tell you that? A. I don't remember.

Q. You don't remember that he expressed dissatisfaction that you should find fault with anybody taking your place when you were away? A. I don't understand the question.

Q. Do you remember about that, whether he expressed any criticism of your speaking to the Italian girl and criticizing her for taking your place? A. I don't remember.

Q. You don't say it didn't take place? A. I don't remember.

Q. When you finally left where were you living? A. Twenty-four Hudson street.

Q. Was that with your aunt? A. No.

Q. What time did you leave your aunt? A. I left my aunt in June.

Q. You had had some trouble there? A. I told you I was getting married and my aunt was dissatisfied.

Q. When was you married? A. In July.

Q. You were still at Ulrich's place when you got married? A. For two months.

Q. What date were you married? A. July the eighth.

Q. Where were you living at that time, whose people were you living with then? A. At what time do you mean?

Q. The time you were married? A. My husband's sister.

Q. Where were you married? A. Grace M. E. Church.

Q. Who married you? A. The Rev. Mr. Mooney.

Q. Shortly before you left about three weeks or so you had a conversation with Frank Ulrich, did you not, about wanting to be out three or four weeks? A. I expressed my desire to have two weeks vacation.

Q. When was it you expressed that desire? A. The day I left, before that I had suggested, I told them the doctor's orders that I should stay home for two weeks.

Q. Did you tell him it was the doctor's orders that you should not stand on your feet? A. He said I should have a rest.

Q. Had the doctor said you should not stand on your feet? A. No.

Q. Mr. Ulrich didn't know you were married? A. Oh, yes.

Q. Did you tell him? A. I asked him for the day off so I could get married.

Q. When was that? A. On July 7th I asked him for July 8th off because I was to be married.

Q. Didn't you ask Mr. Ulrich for a vacation for three or four weeks and at the same time say you expected it to be your vacation and to get your pay? A. No, sir.

Q. You had been told by the doctor you could not stand on your feet? A. The doctor said I needed a rest.

Q. Didn't Mr. Ulrich say there was no occasion to stand on your feet? A. I mentioned nothing about it to Mr. Ulrich.

Q. He refused to give you this vacation and pay you? A. I didn't ask for pay.

Q. He told you if you went away he would have to have some one in your place? A. He did.

Q. You thought that was very unjust? A. No.

Q. Did you speak to Mr. Burchill about it? A. I told Mr. Burchill I was leaving for a two weeks vacation.

Q. Did you tell Burchill that Frank had told you you could not come back? A. No, sir.

Q. There was nothing said to Burchill, nothing more than what you said? A. That is all I told him.

Q. Did you tell him you were leaving for good? A. No, sir.

Q. You thought you were? A. I did not intend to until after I got home and the doctor said I would really have to give it up.

Q. Mr. Frank Ulrich told you that if you went away he would have to get somebody else in your place? A. Yes, sir.

Q. Then after that you had this conversation with Mr. Burchill? A. I simply told Mr. Burchill I was going for a vacation of two weeks.

Q. You must have told Mr. Burchill more than that. You understood, didn't you, that you were going away for good? A. No, sir.

Q. You understood he would have to get somebody to take your place? A. They would have to have someone to do the work while I was out.

Q. That would not be any cause for discussion while you were out. You didn't have any objections to someone being there while you were out? A. No, sir.

Q. Did you tell him that? A. Yes, sir, because he asked me if I knew of someone that would come in while I was out.

Q. Did you tell him anyone? A. I told him, "No, I didn't know anyone."

Q. When did he ask you this? A. The morning I told him about it.

Q. Who was present? A. Just Mr. Ulrich and I.

Q. As a matter of fact did Mr. Ulrich complain about your work that time, did he complain about your doing something? A. Never to my knowledge.

Q. He dictated to you? A. Yes, sir.

Q. He was superintendent at the mill? A. Yes, sir.

Q. Was his manner a little brusk at times? A. Yes, sir, at times.

Q. Sometimes he found fault with the way you were doing it? A. Never to my knowledge.

Q. On no occasion while Mr. Ulrich was talking to you, when he was speaking to you about the way the work had been done didn't you shrug your shoulders and look at him in kind of a contemptuous way? A. Not that I remember.

Q. You can't remember that? A. If I had been nasty I would remember it.

Q. Are you ever nasty? A. I am quick tempered at times, at home.

Q. Mr. Ulrich is a little quick tempered also? A. Yes, sir.

Q. You felt his conduct was quite different from Mr. Burchill's? A. At times.

Q. Did you ever see Mr. Frank Ulrich after you left in October? A. Once.

Q. To talk with him? A. No, sir.

Q. Where was it you saw him? A. In the United States Trust Co.

Q. You just accidently saw him? A. Yes, sir.

Q. Have you ever seen Mr. Burchill after you left? A. Not until this trial.

Q. Do you mean this week? A. No, sir.

Q. When did you next see Mr. Burchill after you left? A. Just before this trial.

Q. Will you please look at me when I ask you a question. You say shortly before this trial. Tell me

the date as near as you can? A. I cannot give you any definite date.

Q. Can you tell me within a month? A. Yes, within a month.

Q. Within a month from today was when you first saw Mr. Burchill? A. Yes, sir.

Q. Had you seen anybody else connected with the executors and talked with them about what you knew about this case until a month ago? A. What do you mean by that?

Q. Have you talked with anybody, the lawyer, or Burchill or the executors until within a month before today? A. Yes, sir.

Q. With whom did you talk first? A. Mr. Pomfret.

Q. When did you first talk to him about it? A. Within a month.

Q. Until a month ago you have not talked to anybody? A. No.

Q. About nothing you knew in reference to this case? No, sir.

Q. Was that about the time you talked to Mr. Burchill about it? A. Mr. Burchill brought Mr. Pomfret to my home.

Q. Have you ever heard from Mr. Burchill before that? A. No, sir.

Q. Have you ever seen him on the street? A. Once.

Q. Where? A. In front of the company's office.

Q. Did you talk to him? A. Yes, sir.

Q. What did you talk about? A. He asked me how I was getting along and he asked me about my husband and my baby.

Q. Can you tell me about when that was? A. I would say about three or four months ago.

Q. Did he speak about seeing you again? A. No, sir.

Q. Did you hear when Franz Ulrich died? A. I knew it by the papers.

Q. You did see it in the paper? A. Yes, sir.

Q. You were interested in that? A. Yes, sir.

Q. Were you interested in seeing how he left his property? A. Just as a matter of fact.

Q. Did you learn how he left it? A. Only by the paper.

Q. Was it all in the paper? A. Well, I read what was in the paper.

Q. You read the provisions of the Will? A. In the paper.

Q. Did you see whether or not Frank Ulrich had been left anything? A. I read the Will in the paper, that is all I knew.

Q. You did see that Frank had been left nothing? A. Yes, as published in the paper.

Q. At about that time did you speak to different people about it? A. No, sir.

Q. Did you talk to anybody? A. No, sir.

Q. Did you speak to anybody or express yourself about the justness of the Will? A. No, sir.

Q. You did not say anything? A. No, sir.

Q. Did you say anything about the fact that Frank did not deserve to get anything? A. No, sir.

Q. Not a word? A. No, sir.

Q. Have you any feeling about that? A. No, sir.

Q. Mr. Burchill went with Mr. Pomfret to see you about this case? A. Yes, sir.

Q. Then did you talk over all the case? A. I gave Mr. Pomfret my testimony.

Q. Is that the only time you have ever spoken to Mr. Burchill and Mr. Pomfret about it? A. No, the other night I also had a conversation with Mr. McCran.

Q. That is all you know about it? A. Yes, sir.

Redirect Examination by Mr. Pomfret.

Q. What difference, if any, was there between the form of the bill sent out to the customers for work done at Allentown and Paterson, at the Allentown and Paterson mills? A. What do you mean?

Q. Were the form of the bills for each of the different mills the same? A. They were regular bills only it said Allentown Mill and gave the address of the Allentown Mill where the Paterson Mill had its address on their bill.

Q. Was there anything from the form of the bill by which you could distinguish where the work was done? A. Only by Ulrich Co. Allentown or Ulrich Co. Paterson.

Q. How would that appear? A. On the printed form at the head of it.

Q. Would the typewritten part of the bill indicate where the work was done? A. Not unless Mr. Geitznaur ran short of bills and then I would have to forward my bills to him.

Q. The bill in form was partly printed and the substance of the bill was typewritten on the bill? A. Yes, sir.

Q. There was nothing from that typewritten part of the bill which indicates at what mill the work was done? A. Not necessarily, no.

Q. Do you know in reference to the seven hundred dollar check deposited in the Allentown Bank, do you know why Franz Ulrich wanted that check deposited in the Paterson account? A. Because he wanted to keep the Paterson account as large as possible.

Q. That is the reason why he wanted it deposited in the Paterson Bank and not the Allentown? A. That is the reason.

ROSALIE GABRIEL, sworn as a witness for the proponent and testifies as follows:

Direct Examination by Mr. McCran.

Q. How old are you? A. Eighteen.

Q. Where do you live? A. 65 Graham Avenue.

Q. What is your business? A. Stenographer.

Q. For whom? A. The Ulrich Co.

Q. How long have you been in the employ of the Ulrich Co.? A. Two years.

Q. When did you first go to work for that Co.? A. October, 1920.

Q. What was your work with the Co.? A. Stenographer.

Q. Where was your desk? A. In the private office.

Q. The private office of Mr. Ulrich, Sr.? A. Yes, sir.

Q. Mr. Franz Ulrich? A. Yes, sir.

Q. Where was the desk of Frank Ulrich, the son? A. Right next to mine.

Q. How close to yours? A. There is about two inches between them, two inches between the edge of his desk and mine.

Q. They almost touch each other? A. Yes, sir.

Q. In what part of the room was your desk and Frank's desk with reference to where the father's desk was? A. Mr. Frank Ulrich's desk and mine were just as you come into the office, Mr. Franz Ulrich was on the other side.

Q. As you entered the door of the private office? A. Yes, sir, you passed my desk.

Q. On the right or on the left? A. I am on the right as you come in and Mr. Frank Ulrich is on my right, is on the right of me, that is, on the right of me as you come in and directly across from that is Mr. Franz Ulrich.

Q. Is there a partition between that office and the outer office? A. Yes, sir.

Q. Who work in the outer office? A. Mr. Coogan, the bookkeeper.

Q. What is his first name? A. John, John Coogan.

Q. Does the partition go all the way to the ceiling? A. No, sir.

Q. How far up does it go? A. About half way.

Q. Did Mr. Ulrich come to his office to the mill after you first went to work there? A. Mr. Franz Ulrich?

Q. Yes, the father. A. Yes, sir, he came down, what do you mean, what time?

Q. No, did he come to the office? A. Yes, sir, he came regular.

Q. How long did he continue to come down to the mill and office? A. As near as I can remember, two weeks before his death.

Q. What time of day would the father get down to the mill? A. I got there five after eight and he was always there when I got there.

Q. How long did he remain in the morning? A. All morning until lunch time.

Q. What time did he go away, he had lunch at home? A. Five or ten minutes to twelve.

Q. Did he return in the afternoon? A. Yes, sir.

Q. What time? A. About one o'clock.

Q. What time did he leave? A. Well, he used to go home any time from four to five.

Q. Would he go home before four o'clock? A. No.

Q. How did he come to the mill and go from the mill? A. I understood by automobile.

Q. You don't know? A. I was in the office. I really didn't see him come.

Q. When you would get there in the morning where would you find the father? A. Usually sitting at his desk reading the papers.

Q. Tell the court in your own way first what his daily routine was from the time you went there until he went home shortly before he died. A. He came down in the morning and read his paper for a few minutes and then he would go through the mill and after he would come back into the office and he would make remarks about what he had seen in the mill where the men were performing their work in a manner to suit him or that one of the different foremen were working too much stock wasted or just what complaint there was he would look through the mill and then come back and make these remarks to Frank Ulrich or Burchill.

Q. What time would the mail come in in the morning? A. About nine o'clock.

Q. What was done with the mail? A. Mr. Franz Ulrich opened it.

Q. Then what did he do? A. Make remarks about the different letters and if an order came in he would talk it over with either his son or Mr. Burchill, then he would put the mail in a pile and hand it over to Frank Ulrich.

Q. How long did he continue doing that? A. After Frank Ulrich had gone he handed it over to Mr. Burchill, he continued to do that until he left the last time.

Q. In the private office as you go in the door does the office extend very far to the left? A. The door is on the left.

Q. What is on the left of that? A. A show-case.

Q. Is there a wall along the office where the door enters? A. Yes, sir.

Q. On that wall there is what? A. A show-case.

Q. What is kept in the show-case? A. Twine used in the harness department.

Q. Twine used in the manufacture of harness? A. Yes, sir.

Q. Were any comments made about the twines by him? A. Where he sat he could see the twine of course, and he always told us when to order and in what quantities.

Q. How long did that continue? A. Up until he left he always did that.

Q. Do you remember the incident when Mr. Brown who was in charge of the harness department came in for information? A. Yes, sir, I do.

Q. Tell us what that incident was? A. We had an order for French harness and it was given to Mr. Brown as all orders were, and Mr. Brown couldn't understand the drawing or sketch, and he brought it down and told Mr. Burchill about it and no one seemed to be able to figure out the sketch and it was taken to Mr. Franz Ulrich and he explained to Mr. Brown, the harness foreman, all about it in about ten minutes and Mr. Brown went back into the harness department and made the harness.

Q. Can you fix about the time that took place? A. Six weeks to two months before Mr. Franz Ulrich died.

Q. Did Mr. Franz Ulrich, during the time you were there speak of the number of employees in the place? A. Yes, sir, he always kept count of how many there were.

Q. How long did he continue doing that? A. As long as he was there.

Q. Did he ever make any comments about the number? A. Yes, sir.

Q. To who? A. To Mr. Burchill and Mr. Frank Ulrich.

Q. What would he say? A. Sometimes he would say, he wouldn't think it was necessary to keep so many there and sometimes he would come in and say he noticed one of the employees was out and wanted to know what the reason for it was.

Q. He would come in from where and say that? A. Into the office from the shop.

Q. Did he speak in the office about how the work was progressing after he had walked around? A. Yes, sir, he always made remarks and comments after he had been through the mill, he would go into

the mill and when he came back he would say just how the orders were progressing and whether they were getting out or not.

Q. How long did he continue to do that? A. As long as he was there.

Q. Were monthly statements made up at the office? A. Yes, sir.

Q. Who made them? A. I did.

Q. What did they contain? A. Just what we had manufactured and what it had cost us to manufacture and both weight and material.

Q. Would it be made up in one long statement including all departments or in separate departments? A. On the front page it showed what each department was doing, of course, that had not been always the custom, it was changed when I was there because Mr. Frank Ulrich requested me to put what each department manufactured and what it had cost to manufacture both for material and time so he could compare it and see just how much profit there was.

Q. Mr. Franz Ulrich requested that? A. Yes, sir.

Q. When did he request you to do that? A. Shortly after his son Frank had left.

Q. That was when about? A. About the beginning of 1921 he requested me to do it.

Q. These statements were made up each month by you? A. Yes, sir.

Q. When they were made up what did you do with them? A. Handed them to Mr. Franz Ulrich.

Q. What did he do with them? A. Compared them and looked them over and if something didn't

please him he would call it to the attention of Mr. Burchill and sometimes Mr. Coogan the bookkeeper.

Q. What would he say? A. He would say maybe one department was taking too much for wages or they were not making enough profit.

Q. How long did he continue doing that? A. As long as he was there.

Q. Did he have another comparative statement at the time he was examining the last statement handed to him? A. Yes, sir, he had all the statements in his drawer and he took them out and looked back over the different months to see how the present month compared with the month before.

Q. He did that how long? A. Always right up to the time he left.

Q. Every month? A. Every month.

Q. Who sent the bills out? A. I did.

Q. Did Mr. Franz Ulrich take any interest in that? A. He always asked me if they had gone out on the first of the month. He would ask me on the second.

Q. If any bills had not gone out what then? A. I would tell him if they had not and he would ask me the reason for the delay.

Q. Did he make any comment upon the reason you gave? A. Yes, sir, often.

Q. He would tell you what? A. He would say he wanted them out quickly.

Q. You knew his son Frank? A. Yes, sir.

Q. You went to work as I understand in October? A. 1920.

Q. What date? A. I think it was October 29th.

Q. Of nineteen hundred and twenty? A. Yes, sir.

Q. Was Mr. Ulrich's son Frank there then? A. Yes, sir, he employed me.

Q. Mr. Frank Ulrich employed you? A. Yes, sir.

Q. What time would Frank come to the mill? A. About quarter past eight.

Q. Would he get there before that time on occasions? A. He might get there at ten after or quarter after eight, occasionally it would be a little later.

Q. What was the general demeanor of the son Frank towards his father? A. While I was there or when do you mean?

Q. You went to work in October? A. Yes, sir.

Q. And you have continued on till the present time with the Ulrich Co.? A. Yes, sir.

Q. After you went to work in October up to the time Frank went away finally what was Frank's when I went there, they seemed to get along all right while I was there except that they quarreled.

Q. During these quarrels what was the conduct of the son towards the father? A. He wasn't very respectful.

Q. In what respect? A. I heard him swear at different times.

Q. Did you ever hear him use any particular language towards the father? A. Yes, sir.

Q. Language that was offensive? A. Yes, sir.

Q. What was it, tell us? A. About two weeks after I went there there was a quarrel, of course, I hadn't been there very long and it was in the outer office.

Q. Where Coogan had his desk? A. Yes, sir. It was something about the key to the safe, the way

I heard it and then I heard Frank use very disrespectful language to the father.

Q. Tell the Court what it was? A. It was very disrespectful, I don't care to repeat it.

Q. Well, the Court would like to know what it was? A. I cannot repeat it.

Q. Was it a swear word? A. Yes, sir.

Q. Tell us some of the words you heard, the least offensive of them? A. I think it is sufficient to say it was disrespectful, I don't care to repeat it.

Q. What tone of voice was it said in? A. Very disrespectful.

Q. On whose part? A. Mr. Frank Ulrich.

Q. Did he swear? A. He swore very much.

Q. Did he use other language that you consider offensive? A. Yes, sir, he told his father he was rotten and he called him different names and that continued for about fifteen or twenty minutes, talking to the father in that disrespectful manner.

Q. Can you tell us some of the names he used? A. No, I can't at that time because, as I say, it continued about twenty minutes.

Q. You don't want to repeat these words? A. No, I don't care to repeat it.

Q. Do you remember Frank going away from the mill before Christmas? A. Yes, sir, I do.

Q. What was it about? A. Well, as near as I can remember, it was the latter part of November.

Q. Let me ask you, was it in October or November Frank went away? A. Why, I only went on the twenty-ninth of October and the first quarrel I speak of was two weeks later and as near as I can remember, this quarrel was about two weeks after that.

Q. You did not go there until October twenty-ninth? A. Yes, sir.

Q. And this was about four weeks afterwards? A. Yes, sir, about a month after I went there.

Q. How did that come about, do you know? A. Mr. Frank Ulrich and Mr. Franz Ulrich, his father seemed to be quarreling, it was in German, and Frank seemed to talk very angry to his father and it lasted about twenty minutes and then Frank walked out and after he walked out his father told me he was having trouble with his son Frank.

Q. Over what? A. He said he had always had trouble with him, but the present trouble was about a five thousand dollar bonus. He had given him a five thousand dollar bonus this previous year but this year he could not do it because business was bad, he said he could not afford it but he wanted to give Frank twenty-five hundred dollars, his own wife twenty-five hundred dollars and Mrs. Albert Ulrich twenty-five hundred dollars, but he said Frank wasn't pleased with that because Frank wanted everything.

Q. How long did Frank remain out after the day you referred to? A. He came back at Christmas time.

Q. How long did he remain there? A. He stayed long enough to complete the work. The Ulrich Co. have a habit of giving gifts to customers and he came back to straighten out the work because he was always in the habit of doing it.

Q. How long was he at the mill at that time? A. As near as I can remember two days before Christmas.

Q. How long was he there? A. Two days, I think, maybe one day.

Q. Did he go away then? A. He was preparing to leave, he had put his hat and coat on and Mr. Burchill came in and sat down at his desk and I, myself, heard Mr. Burchill tell Mr. Frank Ulrich it was his duty to his father to remain in the office and he should not leave but Mr. Frank Ulrich said he had stood it long enough and he couldn't stand it any longer and therefore he would leave.

Q. Did he come back after that? A. Yes, sir, he did.

Q. About what time was that? A. Shortly after the first of the year.

Q. How long was he back that time? A. It might have been only two weeks.

Q. Did any trouble then arise between Frank and the father? A. No, the trouble that started that time was between Melvin Ulrich and Mr. Burchill.

Q. Tell us what that related to? A. The quarrel didn't take place in my office but in the outer office but I could hear it.

Q. Could you hear it? A. Yes, sir.

Q. What was it? A. Mr. Frank Ulrich left a quarter to five and he had dictated a letter to me to the Wahl Co. about an Eversharp Pencil telling them to repair the pencil and make whatever charges there were to him and he gave the pencil to his son Melvin to wrap up and take to the Post Office. About five minutes to five or nearly five o'clock I heard Mr. Burchill and Melvin talking about it and from what I heard Melvin had been out with the car and had stayed too long and he wanted to go out again to mail the pencil and Mr. Burchill didn't know he was going to mail the pencil but he asked him why the packages were not there and Melvin

told him, he said it was his father's orders and he was going to do it the way he wanted.

Q. What did Burchill say? A. That ended it.

Q. Was there anything said about goods or articles that had been finished by the company that were to be delivered that evening? A. Yes, sir.

Q. What was said about that? A. Mr. Burchill and Melvin were talking about Melvin bringing the packages up.

Q. Did you hear any reference to packages in that conversation? A. Yes, sir, they talked about Parcel Post packages.

Q. What time did the father go home? A. The grandfather?

Q. Yes. A. About four o'clock.

Q. Do you know who went with him? A. Melvin, I think Melvin did. He would usually go home with him, and when he returned about five o'clock was the time he and Burchill had the argument.

Q. It was on his return? A. From what I heard Mr. Burchill was telling him that he had taken too long a time to take Mr. Franz Ulrich home.

Q. Do you know whether or not, whether there were any packages to be delivered to the Parcel Post or customers that evening or did you hear any reference to them? A. Yes, sir, I think Mr. Burchill said the packages had been taken up already.

Q. Franz Ulrich wasn't there at that time? A. No, he had gone home.

Q. Well, the next day what happened? A. The next day when I went in Mr. Franz Ulrich was there because he got there ahead of me. About half past eight Mr. Frank Ulrich came in, Mr. Franz Ulrich had been out in the mill and Mr. Frank Ulrich came

into his desk and while he was at his desk Mr. Franz Ulrich came into the private office and he said something, it didn't amount to much, I think it was in German.

Q. When Frank came into the office where were you? A. Sitting at my desk.

Q. What did Frank do when he came into the office? A. He said, "Good morning," to me.

Q. What did he do at his desk? A. Open his drawer and start in going through some papers.

Q. Then what? A. Mr. Franz Ulrich came in.

Q. When Franz Ulrich came in what was Mr. Frank's position? A. He was standing by his desk next to me.

Q. What did the father do? A. The father came into the office and said something in German then Frank said, "I didn't come down to quarrel, I merely came down to get my personal papers," and then Mr. Franz Ulrich walked over to Frank but before he got to Frank he said to him, "Frank is a robber and swindler."

Q. Then what did he do? A. When Mr. Franz Ulrich was speaking to anyone he was in the habit of placing his hands on your shoulder and he was just about to say something and he just said, "You—" and he was standing between me and the son Frank and I heard Frank tell his father to keep his hands off him and at that moment Mr. Franz Ulrich fell to the floor very violent and I heard Mr. Ulrich say to him in a very rough manner to keep his hands off him.

Q. Where did the father fall and how did he fall that you saw? A. They were standing on the left hand side of me and he fell in back of me and

fell over to the right hand side of me. He fell very violently. He had his hat on at the time and he was lying flat on his back on the floor.

Q. How near was Mr. Ulrich's head to the other wall beyond your desk? A. Of course, the show case is there.

Q. About how near was it? A. About eighteen inches.

Q. Right close to it? A. Yes, sir.

Q. How far was Mr. Ulrich's head from where Frank had been standing when Frank put his hand on him? A. Six or seven feet.

Q. Did the father sit down on the floor and roll over? A. No, he fell very violent and he fell flat on his back.

Q. Did the father trip on your chair? A. No, he fell violently, he fell too violent to trip.

Q. When the father fell on the floor did Frank attempt to pick him up? A. No, but when he fell Mr. Frank Ulrich's son, Melvin, was standing out in the outer office and by the expression on his face he was very frightened and he came in and tried to pick him up but the grandfather pushed him away.

Q. While the grandfather was on the floor did Mr. Frank Ulrich say anything? A. When he saw his son Melvin turn to help him up he told his son Melvin to let him stay there.

Q. What did he say? A. He swore at him.

Q. What did he say? A. He said, "Let the son of a bitch stay there."

Q. Then what did Mr. Frank Ulrich say? A. He called to Coogan, "Coogan, pick him up."

Q. Where was Coogan? A. In his own office.

Q. Did Frank Ulrich at any time attempt to as-

sist his father to his seat? A. No, sir, after he said, "Coogan, pick him up" Mr. Frank and his son walked out of the office.

Q. How did he say that? A. "Coogan, pick him up."

Q. Who did pick him up? A. Coogan picked him up and picked his hat up and brushed the hat off and put him in his chair.

Q. Frank and the son were there? A. They had gone out of the office.

Q. Did the father after that make any remarks? A. About half an hour later before he said one word, he didn't speak for a half an hour and then he told me that he had been very good to Frank.

Q. What did he tell you? A. He told me all about his trouble with Frank and then said Frank threw him down.

Q. Did he tell you he had been good to Frank? A. Yes, sir, he said he had been very good to him. He had given him plenty and if it were possible to get back what he had given him he would do it.

Q. Did the father ever speak to you about Mr. Burchill? A. Yes, sir, he told me that Mr. Burchill had always been very good to him for the past seventeen or eighteen years in his home. Mr. Burchill had been very kind to him and had been brought down into the business by him to protect his interest after the son Albert had died.

Q. When did he tell you that? A. The day after Frank left.

Q. The last time? A. The last time.

Q. Did the father ever make any other remarks about Frank after that incident? A. He said he had always had trouble with him and that the whole

trouble with Frank was he didn't want his sister to get anything or he didn't want Mrs. Albert Ulrich or Burchill to get anything and he said he considered the as much his family as his own children; he also said he was very much disappointed in Frank and he wanted everyone to know how he had treated Frank and how Frank had treated him and one day he said he would like to publish it in the newspaper.

Q. From the time you went to the mill in October, nineteen hundred and twenty, up to the time the father went away finally? A. Yes, sir.

Q. Was there anything in his conduct, his actions or speech or things he did or things he said that indicated there was any change in his mental condition? A. From the time I went there until the time I left he was always the same very strong willed man and he was strong up to the last time he was there.

Q. He knew what he was doing, did he? A. Yes, sir.

Cross Examination by Mr. Merrey.

Q. You say there was no difference between the old man from the time you went to work there until he left? A. None that I could notice.

Q. He was just as strong? A. He was not as strong physically but mentally there was no change whatever.

Q. He was strong mentally when you first went there? A. He was always the same from the time I went there till the time he died. He never appeared to be weak mentally to me. Physically he was weak, especially a few weeks before he died.

Q. What were his personal habits around the place? A. In the morning, he would read the newspaper, then occasionally go through the mill and take note of what the men were doing.

Q. About his dress, was he careful about his dress? A. Careful enough.

Q. Did he ever have his clothing disarranged? A. No.

Q. You never saw anything of that kind? A. No, not that I saw.

Q. Did you ever see him come into the office with his clothing disarranged in any way at all? A. Not that I noticed.

Q. He was in the same office with you? A. Certainly.

Q. You say for the first two weeks you were there everything was friendly between him and Frank? A. Everything appeared to be friendly.

Q. Then they had little quarrels? A. Yes, sir.

Q. What was the first quarrel about? A. It wasn't in my office, it was in the outer office but from what I heard it was about a key to the safe, Mr. Franz Ulrich had instructed the bookkeeper, Mr. Coogan, to put that key on his, Mr. Coogan's key ring and Mr. Frank Ulrich objected.

Q. Are you sure that was the first or wasn't that later? A. That was the first time.

Q. That was the first quarrel between the father and son? A. Yes, sir.

Q. What language did they speak in? A. English.

Q. Did Frank say why he objected to that? A. From what I heard he seemed to think that the

father didn't trust him by telling the bookkeeper to place the key on his key ring.

Q. What was that key to? A. The inner door of the safe.

Q. Where had it been kept before that? A. Of course I don't know, I only knew the quarrel.

Q. Was anything said about where it had been kept? A. No.

Q. There was a suggestion on the part of the father that he was mistrusting Frank? A. No, not from what I heard, Frank had no right to take it that way what I heard.

Q. Did the father direct Frank to give the key to Coogan? A. I didn't see Frank with it in his possession.

Q. From that conversation you learned that Frank understood his father mistrusted him and he put in the hands of Coogan a key to some private papers and matters in the safe? A. Yes, sir.

Q. Did the old man say much? A. No, Frank said it all, he talked very little, Frank did all the talking. He was very angry and talked angrily for about twenty minutes and then it was over.

Q. Did the old man try to pacify him? A. Yes, at times.

Q. Did he say he didn't mistrust him? A. No, I didn't hear him say that.

Q. But he did try to pacify Fank about it? A. He started to say something a few times but he never got through with it.

Q. Did he ever give any reason for that? A. He never said anything to me.

Q. Did Frank accuse Burchill of putting the father up against him? A. I didn't hear that.

Q. Was there any suggestion that Burchill was the cause? A. Not that I heard.

Q. Frank didn't suggest to the father that Burchill had been the cause of it? A. Not at that time, I don't think Mr. Burchill was in that quarrel. As near as I recall it, it was all about giving the key to Coogan.

Q. You say at that time nothing was said about Burchill being accused of this dispute? A. I didn't hear his name mentioned that day.

Q. At any other time did you hear Frank make that suggestion to the father? A. No, because the next quarrel I heard was in German, and the last one was the day he threw his father down.

Q. You never heard of any trouble between Frank and Burchill? A. No.

Q. All while you were there? A. No, but of course in all Frank was only there a month or six weeks when I was there.

Q. There was never any suggestion on his part that Burchill was trying to undermine him with the father? A. I never heard it.

Q. You never heard Frank say that? A. No.

Q. You never heard him say anything to Burchill about that? A. No.

Q. Did you hear him speak to the father? A. No, he spoke in German generally and this quarrel in the outer office was where Frank did all the talking.

Q. There was a quarrel and the old man began to discuss Frank? A. It appeared to me that.

Q. Did the old man talk to you about it? A. No, because I had only been there a week.

Q. Did you hear him talk to Coogan? A. No.

Q. Did you hear the orders go to Coogan to keep the key? A. No, all I heard was the quarrel.

Q. Did you hear the quarrel in English? A. I heard Frank talking.

Q. Was Coogan there? A. Most likely he was.

Q. You knew Coogan was in the outside office? A. Most likely he was.

Q. Do you know whether he was there? A. I did not look out.

Q. You knew Coogan was in the office, did you? A. I am not certain.

Q. If he had spoken a word you would have heard it? A. Yes, sir.

Q. If he had moved around you would have heard it? A. No, Frank was talking very loud.

Q. Your desk is right at the door? A. Yes, sir.

Q. And you can look out into Coogan's office? A. No, I face the partition.

Q. You were to the right of the door as you come in? A. Yes, sir, but the side of my desk is at the door, I sit in the center and my face is towards the partition.

Q The way you face the door would be at your left hand going out? A. When I am sitting at my desk?

Q. Where is the door then? A. On my right, to the right of me.

Q. How close is your desk to the partition? A. Right up against it.

Q. The door is to the right of your desk? A. Yes, sir.

Q. It is a low desk or a high desk? A. A low desk.

Q. You could look right out through that door if it is opened? A. No, my desk is next to it not in front of the door.

Q. Your desk is a little to the right? A. Yes, sir, to the right.

Q. By turning your eyes to the right you look out into the next room? A. No, the side of my desk is at the door but where I sit in the center I have to look at the partition.

Q. But by turning your head a little to the right you could look out into the next room? A. I could not see anything out there unless I got out of my chair.

Q. You could see through the door? A. I could not see through the door unless I stood up and go over in front of the door. When I am sitting down I am facing the partition.

Q. You don't know whether Coogan was there or not? A. No, but he belongs there.

Q. Did the father swear at any time? A. Yes, sir, at that time he swore very much.

Q. The father did? A. No, not the father.

Q. Did he ever swear when you were there? A. Yes, sir.

Q. How much did he swear? A. It was habitual with him.

Q. Did he swear at Frank? A. He didn't really swear at any time.

Q. At nobody? A. It was just habitual with him.

Q. In this quarrel he swore at Frank? A. No, Frank did all the talking.

Q. What was the matter with the old man, you say he was pretty vigorous at this time? A. Yes, sir, different times he started to say something but Mr. Frank did all the talking.

Q. After Frank stopped he didn't even then have anything to say? A. No, he just came into my office and sat down.

Q. Then where did Frank go? A. I am not positive what Frank did after that.

Q. Did he go away? A. I don't know but I think he went out and returned the next day.

Q. What did Frank do about the business? A. About the business?

Q. What were his duties? A. Usually in the office taking care of the payroll, check the payroll and so forth.

Q. Did he solicit orders? A. Yes, sir.

Q. Wouldn't he go away for days up to Allentown? A. I cannot remember him going to Allentown while I was there.

Q. You knew he was away on business for a day or two days at a time? A. I never remember that, he was late sometimes in the mornings.

Q. If he came in late he might have been out on business for all you know? A. Certainly.

Q. After this quarrel he came in the next day and everything was all right? A. Yes, sir.

Q. They spoke to each other friendly? A. Yes, sir.

Q. Where did the key remain? A. I don't know.

Q. You don't know whether Coogan kept it or not? A. All I know is the quarrel I heard.

Q. There was nothing further between them for some time after that? A. No.

Q. You didn't know when that quarrel was about? A. What quarrel?

Q. The quarrel after the key incident? A. That was in German.

Q. Could you understand any swear words? A. I could not understand.

Q. Aren't they something like the English? A. I don't know.

Q. You don't know whether the old man swore at him or not? A. No.

Q. All you know about it is that the old man spoke to you about it later? A. Yes, sir.

Q. Frank was away after that? A. After which quarrel do you mean?

Q. You know the quarrel we are talking about? A. The one that took place in German?

Q. Yes. A. Yes, he left.

Q. He left after that? A. Yes, sir.

Q. And he was away a couple of days? A. No.

Q. For how long? A. About a month.

Q. When did that quarrel take place? A. The latter part of November.

Q. When did he come back? A. Christmas time. I heard Mr. Frank Ulrich say his mother had asked him to come back and he said he had only come back to take charge of the Christmas gifts.

Q. He did that? A. Yes, sir.

Q. And then left again? A. Yes, sir.

Q. And then he returned again how soon after? A. Shortly after the new year.

Q. Are you sure about that? A. Yes, sir, as near as I can remember.

Q. Do you remember when he came in? A. Yes, sir, he just came in and said, "Good morning,"

and everything appeared to be the same as before.

Q. It was with the father too? A. Yes, sir.

Q. They were very friendly? A. No, not very friendly, I never seen them very friendly.

Q. You never saw them very friendly? A. No.

Q. What do you mean by that? A. They did not seem to converse in a friendly manner at any time, they didn't seem to bother with each other at all.

Q. You never saw the old man converse in a friendly manner with anybody? A. Yes, he did with me and with others too.

Q. With Mr. Burchill? A. Yes, sir, I never had a fight with him.

Q. How about Burchill, did he talk with him? A. Not while Frank was there.

Q. After Frank went away he talked with Burchill? A. Certainly he did to give instructions.

Q. Would he talk friendly? A. Yes, sir, certainly.

Q. Did he talk about other matters than business? A. No, generally business.

Q. After Frank came back after New Year's he stayed how long? A. That time it was about two weeks that he remained.

Q. Then you related this dispute over the pencil between Melvin and Mr. Burchill? A. Yes, sir, that of course, I heard but that was in the outer office.

Q. Frank wasn't there? A. He had gone home.

Q. Old Mr. Ulrich wasn't there? A. He had gone home.

Q. Did it amount to a quarrel? A. No, more of an argument.

Q. Did Burchill order him around? A. No, I never heard him order anyone.

Q. Did he tell Melvin he must do as he says? A. No.

Q. Did you ever hear of the question raised there as to who was boss? A. I heard Mr. Franz Ulrich say he was the boss and no one else.

Q. When was that? A. It was a habit, he was always saying that, "I am boss."

Q. Who did he say that to? A. He said that usually, he would say it to anybody there.

Q. That was a constant expression? A. Yes, sir.

Q. Why did he repeat that, did anybody ever question it? A. No, he would just say that.

Q. Did you ever say the old man only thought he was boss to anybody? A. No, because he was the boss, no one could cross him or dictate to him.

Q. You never said anything to him or anybody else like that? A. No.

Q. You say there was a constant repetition of this expression? A. Yes, sir.

Q. Who questioned his being the boss? A. I never heard any one question him.

Q. After this pencil incident the next morning what time did the old man come in? A. He was there when I got there.

Q. Where did he go? A. He went out into the mill as usual.

Q. Then Frank came in? A. Yes, sir.

Q. To get some papers? A. Yes, sir.

Q. You saw him at his desk? A. Yes, sir.

Q. How far was that desk from you? A. Right next to mine, maybe two inches of space between the edges of the desk.

Q. He practically stood along side of you? A. Not along side of me, he was in the middle of his desk.

Q. How long is that desk? A. His desk is a large one.

Q. How large is yours? A. A regular stenographer's desk.

Q. They were right along side of each other? A. There was about two inches between the sides and I was sitting at my desk in the center of mine and he was in the center of his desk.

Q. What part of the desk did he have open? A. Why, the right hand side.

Q. That is the side nearest to you? A. Yes, sir.

Q. Are there drawers on that desk on that side? A. Yes, sir.

Q. Was it a top drawer or a bottom drawer that he was taking papers out of? A. The second drawer.

Q. While at that the old man appeared? A. Yes, sir.

Q. What did he say? A. He said something to Frank.

Q. You heard him use some words? A. Very slight.

Q. You heard him say something and then what? A. After that Mr. Frank Ulrich answered him in English and said, "I didn't come down to quarrel, I merely came down to get my personal papers," and Mr. Franz Ulrich walked over to Frank

and when he was behind me he said, "Frank is a robber and a swindler."

Q. That seemed to come out of clear side? A. Yes, sir.

Q. He never explained that to you? A. He often said that.

Q. He had said that before? A. Yes, sir.

Q. Did you ever hear him say that to Frank? A. I cannot remember hearing him say that to Frank before.

Q. Did you ever hear him say that Frank had robbed him or swindled him out of his money? A. He said, "Frank thought he owned the Allentown Mill," and he said it was his mill because he had started that business and paid for the machinery and had paid the bills.

Q. He told you that. The Allentown Mill at the time you came there was run by the old man? A. Yes, sir.

Q. When the old man was behind you and said that what did he do next? A. He walked closer to Frank.

Q. What did you do at that time? A. Just sat at my desk.

Q. Were you looking ahead, looking at the partition? A. Just then I was looking at Franz Ulrich coming over.

Q. He was behind you? A. Yes, sir.

Q. You had to turn and look behind you? A. Yes, sir, as he stood next to me he said that.

Q. Did he speak very loudly? A. No, just moderately.

Q. Where was Mr. Burchill at this time? A. He was out.

Q. Had he been in that morning? A. I had not seen him yet.

Q. Did you see the old man put his hand on Frank's arm? A. Yes, sir, he may have because that was his custom.

Q. Did you see him take Frank by the throat? A. No.

Q. What was Frank doing when the old man got close to him? A. Standing upright.

Q. Was he reaching into the drawer for papers? A. No.

Q. Then were you looking towards him at this time? A. Yes, sir, then I was.

Q. Then you say the old man fell behind you? A. Yes, sir, and I heard Frank tell his father to keep his hands off him.

Q. Was that in English or German? A. English, I can't understand German.

Q. What did the old man say? A. Nothing, he fell at that time.

Q. As he went down he fell in back of you but when he reached the floor he was still in back of you? A. Yes, but he fell to the floor and to my right.

Q. Did he touch your chair in falling? A. No.

Q. Were his feet near your chair? A. No, they were facing me but they were not near enough to my chair to reach to them.

Q. Did you see him start to fall? A. No, he fell too quickly.

Q. You did not see exactly what happened? A. No.

Q. Nor what caused his fall? A. No, but there was no one else in the room and I heard Frank say very angrily for him to keep his hands off him.

Q. Frank said that? A. Yes, sir.

Q. Were you looking at Frank? A. No.

Q. You don't know whether the old man put his hands on Frank's throat? A. I was looking at him when he put his hand on Frank's arm.

Q. You did not see him push him? A. I know it happened too fast, that is why I didn't see it.

Q. You don't know what caused that, you don't know whether the old man had his hand on his throat? A. I know he didn't because I didn't have time to get my head around to the typewriter when the old man fell to the floor.

Q. What did the old man say? A. He didn't say anything, he couldn't when he was knocked down.

Q. Then you saw Melvin come right in? A. The old man fell to the right of me and Melvin saw the grandfather fall.

Q. He saw him fall? A. Yes, sir.

Q. And he rushed in to pick him up? A. Yes, sir.

Q. What did the old man do? A. He pushed him aside.

Q. He knew it was Melvin? A. Most likely he did.

Q. He didn't want him to have anything to do with it? A. No.

Q. Melvin hadn't said anything to him before? A. No, not in the office.

Q. Did he call for Coogan? A. That was Mr. Frank Ulrich when his son Melvin attempted to pick him up Mr. Frank Ulrich told the son to let the grandfather lay there.

Q. That was afterwards? A. Yes, sir.

Q. When Frank saw his father shove Melvin away? A. Yes, sir.

Q. When he saw his father shove Melvin away he told him that? A. It happened in the same moment.

Q. When the old man wouldn't let Melvin pick him up how soon after did Frank say that? A. It happened together, Frank said that and the father pushing him away.

Q. Then what happened? A. Then Mr. Frank Ulrich went out.

Q. After that Frank didn't come back? A. He and the son walked out then and Mr. Coogan picked Mr. Franz Ulrich up and assisted him to a chair and then Mr. Franz Ulrich told me that Frank had knocked him down and he told me about his troubles.

Q. That was about half an hour after, you said? A. Yes, sir.

Q. Did Mr. Burchill come in at that time? A. He came in shortly after that.

Q. Before he started to talk with you? A. After he was talking to me.

Q. Did Mr. Burchill hear any of that? A. Yes, sir.

Q. He said Mr. Burchill had always been good to him? A. Yes, sir.

Q. And he had brought him down to protect his interest after Al had died? A. Yes, sir.

Q. Did you often talk to the old gentleman about Frank? A. He talked to me.

Q. What did you answer? A. I didn't answer once, I never answeed him once.

Q. What kind of English did the old man use? Was it good English? A. Fairly good.

Q. Or was it broken German? A. It was fairly good English, you could understand him.

Q Could you understand him right up to the last? A. Certainly.

Q. Was his mouth ever twisted up that he couldn't use it? A. I could understand it.

Q. You never sympathized with him, from that conversation you came to believe that Frank was not a very good son? A. What do you mean, I did not have any conversation with him.

Q. I ask you again, from that conversation you came to believe that Frank was not a very good son.

Objected to by Mr. McCran.
Question withdrawn.

Q. What conclusion did you come to from this conversation?

Mr. McCran—What conversation are you referring to?

Mr. Merrey—The conversation she had with the old gentleman.

A. I didn't think very much of it, it didn't concern me at all.

Q. Did you believe what he said to you? A. I didn't give it that much thought.

Q. You listened to it? A. I listened to it and remembered it.

Q. Did it make an impression on your mind? A. I thought if it was true he was very mean.

Q. Did you come to the conclusion that Frank was a bad son and should be disinherited? A. I can't see where that has anything to do with it.

Q. You went to work about two years ago? A. Yes, sir.

Q. What salary did you get at that time? A. When I started I received fifteen dollars a week.

Q. And what do you get at the present time? A. Seventeen.

Q. Who is your employer now? A. Mr. Burchill.

Q. Have you talked to him about these matters you are testifying now? A. Certainly.

Q. How often? A. Three or four occasions.

Q. Who else have you talked to about it? A. Mr. Pomfret and Mr. McCran.

Q. You are right in the mill there with Mr. Burchill now? A. Yes, sir.

Q. You talked to him on three or four occasions about the testimony you were to give? A. Yes, sir.

Q. You never saw Frank after that time he left the mill on this occasion? A. Did I ever see him? I met him a few times on the street.

Q. Did you speak to him? A. I attempted to but he looked away, he never spoke to me.

Q. You never saw him back at the mill? A. No, I never saw him there.

Q. Do you think Frank tried to avoid speaking to you on this occasion? A. That is the way it appeared to me.

Q. You seemed to think he was unfriendly to you? A. Yes, sir.

Q. Where did you see him? A. I saw him in his automobile twice.

Q. You don't know whether he knew you or not when he didn't speak to you? A. No, he may not have known me, I don't know.

Q. You are not sure whether he knew you? A. Maybe he didn't, I am not sure.

JOHN COOGAN, sworn as a witness for the proponents and testifies as follows:

Direct Examination by Mr. Pomfret.

Q. Where do you live? A. Twenty-one Leslie street.

Q. Where are you employed? A. The Ulrich Co. at Ward street and Dale avenue.

Q. In what capacity? A. Bookkeeper and office manager.

Q. How long have you been in the employ of the company? A. Since March first, nineteen hundred and twenty, two years and seven months.

Q. You knew Mr. Franz Ulrich in his lifetime? A. Yes, sir.

Q. Did you have occasion to come in daily con-

Q. You say that Mr. Franz Ulrich was there every day? A. Yes, sir.

tact with Mr. Ulrich at the mill before his death? A. Up to the time Mr. Frank Ulrich lef there I had very little contact but after he left I had conversations with him every day.

Q. You saw him every day while Frank was there? A. Yes, sir.

Q. When was it that Mr. Franz Ulrich left the mill for the last time before he died? A. I cannot place the exact date. It is a question of some weeks. I cannot recollect the date when he left, possibly a few weeks before he died.

Q. Was it a week, two weeks or three weeks? A. More than a week.

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

Q. What time was it Mr. Ulrich's custom to come down to the mill in the morning? A. When I first started to work there he was ahead of me, he would get there about twenty-five minutes to eight and read the paper and then after that he came down around eight o'clock.

Q. How long during the day would he be there? A. He wanted to be taken home say, eleven o'clock, and he came down after dinner and then he would go home around four.

Q. Did you observe his routine daily at the mill and if so tell us what it was? A. He read the paper in the morning and sometimes made comments to me about the headline in the paper and then he would go through the mill and see the work. He

would know the names of all the men working there and he would know when we got a new man in and he would call our attention to it.

Q. Did he discuss with you about orders? A. During the latter period of his life he did when Frank was away from there.

Q. How long did this continue? A. He did that pretty much up to the time he left there before he died.

Q. Did he take any note of the stock you had on hand or the stock in the place? A. I remember his calling attention to the stock on different occasions.

Q. Did he make any inspection of the work? A. Yes, sir, and commented upon it.

Q. This continued how long? A. As long as he was around there.

Q. Did you ever see him examine any intricate reeds or harnesses? A. Yes, sir, I have seen him.

Q. Can you give us any particular instance you have in mind? A. Yes, sir, I remember some harness we manufactured there, an English harness, he noticed it there and wanted to see the job and what kind of work was done on it.

Q. Could he describe a harness? A. I should say he could.

Q. Have you seen him do it? A. As far as my limited knowledge goes he could do it, yes, sir.

Q. Did he pay any attention to the payroll, who made them up? A. I put down the hours and the pay coming to the men and made up the totals and then the stenographer took it.

Q. Did Mr. Ulrich, Mr. Franz Ulrich, examine the payroll or do you know that? A. I cannot say what happened to it after it left my hands and went into the other office.

Q. Who sent out the bills to the customers? A. The bills were penciled by me and checked by the stenographer and sent out by her.

Q. Did you ever have any discussion with Mr. Franz Ulrich about the bills not being sent out? A. Yes, sir, if they were not sent out he wanted to know why they were not sent out.

Q. These instances that you speak about during what time did they occur with relation to the time he left the mill? A. That was his general routine.

Q Did that continue up to the time he left the mill the last time? A. Up to the last time I saw him there.

Q. Did he ever call your attention to errors in your accounts or bills? A. Yes, sir.

Q. Can you give us an instance? A. Yes, sir, I made a mistake on a particular customer's bill and he saw it and he wanted to know why it wasn't right in the first place.

Q. In the payment of bills of the Ulrich concern did you ever have any discussion about discounts taken off? A. We have a custom of taking two percent and a couple of people we were dealing with don't allow it and he wanted to know why that discount was taken off in the first place and I explained it was the custom but it didn't make any difference.

Q. How did he get this information that these

discounts were taken off? A. When he opened the mail he saw the letters.

Q. Did he bring it to your attention? A. Yes, sir.

Q. Did he discuss the matter with you? A. Yes, sir, very emphatically.

Q. Who made out the checks after Mr. Frank Ulrich left the place? A. I did.

Q. Who signed them? A. The old gentleman, Mr. Franz Ulrich.

Q. Down to the time Mr. Franz Ulrich left the mill did he sign the checks? A. He did.

Q. From the general observation you made of Mr. Franz Ulrich, during the time you worked there up until the time he left the mill just prior to his death, can you tell us whether you noticed any change in his mental condition up to the last time he was there from the first time you went there? A. I wouldn't say in his mental condition.

Q. Did you notice any change at all in his mental condition during that period? A. No.

Q. How was his memory, good or bad? A. Very good for an old man.

Q. Could he recognize faces or names of customers? A. Yes, sir, he did and some of the customers he didn't see in quite a while but he knew their faces.

Q. Have there been occasions when that was indicated to you that he did recognize them? A. Yes, they have come there and he would say, "Well, I know your name but I can't just think of it," and

then he would rack his memory and then he would get it, he would know who it was.

Q. You were present in your office the morning of this occurrence when Mr. Franz Ulrich was on the floor? A. I was in my office.

Q. Will you just tell us what occurred that morning that you know of and what you did? A. Well, I was there before it happened but I didn't see the occurrence itself, I know Mr. Frank Ulrich was there and I heard Mr. Frank—

Q. Mr. Frank Ulrich was where? A. In his own office.

Q. Was his father in there? A. His father was in there.

Q. Was Miss Gabriele in there? A. Yes, sir.

Q. Did you hear anything going on in there before you went in? A. I recollect that the father and Frank were talking about something but what the subject was I couldn't tell.

Q. What caused you to go in? A. I was called in.

Q. By whom? A. By Mr. Frank Ulrich.

Q. When you went in through the door what did you see, where was Mr. Franz Ulrich and Frank and Miss Gabriele? A. The old gentleman was on the floor and Frank told me to come in and pick his father up and I did. I believe Frank and his son were there on the side, I believe Melvin was there, I am not sure, I suppose they were, but the stenographer was there.

Q. What did you see when you went in? A. I saw the old gentleman on the floor.

Q. What did you do? A. Picked the old gentleman up.

Q Who told you to pick the old man up? A. Mr. Frank told me.

Q. How did he say it to you? Can you tell us what words he used? A. He called out to me and said, "Coogan, pick him up."

Q. Did his manner indicate there had been trouble or was it respectful or not? A. It indicated to me there had been a fight, if not a short struggle.

Q. As you come in the door from your office to your left there is a show case? A. Yes, sir.

Q. That is on the opposite side of the roof to the desk of the stenographer and Frank Ulrich? A. Yes, sir.

Q. Where did Mr. Frank Ulrich stand in reference to that show case? A. He was across the room by his desk.

Q. Where was Mr. Franz Ulrich with reference to that show case? A. Mr. Ulrich's head was, I believe, between the show case and the stenographer's desk.

Q. Was his head near the show case? A. It was a matter of a few feet.

Q. And his feet were down that way? A. Yes, this is the desk and he was sort of facing towards the desk where Frank Ulrich sat.

Q. What did you do with Mr. Franz Ulrich? A. I picked him up and he had got a little dirty and I think I brushed him off then I helped him up and put him in his chair and his derby hat was dented and I fixed it and gave it to him.

Q. After that did Mr. Franz Ulrich make any statement to you as to what had happened? A. I believe he didn't talk for quite a while and I went out and it strikes me as if he said, "He knocked me down."

Q. To you? A. He wasn't facing anybody in particular, he said, "He knocked me down," and then I paid no more attention to it.

Q. Did you ever hear Frank Ulrich make any statements or suggestions to his father that he was going into business?

Objected to by Mr. Harding as leading.
Objection sustained.

Q. Did you ever hear any conversation between Frank and the father regarding Frank's going into business? A. I recall I heard some conversation that he said he was going to start for himself.

Q. Can you give us the substance? A. I cannot, that is the substance that he was going into business, as I recall it.

Q. That remark was made by whom? A. By Frank, I believe.

Q. To whom? A. To the father.

Q. Was that while Frank was still with Ulrich Co. before he left? A. It must have been, I couldn't hear it any other way.

Cross Examination by Mr. Harding.

Q. When did you say you went with the Ulrich Co.? A. Monday, March the first, nineteen hundred and twenty.

Q. That was after Albert had died? A. Yes, sir.

Q. How soon after you came into the business did Mr. Burchill come there? A. He had been working there previous to my coming there.

Q. You didn't see much of the old man until Frank had left? A. I saw him every day.

Q. You didn't talk to him? A. Yes, sir, I did.

Q. Did you talk to him every day before Frank left? A. Yes, sir.

Q. I understood you to say you had very little to do with him up to that time? A. I just said a little while ago that he made comments on the headline in the paper and expressed his opinion on them to me. He sat there every morning and he told me them every morning.

Q. That is before Frank went away? A. Yes, sir.

Q. On direct examination you made some distinction about your dealing with him before Frank was out and after? A. I had more business to do with him after Frank left.

Q. You did have conversations with him before that time? A. Yes, sir.

Q. Did you notice any change in him from the time you first went to work there until he died? A. What kind of a change?

Q. Mental changes or physical changes? A. I didn't notice any mental changes.

Q. You never noticed anything with respect to the old gentleman with regard to his mental condition? A. Not his mental condition.

Q. What was the old gentleman's personal habits of dress? A. At first they were very good for an old man, I thought it was all right then but after a while his appearance got a little careless.

Q. In what respect? A. He exposed his person.

Q. In front of you? A. Yes, sir.

Q. Did he go in the stenographer's room in that condition? A. Yes, sir.

Q. Did he do that frequently? A. There is two occasions I recall, it might have happened more.

Q. Did you tell Frank about it? A. No.

Q. You never mentioned it to him? A. No.

Q. Do you remember the occasion when the old man fell down? A. When he was on the floor I seen him.

Q. Not that incident you related but another occasion? A. What do you mean, when?

Q. When he fell down in the office of the mill? A. I remember the occasion he almost fell down if that is the time you mean.

Q. When was that? A. I can't place the date but I know he came out of the mill and I saw him.

Q. What happened? A. Well, he stood there and went back like that and his eyes became peculiar like and I thought he was going to fall and the man he was talking to put his hand out and I went around there to catch him and he grabbed hold of something and steadied himself.

Q. Was there an occasion on which you thought he became unconscious and you dropped a book to

wake him up? A. He sat at his desk and was dozing like he very often did and his color became rather frightening to me and I went over to him and I thought for a minute he probably was dead so I had a book in my hand and I dropped the book and he opened his eyes.

Q. Did you tell Frank about that? A. Yes, sir.

Q. Didn't you tell Frank you thought he was out of his mind? A. I didn't say so, I said that Frank asked me if I thought so and I said it would be terrible to say it because he was his son.

Q. That is the reason you didn't want to say it? A. No, I said it would be terrible on his part because it was his father.

Q. This occasion happened then before Frank went out of the business, about him falling and about him getting unconscious and his color changing? A. I don't think Frank was there.

Q. You spoke to Frank about it afterwards? A. Frank must have been out.

Q. Did you ever notice him when he went out of the office or did you assist him? A. I opened the door for him.

Q. Why? A. Because I thought he might fall down before he got there.

Q. Afraid he would fall into the machinery? A. Yes, sir.

Q. How long had that been going on before he died? A. That was a matter of some months before he died.

Q. Was he physically weak? A. Yes, physically.

Q. Did you ever speak to him about leaving his pants opened that way? A. I believe I told him about it.

Q. Told who? A. The old man.

Q. What did he say about it? A. I don't remember what he said.

Q. He didn't realize it, did he? A. He didn't think they were opened.

Q. That happened frequently? A. I would say frequently.

Q. Was his shirt sticking out of them? A. One time.

Q. More than one time? A. Well, it was one time anyway.

Q. These things happened often, Coogan, didn't they? A. It could have happened often but I didn't see all the occurrences.

Q. You saw many of them? A. I saw frequent ones.

Q. That happened frequently? A. It did happen.

Q. He did that in the presence of this girl stenographer, he went into her room? A. He did, yes, sir.

Q. Both of the girls? A. This stenographer we have now it happened while she was there.

Q. You are not sure about the other one? A. No.

Q. Did you ever call attention to that fact to Mr. Burchill? A. Yes, sir, we discussed that, I told him of it.

Q. You discussed the fact about the old man going around with his clothing disarranged? A. Yes, sir, he already knew that though, everybody knew it.

Q. Mr. Burchill knew it, did he? A. I presume he did.

Q. What did he say about it? A. I don't know.

Q. You don't recollect what Mr. Burchill said to you when you told him about this thing? A. No, I don't recollect now, Mr. Burchill could handle him better than I could.

Q. Did Mr. Burchill say to you not to mind it as the old man was crazy? A. He could have said it, I don't doubt it, but I am not sure.

Q. Didn't you tell Frank that Mr. Burchill had said that? A. Perhaps I did.

Q. Isn't it so? A. I don't recall that. I have studiously avoided dates in this case and occurrences I have tried to forget.

Q. You did speak to Burchill about the old man going around the mill in that condition? A. Yes, sir.

Q. And Mr. Burchill said something to you? A. Yes, sir.

Q. I want you to recollect if he didn't tell you not to mind it because the old man was crazy? A. No doubt he said not to mind him.

Q. What reason did he give for not minding him? A. I don't recall that.

Q. Didn't you tell Frank that Mr. Burchill had said not to mind him because the old man was crazy? A. I may have.

Q. You won't deny you said that? A. I cannot say, I will have to have some time to think about it.

Q. What kind of a man was the old man so far as temper was concerned? A. He had a very violent temper.

Q. Did he curse and swear? A. Yes, sir.

Q. Did you ever hear him swearing at Frank? A. I cannot tell you whether I did or not when Frank was in the office. I never went in there, I seldom went in there.

Q. Was he friendly with Frank? A. I would say he was friendly with Frank until the morning of the fight.

Q. When was that? A. The exact date I cannot place.

Q. What was it about? A. About some occurrence that happened some place, where I don't know.

Q. Was it where Mr. Burchill and the old man were plotting against Frank? A. No.

Q. Were you ever present when they had a quarrel of that kind? A. Yes, sir.

Q. A quarrel between the old man and Frank? A. Yes, sir.

Q. Do you remember the instance of it? A. Yes, sir, I had to witness that because it was in front of me.

Q. You remember what the quarrel was about? A. I think I do.

Q. What was it? A. The details that the old man was up in a certain saloon and on the Notch Road.

Q. Was that Sells' saloon? A. Yes, sir, and he was in there and it seemed that Frank Ulrich heard that the old man said that Frank was robbing him, or that everybody was robbing him except Mr. Burchill. It was either one of those two statements. Frank said that someone told him that Mr. Burchill had said that and he said it was a lie and Mr. Burchill said it was not true and that he was going to make him prove it.

Q. That was an argument between Frank and his father? A. Mr. Burchill was in that too.

Q. There were words between Frank and the father? A. Yes, sir.

Q. That is the first time you heard of any trouble between them? A. The first fight, yes, sir.

Q. Did that come on rather quickly? A. Yes, sir.

Q. How quickly did it subside? A. That lasted only a little while.

Q. How long would you say? A. I cannot say.

Q. Fifteen minutes? A. Yes, sir.

Q. Then it was over? A. More than fifteen minutes, between half an hour and an hour.

Q. Was it over after that? A. I believe Frank went out at that time.

Q. Went out where? A. Went out of the mill.

Q. Did he come back again? A. Yes, sir.

Q. When? A. I don't know what the lapse of time was, I cannot tell you.

Q. Did he come back in a day or so? A. I don't believe he was out more than a day.

Q. How did he happen to come back? A. I don't know, I imagine—

Q. I am asking you if you know? A. I don't know.

Q. How was the relationship between the father and Frank after? A. Frank continued there until he left again.

Q. Were they friendly? A. Apparently they were. I couldn't understand enough of the language they talked to answer that.

Q. Frank was tending to the business? A. Apparently, I had my duties outside.

Q. You saw him there? A. I can't swear what

he did, you know he was inside in the office and I was outside in my room.

Q. Frank had certain work to do? A. Yes, sir.

Q. You knew whether he did it or not? A. How should I know, I don't doubt he did do the work but how should I know of it?

Q. Would you say he took care of the checks? A. I didn't handle the checks.

Q. You didn't handle the check book? A. Not until Frank left there.

Q. How long did this continue then, that quarreling? A. You mean how long Frank stayed there?

Q. Yes. A. As I told you before of all that I purposely avoided I never took any notice.

Q. There was nothing unfriendly between them after this quarrel that you related? A. I don't doubt that they were friendly.

Q. You know whether they were friendly, Frank was there every day and he talked to the father and the father answered him? A. Yes, sir.

Q. Things went along the same as before? A. It looked as if it did, I never handled the checks until after Frank left.

Q. Did the father and son speak together after having that quarrel or was there any difference in their conduct before the quarrel? A. There wasn't any difference that I could see.

Q That continued for some time? A. Until Frank left again.

Q. How did he come to leave again? A. I imagine he left over Mr. Burchill, I imagine he left the next time—

Mr. McCran—I ask that what he imagined be stricken out.

The Court—Strike it out.

Q. I want to know what you know? A. There is a lot of details I don't remember.

Q. Have you any idea about what caused the next breech between them, what caused Frank to leave the next time? A. I cannot tell you because I don't recall it.

Q. How long was Frank away that time? A. I don't know.

Q. Was Frank away a short time or a long time? A. I cannot tell you.

Q. Did he come back again? A. Frank was back again after that.

Q. Then was he away again? A. Well, the next time must be the final time he left.

Q. That was the time you found the old man on the floor? A. Yes, sir.

Q. On that occasion do you remember the details? A. Yes, sir, I remember picking the old man up.

Q. Did you hear the quarrel? A. I heard their voices raised.

Q. Did you hear the old man call him a robber and a swindler? A. I heard him call him that before that.

Q. Where? A. Two or three times.

Q. Was that a custom of the old man's? A. Oh! he told him that a half a dozen times.

Q. He said he was robbing him? A. He said he was a robber.

Q. Did he say that about anybody else? A. Not that I remember now.

Q. Did he ever talk to you about going to the poorhouse? A. Yes, sir.

Q. What did he say about that? A. He came out of the shop and said, "Well, pretty soon the sheriff will be getting me, I am going to the poorhouse," and I said, "No," because as far as I knew about his financial condition he was all right.

Q. How often did he say that? A. I heard that half a dozen times.

Q. How long before he died? A. I cannot tell you, that is something I forgot about.

Q. Would it be three or four months before he died that he made statements of that kind? A. Possibly it was.

Q. You couldn't understand why he said that? A. No, I didn't know why he said that.

Q. It didn't occur to you that his mind was a little unbalanced? A. Well, I thought about the old man sometimes and I thought if that was true it was a shame for him to go to the poorhouse but then I thought when a man has a business grasp and a business like he has it couldn't be so and he couldn't be crazy because when I saw the grasp he had on the business it convinced me he wasn't.

Q. Well, that grasp he had on his business made you think he was all right but at times you didn't think so; when he made these statements about going to the poorhouse you had doubt of him? A. No, it made me so I did think he did it for effect.

Q. He seemed to be perfectly sane? A. He certainly did, I don't know why he said that, I cannot understand it to this day why he said it.

Q. It wasn't a joke, was it? A. No.

Q. You say you remember some of the instances about the quarrels he had, the disputes he had with the son Frank but you don't remember the date. Do you remember the quarrel about not taking an order from the Bethlehem Ribbon Co.? A. I remember that good.

Q. What do you know about that? A. I understood it was the Miesch Manufacturing Co., but I don't know about it if it was the Bethlehem.

Q. It was represented by Mr. Burchill to Franz Ulrich that Frank had refused to take an order from the Bethlehem Ribbon Co.? A. It was represented by Mr. Burchill that Frank had refused?

Q. Yes. A. If he represented that he must have represented it home, I remember the time in the mill when the order was discussed.

Q. Who discussed that? A. The order came in and—

Q. Who did the order come in from, who brought the order in, what concern sent it in? A. The order I mean I understood it was the Miesch Manufacturing Co.

Q. What did you hear about the Miesch order? A. They were discussing the order from the Miesch Co. and they were considering it and I was at my desk and I heard the conversation.

Q. What conversation did you hear about it? A. Mr. Burchill was standing by the show case.

Q. Who was he talking to? A. Frank was there and I cannot tell you exactly but I understood they couldn't handle the order, they had to refuse the order whether they were short of material or labor or what I don't know but there was some business reason.

Q. Did Burchill talk with him about it? A. He may have come out and made a comment to me, there is no doubt he did because he and I talked about several orders, many of them.

Q. Did he discuss with Frank about taking the order? A. I cannot tell you what his opinion was now.

Q. Did he express any opinion? A. He did, it was his place to express an opinion.

Q. We want to know what opinion he expressed? A. I cannot tell you now.

Q. Did you ever hear Burchill talk to the old man about that order? A. No, not in the mill, I don't remember he might have talked to the old man when he was home about it.

Q. You don't remember Burchill talking to the old man about that order? A. No, but no doubt he did.

Q. He didn't tell you he did? A. He might have, yes.

Q. Didn't he say Frank was entirely wrong about that and he had told the old man so? A. He might have told me that, I don't recall it. I suppose that matter was discussed in his home too.

Q. What matter? A. These occurrences you are speaking of, these things.

Q. In whose home? A. In the old man's home.

Q. How do you understand that? A. You ought to know that, you heard it explained to me before this.

Q. Did you understand it from Frank? A. I understood from Frank, yes.

Q. I am asking you about conversation? A. It was discussed at his home, that is all I know.

Q. Can you tell us what it was that was said by Mr. Burchill? A. What do you mean, what was said to him about it?

Q. Yes, did Burchill tell you what he had said to the old man about it? A. No, he wouldn't tell me that.

Q. Did the old man speak to you about it? A. I heard the old man say something about it.

Q. What did you understand the old man to say? A. I understood the old man said--. He said he wouldn't take this order and the old man had been excited and he wanted to know why they didn't take the order and said they should have taken it.

Q. Did he think that was bad business? A. Yes, sir.

Q. Did he say anything about Frank's conduct in not taking the order? A. He seemed to imply it was up to Frank, that Frank was the cause.

Q. Was the old man confused as to who the order came from? A. He wasn't confused as to who the order came from.

Q. Was he given to understand it came from a ribbon company, the Bethlehem Ribbon Co., and not the Miesch Co.? A. The Bethlehem Ribbon Co.?

Q. Yes, the Bethlehem? A. If he was confused about that that is a new one on me.

Q. That came from the Miesch Co.? A. My recollection is it was the Miesch, I remember having no order refused for the Bethlehem.

Q. Didn't the old man think it was from the Bethlehem? A. No, the Bethlehem part of it is new to me.

Q. It was the Miesch order but you don't recollect whether the old man believed it was from the Bethlehem? A. He just said, "This order came in, why was it refused."

Q. Who did he say that to? A. He said it in his own office when I was there, I don't see why he should get confused.

Q. Do you remember any other instance, any dispute, for instance about gasoline? A. I heard some words about gasoline but don't know anything about it; that was the time I never went into the old man's office because Frank was there then.

Q. What did you hear? A. From what I could understand there were a number of gallons excessive used.

Q. Who kept track of the gasoline used? A. The gasoline slip was handed in whenever gasoline was used and that was used to check them up and they could compare the slips with the items on the bills at the end of the month. I understood the stenographer and Frank did that.

Q. Did you hear Burchill say anything about this gasoline bill? A. I did but only when he was asked about it.

Q. Did you hear him talk to the old man about it? A. Yes, sir the old man engaged him in conversation about it.

Q. Did you hear what Burchill said? A. I don't recall now that I did.

Q. Did you hear Burchill say to the old man that Frank and the son were using the car at night? A. I don't know whether I heard him say that, I did hear that rumor somewhere.

Q. Didn't you hear Burchill tell the old man that

Melvin was using the car at night? A. Possibly I did.

Q. Wasn't he complaining about him using the car? A. I don't know.

Q. Did you hear the old man talk it over with Frank? A. No, but I understood—

Q. Only what you know? A. All this happened inside and I couldn't help to hear it and then what I did hear I didn't want to hear.

Q. Did you hear Frank and the father having any sort of a dispute about gasoline? A. I think I remember Frank speaking to the father about the gasoline, whether he had a fight about it I don't know.

Q. Do you know anything about the gas incident? A. Not much.

Q. Do you know anything about the key incident? A. Yes, sir.

Q. What was there in that? A. In the inside of the safe there is a little closet and that has a small key and we kept the bank book in there and petty cash never more than fifty dollars and one day the old man came in and saw the key and he says, "Take that key out of there and put it on your ring."

Q. When was that? A. I couldn't tell you the date.

Q. Was Frank there. Did Frank say anything? A. Yes, sir, Frank, it was just before he left and he wanted to know why they should take that key out of there, that there was only petty cash. He says, "Why should I take that," he says, "There is nothing in the safe for me," and I says, "There is

only fifty dollars in the safe," and he says, "There is nothing in the safe that I would take."

Q. Did the old man say why he wanted you to take it? A. No, I never asked him, he just issued the order and I did it.

Q. Did it seem strange to you to ask you to take it out? A. It was kind of surprising to me.

Q. Whenever he ordered you to do anything you simply did what he told you? A. No, I will qualify that, I wouldn't do everything he ordered.

Q. You said you did everything? A. Everything in reason.

Q. Did you do everything he told you? A. Everything in reason.

Q. What do you mean? A. Everything in reason, I did my duty by him.

Q. Did he ever ask you to do anything out of reason? A. No, nothing wrong, he never asked me to do anything wrong.

Q. Did you ever hear any talk between Burchill and Frank in which Frank was accusing Burchill or trying to supplant him with the old man? A. I heard a couple of incidents where Frank objected to Burchill and said he was a sucker. He told the old man he was.

Q. What did he say to the old man? A. He says, "You have a sucker in the family," and the old man says, "Lang is not a sucker."

Q. Did you ever hear any other conversation between Frank and Mr. Burchill about the father? A. I think there were other conversations, I don't recall now what they were.

Q. Do you remember a conversation in which Frank went to Burchill and said that it was hard

for him to stand for the father making these remarks about going to the poorhouse? A. Yes, sir.

Q. Do you remember the conversation? A. Yes, sir.

Q. Do you remember what Burchill replied? A. Yes, sir, I do.

Q. What did he say? A. He said, "Don't mind him." I don't know whether he said he is crazy or nutty but if he did we didn't take it literally then.

Q. That was Mr. Burchill's remark to Frank? A. I believe it was.

Q. Frank was saying it was hard for him to hear his father going on in that way and he mentioned that to Burchill and Burchill replied "not to mind him, that he was crazy." A. That he was crazy or nutty, whatever it was; I don't know whether that was the exact words but I didn't take it literally.

Q. How long was that before the old man died? A. I couldn't place that.

Q. Was this remark about going to the poorhouse, was it repeated often by the old man? A. Yes, sir, I would say so.

Q. Was the old man in the habit of swearing? A. Yes, sir.

Q. He was explosive that way? A. Yes, sir.

Q. He swore at everybody? A. Pretty much.

Q. Did he swear at you? A. No.

Q. Did he swear at the girl? A. I would rebuke him if he swore at me or anyone else only just in conversation.

Q. Did he ever call you a robber? A. No, he had no reason.

Q. Did you ever hear him call anyone else a

robber except Frank? A. He said a lot of people were swindlers.

Q. Did you hear him on this last occasion when he was on the ground, did you hear him call Frank a robber and a swindler? Did he talk loudly? A. You mean just before that happened?

Q. Yes, before you went in? A. The conversation I don't recall, I don't recall whether he did or not, in fact, the first I knew was when I heard some kind of a noise and Frank called me in.

Q. He called you in to pick him up and you did as Frank asked you to and put him in the chair? A. Yes, sir.

Q. He was behind the stenographer at that time? A. Yes, sir, generally speaking he was.

Q. Were his feet near the chair of the stenographer's? A. No, a little away. He was at more of an angle with his head towards the show cases.

Redirect Examination by Mr. McCran.

Q. You say when the word nutty or crazy was used you didn't take it literally? A. No.

Q. Mentally was the father crazy? A. In my opinion?

Q. Yes. A. No, he wasn't crazy.

Q. Was he in possession of his mental faculties so far as you could observe? A. Well, he was so far as I could see.

Q. I want you to tell us just the language that Frank used at times towards the father? A. What time, on any particular occasion?

Q. Tell us the language, I don't know on what occasion but the exact language that Frank ever

used towards his father. What kind of language coming from a son? A. The occasion I remember is when they had the fight near my desk, the first fight that I knew of. Up to that time I thought he treated the father respectfully and when that did happen I thought probably his temper was to blame, he was kind of disrespectful towards him.

Q. What language did he use? The Court wants to know what was the language he used that you consider disrespectful? A. He argued with the father and the father said to him, some remark like, "You are no son of mine," and he said, "I'm glad I'm not."

Q. What other language was used and the exact adjectives used, tell us the exact language, Mr. Coogan? A. I do know of some instances but I can't remember just what they were.

Q. On other occasions tell us the exact language Frank used to the father? A. One occasion he was quite violent towards the father.

Q. What language did he use when you considered him violent, what was the language? A. Well, the instance I just recalled when he said, "You are no son of mine," that was one.

Q. I am speaking of the language used by Frank? A. When he called me in he told me to pick him up he said it in a very disrespectful way, he said, "Coogan, pick him up."

Q. How was that? A. I never heard anything said like it.

Q. Tell us what other language was used on that occasion or other occasions in a quarrel that occurred between father and son? A. You mean the quarrel when he was on the floor?

Q. No, prior to that in your office, tell us about that one? A. He said, "Get your hands off me or I will murder you."

Q. Who said that? A. Frank said that.

Q. To the father? A. Yes, sir, it appeared to me he was addressing the father.

Q. Did the father put his hands on him? A. Yes, sir, and he wrenched them off.

Q. Then he made the remark about keeping your hands off? A. Yes, sir, he said, "Keep your hands off or there will be a murder in the family."

Q Were any curse words used by Frank to the father? A. There were other instances I don't recall.

Q. On any instance at all were there any curse words used by Frank addressed to the father? A. I don't know, you have me a little mixed up.

Mr. McCran—Will the stenographer repeat the question?

Q. On any instance at all were there any curse words used by Frank addressed to the father? A. I cannot tell you what they were but it strikes me there were curse words used.

Q. Did Frank ever say anything to the father or threaten the father that he was going into business for himself?

Objected to by Mr. Harding.
Objection overruled by the Court.

A. I heard him say it in my presence and he threatened to go in business for himself.

Q. To whom did he say it? A. Mr. Burchill was present and I was too.

Q. On any occasion did you hear him say that to the old man? A. It strikes me I heard him say it out at my desk, it was in the mill and the father was there.

Q. You said in answer to a question something about using the word sucker. What was the exact words used by Frank at that time to the father? A. He said, "Now you have a sucker in the family," and the old man came back at him right away and said, "No, Lang is no sucker."

Q. What did you tell me he said? A. You are referring now to what?

Q. What are the words you told me he used? A. He said, "He is a God damn sucker."

Q. What else? A. And the old man said, "No, Lang is no sucker."

Q. Go on? A. He said, "If you want Lang here to run this I will get out."

Q. Have you discussed this case with counsel on the other side? A. On his invitation, I have, he invited me.

Q. Where? A. I discussed it in Mr. Harding's office in one conversation.

Q. On one occasion you went there? A. Yes, sir.

Q. Who was there? A. Mr. Merrey, Mr. Harding, and Frank Ulrich.

Q. Did Mr. Frank Ulrich ask you to remember some things? A. There were some things I have forgotten and I said I have forgotten about them.

Q. Were there some things he insisted upon telling you of that he wanted you to say and that

you said were not so? A. I wouldn't put it as strong as that. He said, don't you remember so and so and as the case I said I did or I didn't and there was some things brought up there that I didn't remember.

Q. And were some things brought up there that were not so? A. I wouldn't say that, their construction was different from mine on some facts.

ReCross Examination by Mr. Merrey.

Q. You have spoken about a conversation with counsel in Mr. Harding's office. Do you remember stating that you preferred to talk about this thing at the trial and not there? A. I don't doubt that I did say that, that I would rather speak of it here.

Q. And didn't you say that you would tell the truth when you came to the stand? A. Yes, sir.

Q. You didn't want to discuss it with Mr. Harding or myself at that time? A. That was the idea, yes, sir.

(After recess)

FRANK J. ULRICH, sworn as witness for the proponents and testifies as follows:

Direct Examination by Mr. Pomfret.

Q. You are the son of Albert Ulrich? A. Yes, sir.

Q. And the grandson of Franz Ulrich, the testator in this case? A. Yes, sir.

Q. Your father died when? A. In 1919.

Q. What month? A. I cannot tell you the exact month.

Q. About how old was your father when he died? A. Over fifty.

Q. How old are you, Mr. Ulrich? A. Thirty.

Q. Mrs. Margaret Ulrich is your mother? A. Yes, sir.

Q. Have you any sisters or brothers? A. I have one sister, Viola Kearns.

Q. Where does she reside? A. Lindbrook, Long Island.

Q. She is married? A. Yes, sir.

Q. Have you always lived in Paterson? A. Yes, sir.

Q. Where did you attend school? A. St. George's.

Q. Any other school? A. St. Peter's, Jersey City.

Q. What time did you leave school, when, I mean? A. When I was about 18, 17 or 18.

Q. Did you ever work for your grandfather? A. Yes, sir.

Q. When did you go to work in the Ulrich mill? A. I cannot tell you the exact time.

Q. Do you work there yet? A. Yes, sir.

Q. Tell us how long you have been there? A. Eleven or twelve years.

Q. What did you first do when you worked in the mill? A. I worked in the block shop.

Q. What other department? A. Then I went to the harness department.

Q. What other? A. That was the only department until grandfather died.

Q. What wages did you receive when you went there? A. Three dollars and a half a week.

Q. Was that raised from time to time? A. Yes, sir.

Q. What wages were you receiving when your grandfather died? A. Twenty dollars a week.

Q. You were employed in the harness department? A. Yes, sir.

Q. Have you been out of the employ of the Ulrich Company since you went to work there? A. For fourteen months while I was in the service.

Q. What branch were you in? A. Quartermaster at Camp Merritt.

Q. You were discharged from service when? A. In May, 1919.

Q. Did you see your grandfather different times during the day while working at the shop? A. Mostly every day I was there.

Q. Did he visit your department? A. Every day, twice a day, in the morning and in the afternoon.

Q. How long did that continue? A. Right up until he died.

Q. How long before he died did he leave the mill? A. I should judge about two or three weeks.

Q. And that continued up to the time he left the mill? A. Yes, sir.

Q. Did you ever see him make any examination of the work done in your department? A. Yes, sir.

Q. What would he do? A. Examine the harness and examine the twine before it was twisted and if he found any knots or if it was fuzzy he would complain about it, and after the harness was

dressed in the afternoon he would want to see whether it was hard or soft, and at times he would work on the loom and the French loom.

Q. He would work on the loom himself? A. Yes, sir.

Q. How long did this course of procedure continue? A. Up to four or five weeks before he died.

Q. When he made this examination and passed on the work in your department, if he made a complaint was he right or wrong? A. Right.

Q. Did he take any notice of the men or the number of men working in your department? A. Yes, sir, always.

Q. Did he ever make any comments on that? A. Well, he did and he would look at the machine and pass on the work and watch the machines so we would not make them go too fast.

Q. Did he look over the orders in your department? A. He would come up and ask who was working on a certain order and if anything was in a hurry he would come up and explain it to the foreman up-stairs.

Q. Did you ever see him work on the harness? A. Yes, sir, many times.

Q. Every kind? A. The French harness machine, he knew all about them, and on these machines he had a patent.

Q. He had a patent on the French looms? A. Yes, sir.

Q. Are the warps of French looms very difficult to make? A. It is very difficult to make them right.

Q. Did you ever see your grandfather do anything around the machine himself? A. He would come over and examine them. I never saw him work only on the French looms.

Q. What time did your grandfather get to the mill in the morning? A. He was there before I was.

Q. What time did you get to the mill? A. Eight o'clock now.

Q. How did he used to come down to the mill? A. He rode on the trolley car before they got a truck and when they got a truck he came down on the truck.

Q. Your grandfather carried a cane when going around the street? A. Yes, sir.

Q. Did your grandfather carry a cane when going around the shop? A. No.

Q. What was his hours at the shop? A. He stayed there until about half past eleven and he was down right at one o'clock and he stayed until four or half past four.

Q. How long did that continue? A. Right up to the end.

Q. Down to the time until he finally left? A. Yes, sir.

Q. Did you have any personal knowledge of any differences or disputes which had occurred between your grandfather and your uncle Frank? A. No.

Q. Did you hear your grandfather and Frank ever have an argument when you were around the office? A. Yes, sir, I heard arguments.

Q. Did you hear enough to know what the dispute was about? A. No.

Q. Did you take notice of the attitude of one

towards the other? How could you tell they were quarreling? A. From the loud talking.

Q. Did you ever talk to your grandfather about increasing your pay? A. Yes, sir.

Q. On how many occasions? A. Two or three.

Q. When was the first? A. I cannot tell you, three or four months before he died.

Q. Just tell us the conversation you had regarding that request for a raise in pay. A. He says, "You are getting enough money for the time being, leave it alone," and then he walked away and said no more about it.

Q. That was the last time you asked him for a raise? A. What do you mean?

Q. Was that or when was the last time you asked him for a raise? A. I should say five or six weeks before he died.

Q. Where did you have that conversation with him? A. I asked in his private office at the time.

Q. What did he say? A. He said I had enough, he said my mother wasn't taking board off me and for me to go upstairs and keep my eyes open about the shop and learn the business.

Q. Did you ever have occasion to be in charge of any of the departments? A. I did, at one time the bookkeeper left and he told me to go upstairs; that was just before Mr. Coogan came.

Q. What sort of a man was your grandfather, a positive man or a weak man? A. Very positive.

Q. Was he a man who could be easily led or change his mind after he once made up his mind to do something? A. No, sir, he was boss all the time.

Q. From what you saw and the way he acted

was there any question in anybody's mind as to who was boss? A. No, sir.

Q. Do you recall any occasion when your Uncle Frank left the mill? A. I don't recall the exact date, I know he left and came back and left again.

Q. When was it he finally left the employ of your grandfather? A. I couldn't tell you the exact date.

Q. What year was it? Was it long before your grandfather died? A. No, I should judge about 1921.

Q. How long was your grandfather in bed? A. I can't tell you how long he was in bed. He was only home about a week and a half or two weeks.

Q. Did you visit your grandfather? A. I did, not very often, I did on Christmas or New Year's and on holidays.

Q. I believe you saw him every day in the mill, also? A. Yes, sir.

Q. Did you ever have any dispute or trouble with your grandfather? A. Never.

Q. Did you ever have any trouble with your uncle Frank? A. Never.

Q. Did you have any personal knowledge of any trouble between Frank and your grandfather? A. Only just what I heard.

Q. Did you know anything about your grandfather's will? A. No.

Q. Or when he made a will? A. No, sir.

Q. When was the first you heard about the will now under probate? A. The night Mr. Dunn was in the house.

Q. That was the first time? A. Yes, sir.

Q. Did you ever have any conversation with your Uncle Frank in which your Uncle Frank made

reference to this will or to Burchill or yourself? A. The night the grandfather was laid out I was standing by the coffin and he was there and he said, "You will be sorry if you stick to that son-of-a-bitch upstairs."

Q. Where was this? A. Right at the head of grandfather's coffin.

Q. Burchill lived upstairs and he referred to Burchill? A. Yes, sir, Burchill and his wife.

Q. His father was not yet buried? A. No, sir.

Q. Did you ever have any conversation at all with your grandfather concerning the will or the making of a will in your favor? A. No, sir.

Q. The very first intimation you had of your grandfather's will, or that you were mentioned in the will, was after your grandfather was buried? A. Yes, sir, the same day he was buried.

Cross Examination by Mr. Merrey:

Q. You are thirty years old? A. Yes, sir.

Q. You have been employed at the factory for eleven or twelve years? A. Yes, sir.

Q. And you have risen up to be in the harness department? A. Yes, sir.

Q. What did you do? A. Run the machine, harness-maker.

Q. Your father knew the kind of work you were doing? A. Yes, sir.

Q. Your grandfather, I mean? A. Yes, sir.

Q. And you asked him several times for a raise? A. Two or three times.

Q. He wouldn't give it to you? A. No, sir.

Q. He never advanced you beyond the harness department? A. No, sir.

Q. Never beyond a harness-maker? A. No, sir.

Q. Did you ever ask him to give you a better job? A. He thought there was too many in the office now.

Q. Did he ever complain about your work? A. No, sir.

Q. He was always satisfied? A. It seemed that way, he never said anything to me.

Q. You say your grandfather was a positive man? A. He was and if he said to-day you knew he meant to-day.

Q. Was he a kind of explosive man? A. Well, I wouldn't call it that.

Q. Did he swear occasionally? A. He might say "Ach the Hell" or something like that.

Q. Did he ever swear at you? A. No.

Q. He always treated you very kindly? A. Yes, sir.

Q. But he wouldn't give you a raise? A. He said I had enough to spend.

Q. Did he question you as to what you did with your money? A. No, sir.

Q. Didn't he object to your drinking? A. He never said anything.

Q. Didn't he give you to understand that he didn't like your drinking? A. He never said anything.

Q. He never made any statement of that kind? A. No, sir.

Q. Did he ever order you out of the place? A. No, sir.

Q. Did he ever swear at you and tell you to "get the hell" out of here? A. No, sir.

Q. He never found any fault with you about drinking? A. No, sir.

Q. You do drink occasionally? A. Yes, sir.

Q. You drink heavily? A. No, sir, not heavy.

Q. He never said anything about that to you? A. No, sir.

Q. Are you sure that wasn't the reason because you had been drinking heavily, that he didn't want to give you any more money? A No, sir, I don't think so. He used to buy me a drink himself.

Q. Frank was objecting to your drinking? A. Yes, sir, Frank was.

Q. Did he tell you you had to stop it? A. No, sir.

Q. Did he tell you you had been drunk at times? A. He told me in a kidding way but he would go in another way and tell different people.

Q. When he told you to stop drinking, that you had been drunk, that wasn't a kidding way? A. No, sir.

Q. Were you not put out of the factory for a time? A. No, sir, I was sick.

Q. Sick from taking too much drink? A. No, sir.

Q. Didn't you lose any time in the factory? A. I did on account of being sick.

Q. That sickness was brought on by drink? A. No.

Q. When did you do this drinking? A. I took a little ever since I was a kid I guess.

Q. At what time of day would you do it? A. At night.

Q. Did you ever go out of the mill and get a drink? A. No, sir.

Q. Did you take the foremen out with you to buy them a drink? A. No, sir.

Q. You say your grandfather didn't know anything about that? A. Not to my knowledge.

Q. Didn't you suspect he knew something about it and wouldn't increase your pay so as to keep you down on a monthly basis? A. No, sir, he told me I had enough, and he told my mother that too.

Q. You say when your grandfather died you talked to Frank? A. I talked to Frank.

Q. You said Frank said you would be sorry for sticking to that sucker upstairs? A. The night that grandfather was laid out Frank said to me, "You will be sorry for sticking to those sons-of-bitches upstairs."

Q. He was accusing you of being friendly with Burchill? A. That is what he said.

Q. Had you been friendly with Burchill? A. I was friendly with Burchill and the whole family.

Q. Wasn't that strange to you? A. No.

Q. You say you didn't know anything about this will? A. It wasn't strange because I heard of the fight he and Burchill had.

Q. You were sticking to Burchill? A. I wasn't sticking to anybody.

Q. You did stick to Burchill? A. I was there and I stuck there because my place was there.

Q. Did Burchill come in at that time? A. No, he was upstairs.

Q. Was anything said about the will? A. I never heard of it.

Q. Did you hear the conversation with Mr. Burchill in which he said he knew nothing about the will? A. No, sir.

Q. You didn't hear Burchill say at a family ga-

thering, "So help me God I don't know anything about a will"? A. No, sir, as soon as the will was read I went out.

Q. Who was there? A. Mother and I and Burchill and his wife and Mr. Handwerk and his wife, Frank and his wife and daughter and son.

Q. Mr. Burchill's wife was there? A. Yes, sir.

Q. You didn't know there was any will until it was read? A. No, sir.

Q. Were any comments made on it there? A. Yes, sir, Frank got up and thanked Mr. Dunn, he said, "Thank you, you son-of-a-this and son-of-a-that and all that."

Q. Then you went out? A. I went out, I don't know who went out after me.

Q. After your grandfather died and before the reading of that will were you present at any time when they were talking about where the will was? A. No, sir.

Q. How did you know to come to the house to hear the will read? A. I don't just remember, I went home, I don't just remember, something was said, I think Mother told me to dress up and go over.

Q. Had you been over before that? A. I stayed over the night of the wake.

Q. You told us you didn't hear your grandfather swear and all you heard him say was, Oh, the Hell? A. That is about all.

Q. Didn't he swear at everybody? A. No, sir.

Q. He never upbraided you for drinking, for your drinking habits? A. No, sir, he even took me in and bought me a drink as I told you.

Q. All he told you when you asked for a raise was to go upstairs and keep your eyes open? A. Keep my eyes open and watch and learn the business.

Q. You frequently stayed out of the shop? A. Only when I was sick.

Q. Did you ever go out afternoons to the show? A. No, sir.

Q. Didn't you go down to Orpheum on Monday afternoon? A. No, sir.

Q. Did you ever go down on Monday? A. If it was a holiday maybe I did.

Q. Did you ever go down on a working day? A. No, sir.

Q. Are you sure of that? A. I am sure of it.

LANGLEY J. BURCHILL, sworn as a witness on behalf of the proponents and testifies as follows:

Direct Examination by Mr. McCran.

Q. How old are you? A. Forty-one.

Q. Where were you born? A. Paterson.

Q. Where were you educated? A. Paterson.

Q. What school? A. St. Mary's Parochial School, Columbia College and the High School here, evening school.

Q. You married Miss Rose Ulrich, the daughter of Franz Ulrich, the testator whose will is now under probate in this case? A. I did.

Q. When did you get married? A. Nineteen hundred and five.

Q. Where? A. In New York.

Q. Where did you go to live immediately after getting married? A. In Paterson, in Franz Ulrich's house, No. two hundred and thirteen Park avenue.

Q. Where do you live now? A. The same place.

Q. Is that a two family house? A. It is now.

Q. Was it at the time you first went to live there? A. It was not.

Q. Then you lived in the family of Mr. Franz Ulrich, at first? A. I did.

Q. Who made up the family at that time? A. Franz Ulrich, his wife and my wife and myself.

Q. Later, I understand, that house was changed somewhat? A. Yes, sir, changed to a two family house.

Q. When was that? A. That was a year or so after.

Q. After what? A. After we went to live there.

Q. Were you working at the time you got married? A. Yes, sir.

Q. Where? A. In New York.

Q. For whom? A. I believe the American Railway Express, then it was the American Express Company.

Q. Did you work for them, thereafter? A. No, I went from there to the Lackawanna Railroad.

Q. When did you go to the Lackawanna Railroad? A. That was three or four years after I was married.

Q. How long did you continue with the Lackawanna Railroad? A. Five years I guess, about five years.

Q. Then what did you do? A. Then I went to the American Thread company.

Q. Where? A. In New York.

Q. What position did you have? A. Traffic Manager.

Q. How long did you continue with them? A.

I was there about three years until Franz Ulrich asked me to come and work for them.

Q. That house was changed after you got married, into a two family house? Did you continue to live there then? A. I did.

Q. What part of the house did you and Mrs. Burchill occupy? A. The second floor.

Q. Did Franz Ulrich continue to live there with his wife? A. He did.

Q. What part of the house did he occupy? A. The first floor.

Q. Did he continue to occupy that first floor until the time of his death? A. Yes, sir, he did.

Q. And you continued to occupy the second floor until the time of his death? A. Yes, sir, I did.

Q. Are you still living there? A. I am.

Q. Have you any children? A. I have.

Q. How many? A. One daughter.

Q. How old is she? A. Sixteen years.

Q. Has she always lived with you and Mrs. Burchill? A. She has.

Q. Is she still living with you? A. Yes, sir.

Q. Please tell us what was the relationship between yourself and Franz Ulrich and his wife from the first time you went to live with them in nineteen hundred and five? A. Well, I came home in the evening and whatever there was to be done in the house, I did it, no matter what was to be done around the place, I did it. For instance, his tubs would be leaking or his furnace, there was something the matter with his furnace, and I would fix it, and even himself. And even to Mrs. Ulrich, many times when she was not feeling well I would go down to her house.

Q. Down stairs? A. Yes, any time of the night, it didn't make any difference it was the same way. And when Mr. Franz Ulrich, the same. If I thought he didn't feel good I would go down to the drug store or doctor's office, anywhere they wanted me to, and then my daughter was always there to go to the stores for them or any little things they wanted done.

Q. Before your daughter came? A. I did it myself. If there was anywhere they wanted me to go or anywhere they wanted to go or anything they wanted me to do I did it for them, and if he had anything to be fixed in the yard or the garden, which he was very fond of, I would help him and I would go in and talk to him on Saturday. I would do the work but he was very active himself and the same way with the furnace, he was very active with that. He would go to the furnace at night and look it over, go down and look at it with me and all that.

Q. How long did Mr. Ulrich continue to look after the furnace? A. Up to a month before he died. He would always go down himself to look things over but I took the ashes out and tended to the furnace.

Q. Did you always do that? A. I always did.

Q. Did you and your wife go out with Mr. Ulrich and his wife? A. We did at his request, always.

Q. How long have you been doing that? I am speaking, especially now, Mr. Burchill, of the things you did prior to the time you went into the employ of Ulrich Co. A. Well, wherever they would go we would go. For instance to Greenwood Lake and off fishing, I would go off with him on various fishing trips.

Q. Did your wife do anything about the place? A. Yes, sir, she always came down every morning and went through the house, such as making the beds and straightening up the different rooms.

Q. When sickness was down stairs what did you do? A. I?

Q. Yes. A. In the past few years the old man couldn't get down and cut his corns and feet and I would go down and trim his nails and corns and give him an alcohol bath once in a while.

Q. In sickness? A. Yes, sir, I went down and rubbed his back many times.

Q. Do you remember the old gentleman having the influenza? A. The old gentleman?

Q. Or was it the mother? A. The mother when she was sick was in the front room of the house and many a time I would go in and turn her over from one side to the other and set her up on a pillow and all that.

Q. At the time of the epidemic, was there any nurse there? A. At the time of the epidemic she wasn't sick but there was Mr. Albert Ulrich and his family, they were very sick, that is the time he died and two children died. Of course, I was called on there and I stayed there, too, all through the illness.

Q. These cases you mentioned, were they all before you went into the employ of Ulrich and Co.? A. When they couldn't get a nurse I went over.

Q. When did you go to work for Franz Ulrich in the Ulrich Co.? A. In March, nineteen hundred and nineteen.

Q. Had you been doing these things you mentioned for fourteen years before that? A. I had.

Q. What was your relationship with Franz Ulrich and his wife? A. Friendly.

Q. Was there any difference in the relationship before or prior to your going to work for him in the Ulrich Co.? A. It was just the same.

Q. How did you come to go to work for the Ulrich Co.? A. Mr. Ulrich, Franz Ulrich, for at least two months or a month and a half or a month or a month and a half had wanted me to come down to work for him.

Q. How did it come about? A. He came to me and told me he would like to have me go down to work for him.

Q. Up to that time had you ever tried to enter his employ? A. I had not, neither did I want to.

Q. What did he say about going down to work? A. He wanted me to come down to work for him. I said, "All right, all right," and I put him off for weeks and weeks and he kept asking me all the time and at last I had to give my notice in where I was working and Mr. Ulrich was a man who if he wanted you to do a certain thing he insisted on you doing it and he insisted on my giving my notice where I was working and I had to leave my job.

Q. Who were you working for? A. The American Thread Co.

Q. What were your wages at that time? A. About sixty dollars a week.

Q. What did Mr. Ulrich offer you? A. Forty dollars.

Q. Why did you give up your position at the American Thread Co. where you were getting sixty dollars a week to work for less with Mr. Ulrich? A. Mr. Ulrich thought forty dollars a week was enough.

Q. Did your wife speak to you about it? A. She did and at last she said I had to do it. She said "you better give up your job and do it" because the old gentleman was kicking about me not doing it and I said, "I will go over and consult Frank Ulrich," and I told the old gentleman that and he says, "All right, you go over and see him," so I went to see him and he sat there and listened to what I said. I told him his father wanted me to come down to work and I said before I went down I wanted to make sure it was agreeable to him. He said it was all right and I went down there and started in to work for him. I never went back to New York. My wife said I better stop right now, and in the morning I had to send a telegram to New York saying that I couldn't be there.

Q. So you entered the employ of Ulrich Co., in nineteen hundred and nineteen. What month of the year? A. March.

Q. What was your position down there? A. I was down there as a salesman but after I was there a short time I was everything.

Q. How did you come to be everything? A. Well in case an order came in you would see it delayed here and there and the orders had to be gotten out and somebody had to get them out so I went in and worked with the men, I took my coat off and worked with the men and I was up in the office and I would have to go out to do this and that and then the telephone would ring and they would ask for Burchill and by and by everybody called up, they wanted to see Burchill, Burchill, and they kept me pretty busy.

Q. Did you act then as salesman? A. I did.

Q. What wages were you receiving at the time of the grandfather's death? A. Forty-five dollars a week.

Q. Then you had received an increase of five dollars? A. Yes, sir.

Q. Do you remember when you got that increase? A. Yes, sir, I do. I don't remember just the date but I remember getting the increase.

Q. Did you solicit it yourself? A. I did not. I was afraid to.

Q. Why? A. When the old gentleman said to me he mentioned it to Frank Ulrich, and he told me to mention it to Frank Ulrich, I said no, you are the boss.

Q. Who brought the subject up? You or Mr. Ulrich? A. Mr. Ulrich, the father. I said no, you mention it to Frank Ulrich, and he must have mentioned it to Frank because Frank Ulrich came up to me and said it wasn't that he was giving the raise to me but it was about he, himself, that he was angry. Frank Ulrich said that to me.

Q. In what way, what did he say? A. He said it isn't because you are getting the five dollar raise that I am arguing with the old man.

Q. Did he say or tell you what it was? A. It was on account of him treating him the way he did.

Q. What kind of a man was Mr. Franz Ulrich as you knew him? A. A very fine man.

Q. With reference to his physical and mental activities, please tell the court? A. He was a powerful man.

Q. Physically? A. He was a very strong man, and at times he would meet me and would be explaining something to me and he would start tapping me and he would near knock me over in explaining.

Q. You mean he was vigorous in talking? A. Yes, sir, and he always had to grab on to you when he was going to tell you something.

Q. That was a mannerism of his? A. Yes, sir.

Q. How long did he continue that mannerism? A. As long as I remember.

Q. To the time he left the shop? A. Yes, sir.

Q. Mentally what kind of a man was he? A. He had a very strong mind.

Q. Give us an illustration or a type of mind he had, if you can? A. I will give you one little instance, for instance in the garden. When he went out and bought twenty-five rose bushes and he said he was going to plant these right in line; so I went out and planted them and got them in line so they looked nice. After I got them planted then he came out and looked down the line and he said they were not straight, that they were out this way and that way, so I just went along the line and shoved them this way or that way and after I had shoved them all over he came out and he said, "I thought I told you to take these out." I said, "I did," and he said, "Look at that, take that out," so I had to rip them out and had to put them the way he wanted.

Q. Was he the type of man you could tell how things were going to be done? A. Nobody told him anything, he had his own mind and what he wanted was done, it had to be done the way he wanted it, too.

Q. How long did that continue? A. Until he left the shop.

Q. You mean finally before he died? A. Yes, sir.

Q. He was fond of flowers you said? A. He was.

Q. And he worked in the garden with you? A. Yes, sir.

Q. Did you work in the garden with him in nineteen hundred and twenty-one? A. He was in the garden but he didn't do any work. I did the nineteen twenty-one work. I don't believe he did any work in that time.

Q. Did he take an interest in it? A. Yes, he went around the garden just the same but I did the work and took care of it.

Q. Did he know anything about flowers? A. He certainly did, he knew a whole lot about them.

Q. In nineteen hundred and twenty-one could you tell us if he purchased any flowers? A. He did.

Q. How? A. He said we will go over to the sanitarium, the Riverview sanitarium, we will go over and see that fellow about some dahlia bulbs and I went over with him and he picked out the kind he wanted and drove home.

Q. When was that? A. In the spring of nineteen hundred and twenty-one.

Q. With reference to having work done was he a prompt man or a procrastinator? A. You could never tell him, you could never say to him I will do it tomorrow. Nobody could say that, wait until tomorrow. I have said that to him, I have said that we could fix that up later, that we have plenty of time and he would say, do it now.

Q. Did he come down to the mill in nineteen hundred and twenty-one? A. He did.

Q. What had been his routine in coming down to the mill in nineteen hundred and nineteen? A. Mr. Ulrich got up at five o'clock in the morning. He would cook his own meals in the morning.

Q. His breakfast? A. Yes, sir.

Q. Himself? A. Yes, sir.

Q. How long did he continue to do that? A. A few weeks before he died, he got up and he would go down to the furnace before I was up and have the fire going.

Q. How long did he continue going down and tending to the furnace? A. Up to the time a couple of weeks before he died, he would go to the furnace, go down the cellar; and he would go out in front or out in the yard and go through his yard. He would walk out in his stocking feet. He was a very hearty man that way. He would go out in his stocking feet and stand in the cold. I have seen him come out and stand there in the middle of winter.

Q. Could he do that in nineteen hundred and twenty-one? A. He could.

Q. Did he? A. He did. He would go to the front of the house and sit there until the trolley car came along. He would leave the house half past six in the morning when the hours were ten hours a day and began at seven o'clock in the morning and ended at six o'clock at night.

Q. Then the hours changed? A. I guess the forty-four hours had been in effect a year or two years.

Q. What were the hours when you first went there? A. Ten hours.

Q. Then they were changed to eight hours? A. Yes, sir.

Q. After that what was his routine? A. He would come down at half past seven.

Q. What time would he get up after the hours were changed to eight? A. He got up six o'clock, it didn't make whether it was a holiday or not he was up at six o'clock.

Q. How did he go to the mill? A. When I first went there he went to the mill on a trolley car and if the trolley car didn't run he would walk. He walked down in one of the worst snow storms we ever had after I went to work there.

Q. And you went there in nineteen hundred and nineteen? A. Yes, sir.

Q. What year was the snow storm? A. Nineteen hundred and twenty, I believe. He would ride as far as the depot and then get off and get his paper from Rumler Bros. and go across the track and through the Railroad yard and up Ward street.

Q. At that time did you have an automobile? A. At that time we did but he never rode down, he went down in the trolley.

Q. When did he begin to ride in the automobile? A. After the forty-four hours went into effect then I think we fixed it up that he could ride down on the truck. Before the driver used to get up there too early but then after the change the driver was there at the garage at eight o'clock and the driver would stop there and he started to ride down on the truck.

Q. Did he continue to ride down on the truck thereafter? A. Yes, sir, then we got a new car and he would ride down on the truck but later on he would ride down on the truck right along.

Q. Did anyone have to help him on the truck? A. No, they didn't, it was a pretty high truck. It was what they call a Reo Speed Wagon, a very high seat and truck. Why, in the afternoon when he was ready to go home he would look out and see if the driver was there or not and then he would go out there and get on the truck and wait for the driver.

Q. How long did he continue doing this? A. He rode home on the truck a couple of weeks before he died.

Q. How long did you see him continue getting on the truck himself? A. Up to a couple of weeks before he died.

Q. He got to the office early in the morning? A. He did.

Q. How long did he continue going to the office early in the morning? A. You call early in the morning half past seven or eight o'clock?

Q. With reference to the beginning of the work day? A. He was down at eight o'clock. After our driver started to drive him down, he would go down at eight o'clock and then a month, we will say, before he died he would wait until about nine o'clock and go down.

Q. What was his routine hours, if he had any in reference to going home and coming back? A. He always left around eleven o'clock or quarter after eleven and he came down at one o'clock then he would go home at four o'clock in the afternoon.

Q. What had been his practice since you went there? What had been his practice as to going home in the afternoon? A. I believe he always went home early around four o'clock in the afternoon.

Q. What had been his practice? A. When the eight hours went into effect.

Q. What about when the ten hours were in effect, what time? A. I believe five o'clock.

Q. One hour before quitting time? A. Yes, sir.

Q. What time did he go to the shop in the morning? You, I mean? A. Ten minutes to seven.

Q. Then when the eight hour schedule went into effect, what time? A. About a quarter to eight. I opened up the office.

Q. Did you do that every morning? A. Well, then of late I would ride down on the truck with the old gentleman.

Q. What was the hour? A. Then I was there before eight o'clock when I started going down on the truck.

Q. What did he do when he got to the shop? A. He would come in, in the morning before the power was started and he would read his newspaper. As soon as the power was started he would go through the shop.

Q. How long did he continue making a tour of the shop? A. Until the time he left the shop, two weeks before he died.

Q. What would he do when touring the shop? A. Look over the help, counting the men and see what they were doing and then come in to me.

Q. Did he do that in nineteen hundred and twenty-one? A. He did.

Q. What would he say? A. At times he would say to me there were so many men in a certain department, how is that, and I would say that is right and he would say, is that so, count them over, and

I would go down in the shop and see that there was a new man in or something like that.

Q. Did any such thing as that occur in nineteen hundred and twenty-one? A. It did, not once in a while but very often. He was always counting the men and checking up on them.

Q. What about the work going on in the shop? A. We had very large orders for certain customers which went up into fifty and a hundred thousand dollars at a time and he watched these orders to get them out on time. The work would have to be systematized and he would have them start on it a certain way so that it would be run through smoothly so that when we got a certain part of the work turned out in one department it went to another department and so on so as to get this work out on time, and he would come in to keep that work balanced. He never wanted to see this department running ahead of that other department and he was continually at the foreman of this department to keep his work up and keep it balanced.

Q. Did any such thing as that occur in nineteen hundred and twenty-one? A. It did.

Q. How many floors were used in the mill by Ulrich Co.? A. Three floors and the basement.

Q. The mill is four floors? A. Yes, sir, and a basement.

Q. How did he get up stairs in the mill? A. A. We haven't got an elevator, you have to walk.

Q. How did he get up there? A. He walked up.

Q. How long did he continue walking up stairs in the mill? A. The last I saw him was a month before he died.

Q. Did he use a cane when outside of the mill on the street? A. He did always.

Q. Did he use a cane while in the mill? A. No.

Q. The mail arrived about what time? A. Nine o'clock in the morning.

Q. Who opened the mail? A. Mr. Franz Ulrich.

Q. How long was he continuing that? A. Until he left the shop.

Q. Finally? A. Yes, sir.

Q. What would he do with the mail when he read it? A. When Frank Ulrich was there he would pass it over to Frank Ulrich and I would have to stand aside and if there was anything for me, there was no desk there for me, only for Frank and the father, and I wasn't in the office an hour a day. I wasn't in the office ten minutes a day, I believe.

Q. Where were you? A. In the outer office or in the shop or on the road and he would hand the mail to Frank and I always had to stand there because if I went to go out he would say, stay right here until I get through with the mail.

Q. What was the reason for that? A. Well, in a business like that there is always a certain amount of complaints coming in and when he would get them he would always say to me, how about that and I remember one time and Frank remembers also he passed mail over to me and Frank, got very mad about it and I said there was nothing to be mad or angry about. I would look at the letter and hand it to Frank and explain what it was because I was handling these matters.

Q. You were handling those matters that the letter he handed to you referred to? A. Yes, sir, that is why he would turn it over to me.

WILLIAM CRUTCHLOW, recalled to the witness stand and testifies as follows:

By Mr. McCran.

Q. Didn't you testify the other day, in reference to my question whether or not Mr. Langley Burchill had ever called at your home to ask you to endeavor to have Mr. Ulrich return to the mill? Have you looked into that matter or not? A. When I got home I asked my wife about it.

Mr. Harding—I object to anything he asked his wife.

Q. You did speak to your wife about it? A. I did.

Q. Have you given thought to the matter of whether or not Mr. Langley Burchill did call at your home? A. He did call at my home.

Q. Were you mistaken when you stated the other day that Mr. Langley Burchill had not called at your home to ask you to intercede for Frank to return to the mill? A. He called at my home to have me—

Q. You were mistaken the other day when you said he had not? A. I was mistaken.

Cross Examination by Mr. Merrey.

Q. Did you see him? A. Yes, sir.

Q. At your home? A. I did. There was one other mistake I made while here and I didn't think about it until after I got out of here. I made a mistake about the time I was talking to Mr. Ulrich, old Mr. Ulrich about when Frank got out the second

time. I was speaking to Mr. Ulrich the second time and he did say to me that it was on account of the boy having trouble that that was the reason he got out.

Redirect Examination by Mr. McCran.

Q. When you say boy to whom was the reference made? A. It referred to the boy, the boy of Mr. Ulrich, his son Melvin. The reason Frank got out the last time was on account of the trouble between the boy and Mr. Burchill.

LANGLEY J. BURCHILL, recalled to the witness stand and testifies as follows:

Direct Examination continued by Mr. McCran.

Q. How long did the reading of the mail continue by the father, Mr. Franz Ulrich? A. Until he left the shop.

Q. Did he read the mail every day? A. He did.

Q. Was Mr. Ulrich particular about the old customers? A. Very particular about them, yes. I can remember in the busy time when we had, for instance, shuttles; we would be making shuttles when shuttles were selling at three times the price we were getting, that is we could get fifty dollars a dozen and sometimes sixty-five dollars providing we could make a delivery immediately. We could have had lots of small people, small customers, or at least people buying shuttles wanted to know whether we would sell to them and deliver immediately. In making up the order if the amount happened to be six dozen shuttles we would generally make a dozen or so maybe a dozen and a half extra. We could make a dozen and a half and get fifty or sixty dollars for them but he would come out and say this is a small fellow and he would say, "come on, don't deal with these fellows because you have got big customers and every dozen you take off these big men you are holding them back and encouraging these other little fellows. It is much better to take care of a few good customers than to have twenty-five small ones."

Q. When was that about? A. Nineteen hundred and twenty.

Q. Were monthly statements made out? A. They were.

Q. By whom? A. Mr. Coogan and the stenographer.

Q. What was done with them in reference to Franz Ulrich? A. Franz Ulrich, the first of the month, if the statement wasn't there he would call Coogan and holler for it. He would want that statement and he wanted it on the first of the month, not the second of the month.

Q. How long did that continue? A. Up to the time he died, he kept them in his drawer.

Q. What did he do with the statements? A. Looked them over and compared them.

Q. Compare them with what? A. With last year's. Say for instance, he would get February last year and see how that compares, put that together and see how the wages were and the production and the profit, see what we were making.

Q. How long did that continue? A. Until he left. I believe they are still in his desk drawer. They have never been disturbed.

Q. Who signed the checks? A. Mr. Franz Ulrich.

Q. Did he do anything about the stock or offer any comments on that in nineteen hundred and twenty-one? A. He always took care of the stock.

Q. Tell us about it? A. He would go to the shop and look at it. In our business we have considerable waste and he watched the waste very carefully and the waste which we had would be put in bags and taken home and when he would go in the cellar and before the wood was put in the furnace many times he would look it over and take out pieces which instead of being sawed right were one eighth of an inch out of the way, and he would see there was enough wood for a quill in it he would carry them back to the shop.

Q. How long did that continue? How long did he continue doing that? A. He never stopped doing that.

Q. Did that occur in the winter of nineteen hundred and twenty-one? A. Yes, sir.

Q. Did he take any notice of the orders for stock? A. He always watched the cotton stock. It was in the inside office when I was there and I suppose when Frank Ulrich was inside with him he perhaps took care of that but after when I had dealings with Mr. Ulrich he always watched the cotton because that was inside there and he would say to me, your cotton is running down, you better get some cotton. Cotton was very expensive and we would only order a couple of hundred pounds ahead during these times, about a year or so ago.

Q. Was there any change in the father's mental condition up to the time he left the shop, his mental capacity? A. No, there was not. He was just the same the month before he left there when he said to

me, "Don't you know you are buying too much stock?" I said, "Buying too much stock?" He said, "Yes, look at all these checks." It wasn't because of buying too much; it was because of things were a little slow and we had to be a little bit careful and we would buy small lots and we would run out and we would have to buy again. Previous to that time Mr. Ulrich had been used to buying larger quantities but it made it look like so much more on account of the number of checks.

Q. He called your attention to that? A. Yes, to the fact that he was signing too many checks. I said, notice it is all for smaller quantities than you have been buying on account of conditions.

Q. Was he satisfied with that explanation? A. He was.

Q. Did you ever say that Mr. Ulrich was crazy or nutty? A. I never did.

Q. With reference to the physical condition, I am talking of the time when he was still in the shop. Was there any change in his physical condition? A. He was not robust or strong but I will tell you he could and did make a dozen trips a day down to the toilet and he would come back with a glass of water and he could carry a glass of water back to his desk without spilling it. He would carry a glass of water back and put it along side of him.

Q. You say he did go to the toilet quite often? A. He did.

Q. Was that because he had bladder trouble? A. Yes, sir, and he drank a glass of water there and he would bring a glass back with him and put it along side of him on his desk.

Q. Reference has been made in this case to the

fact that Mr. Ulrich, at times, did not button up his clothes? A. That is so, like any other man. Of course, he might have been a little more so. I would say to him it is one o'clock and he would button up. I have also said the same to Frank, "Frank, button up."

Mr. Harding—I object to anything he said to Frank and ask that it be stricken out.

The Court—Strike out any part of the answer with reference to Frank.

Q. Have you seen Frank, Jr., with his clothes opened in the shop?

Objected to by Mr. Harding.

Objections sustained by the Court.

Q. When you called his attention to the fact at times his clothing was not buttoned would he do anything? A. He would button them up.

Q. You used the expression, it is one o'clock? A. Yes, sir.

Q. What does that expression mean? A. Well, I believe it is common among men. One button means one o'clock, two buttons, two o'clock. It is a common expression among men. Occasionally you forget. When I come back I feel always to see that all the buttons are buttoned. Everybody else does, I guess.

Q. Was that a common thing with reference to his clothing being unbuttoned? A. No, just occasionally.

Q. Did he ever come to the shop with his person exposed? A. No, not as I know of. No.

Q. In reference to the check for seven hundred dollars which has been mentioned in this case that the father wanted deposited in Paterson not in Allentown, tell us of that instance? A I cannot tell you that instance.

Q You don't know of it? A I knew this thing had happened.

Q. Did Mr. Franz Ulrich speak to you about it? A. He did. He told me the check came in, I believe for seven hundred dollars and he handed it to the girl but that is about all.

Q. Did you have anything to do with reference to getting a bill of sale fom Mrs. Albert Ulrich? A. I did.

Q. How did you come to take the matter up with Mrs. Ulrich? A. Mr. Franz Ulrich told me to go over and see Mrs. Albert Ulrich and get a bill of sale from her or at least advise her or tell her that there was twenty-six hundred dollars in the Allentown bank and he wanted her to sign her part over to him.

Q. To him? A. Over to him, Franz Ulrich, and that in return he would give her the twenty-six hundred dollars in the bank.

Q. Pursuant to that did you go to see Mrs. Albert Ulrich? A. I did.

Q. Did you pursuant to these instructions go to a lawyer? A. I went to speak to her about this.

Q. I don't want the conversation but I want to know if after you had taken the matter up with her, did you do anything with reference to getting a bill of sale for the grandfather? A. Yes, I went to the grandfather and he said, "You see Mrs. Ulrich and

take her over to Henry Smith," so I called her up and made an appointment to meet her.

Q. Where? A. At Mr. Smith's office.

Q. When you got there, what happened A. I explained what Mr. Franz Ulrich had said to me and Mrs. Ulrich was there at the time.

Q. Did you give any instructions to Mr. Smith with reference to drawing a bill of sale? A. Mrs. Ulrich wanted me to come over there with her to have the bill of sale drawn up and he was to make out a bill of sale.

Q. From who? A. He drew it for her to turn it over to Franz Ulrich whatever was in that Allentown shop.

Q. That bill of sale was executed? A. It was. I don't believe it was that very day as I recall it, he was to draw it up and I think we came back a second time.

Q. What was your relation with Mr. Frank Ulrich the son of Franz Urich when you went to the mill first? A. We got along all right, we never had any words.

Q. I want to call you attention to a question which has been referred to in this case about the Miesch order and I ask you if you will kindly explain to the Court that instance? A. The Miesch order?

Q. Yes, did you ever tell the father Mr. Franz Ulrich that Mr. Frank Ulrich his son, had refused to take orders that were coming into the mill? A. In that particular case I did.

Q. Tell us what you told the father and how it came about? A That was nothing unusual to turn down an order. I believe it was for five sets of harness, ribbon harness and at the time it would take us

to get out this harness, two or three months with the amount of work we had and the scarcity of labor and we were speaking about the amount of business we were doing at the shop at home. We were home at the time when that little instance came up.

Q. What was said? A. Franz Ulrich and myself was talking about this and I said, there was an order here a short time ago that we had to turn down on account of not having enough help. You see we could manufacture all this work but we could not have it what they call entered.

Q. When you said there was an order you referred to the Miesch order, did you? Did you make a complaint of Frank not taking orders for work? A. It was a case of stalling for we could get so much business we couldn't deliver, and Frank Ulrich, himself, mentioned it to me after that. He mentioned it and asked me if I had told his father about turning down the order and I said, what order. He said the Miesch oder and I said, "Certainly, we couldn't do it."

Q. Did Frank get mad about that? A. No, he just came out and told me and that is all, in fact I never had any words with Frank Ulrich in the shop.

Q. Did you refer to the Bethlehem Ribbon Company? A. We were doing work for the Bethlehem Ribbon Company at that time.

Q. Did you tell the father that Frank turned down an order from the Bethlehem Ribbon Company? A. No, I did not.

Q. Was there any reference in your talks with the father about the Bethlehem Ribbon Company? A. That was a very old customer.

Q. You did mention the Miesch order for the reasons given? A. Yes.

Q. Was there any trouble or reference to the Miesch order so far as you were concerned? A. Not that I know of. I never heard of them having any words about it.

Q. Do you remember the instance of the gasoline bill? A. I do.

Q Who kept the record of the gasoline bill? A. Who kept the record?

Q. Yes? A. There wasn't a record kept.

Q. What was kept? A. The bills came in every month and Mr. Franz Ulrich would open the mail and I believe we had three or four cars running at that time. I would not be sure and every bill had on it whatever car used the gasoline. The first bill might be marked the Reo or the Vim or whatever car used it. It had to be put on this bill an itemized account of the gasoline which it had purchased and whenever gas was bought it was necessary to get a slip and the man who got it signed for it.

Q. The bills came in in the mail? A. Yes, sir.

Q. And the father opens the mail? A. Yes, sir.

Q. Was anything said to you or anybody else in reference to the amount of the gasoline bill? A. I believe there was one time a bill came in and it was rather high for the touring car and as he compared it he said it was running much higher than the truck.

Q. And was it? A. It was.

Q. Did the father call your attention to it? A. He did.

Q. What did he say? A. He said "look at this bill here, here is the touring car running higher than the business car and the business car being out every day," and I made some remark about there

might be some reason for it running so high and at that time that passed off. Then later on the August bill came in and a slip came in with the initials E. B. on it and previous to the time this memorandum came in Frank's son Melvin Ulrich was driving a Buick runabout on Sundays. I seen him often on Sundays and the owner of this Buick runabout, his initials were E. B.

Q. What was his name? A. Edward Bannigan, the girl showed me the slip and I advised her and she said she thought there were other slips coming in with other initials on it.

Q. Was anything said about it? A. There was and they said after this we will not pay any slips that had anybody's initials on who is not working here and we will not pay the gasoline bills without the delivery slip.

Q. Did you say anything to the girl about speaking to any one? A. I don't believe I did.

Q. Did you speak to the father further, in reference to these bills? A. I believe I did.

Q. What did you tell the father? A. I told him that there were bills coming in, delivery slips, with other people's initials on them and I didn't think it right for us to pay for gasoline when someone else was using it and the outcome of that was that they changed the gasoline station over to The Oil Store.

Q. Did you mention Melvin to the father? A. I did.

Q. In addition to these slips coming in have you seen the boy using the car? A. I had on many occasions. He always drove his father's car.

Q. The fact is he was using the car? A. There

was no question about him driving the car. The question was did we use the gasoline but if someone else was using the gasoline for which these bills were sent in I didn't think it was right. I was brought down there to look after the old man's interest and I didn't think it was right.

Q. Was that the purpose of speaking to the father and not in reference to causing any trouble between the father and the son? A. You mean the son Frank?

Q. Was that the purpose on your part in speaking to the father because you were brought there to look after his interest? A. Yes, because Frank Ulrich had mentioned it to me about the gasoline.

Q. So far as you know was that the cause of the father leaving the mill in November? A. I never knew the father left the mill on account of the gasoline.

Q. I am speaking of Frank, the son of Franz Ulrich. Was that the cause of his leaving? A. Frank's son?

Q. No, no, Frank the son of Franz? A. No, I never understood it that way.

Q. Did the father ever say anything to you as to why Frank left the mill in November? A. In November?

Q. Yes. A. He talked to me at one time about the bonus.

Q. Who did? A. Mr. Franz Ulrich.

Q. What did he tell you? A. He told me Frank wanted his bonus of five thousand dollars and he said he couldn't afford to pay him a bonus of five thousand dollars a year but that he intended to give Mrs. Albert Ulrich twenty-five hundred and Mrs.

Ulrich, Frank's mother, twenty-five hundred dollars and to give Frank twenty-five hundred dollars but Frank would not accept it.

Q. Frank did go out of the mill in November? A. Yes, sir.

Q. How long did he remain away? A. I think about six weeks, from six to eight weeks.

Q. Had Frank been out of the mill on previous occasions to that? A. He has.

Q. After Frank went out of the mill in November did you do anything to get him to come back? A. I did.

Q. What did you do? A. I spoke to everybody I thought was a friend of his to bring him back. I spoke to Mr. Crutchlow and I spoke to a man by the name of Bannigan.

Q. What was his name? A. George Bannigan.

Q. Who else did you speak to? A. Every customer that ever came in that was a friend of his.

Q. Did you ever speak to Frank Ulrich's son, Melvin? A. I also told his son to tell the father to come in.

Q. Did you speak to Melvin on more than one occasion to tell his father to come back? A. He knows that.

Q. Did you? A. I did.

Q. Did the son Frank return to work? A. Yes, sir, he did around New Year's.

Q. How long did he remain then with the father? A. A couple of weeks more.

Q. Did Mr. Frank Ulrich say to you, "Lang, I cannot stand this much longer the way father is going on. He is going on something awful"; and did you say "What would you think af any man who has

the money your father has and the money he is making and talking that way and carrying on"; and I said, referring to Frank, "I would think he was crazy," and you said, "So would everybody else think so"? A. I don't think I talked that many words to Frank while I was there.

Q. Did you say these words to Mr. Frank Ulrich? A. I did not.

Q. And Frank returned, as I understand, after New Year's and continued there for how long? A. Two or three weeks.

Q. Do you remember the instance referred to in this case as the Eversharp pencil? A. That is just new to me lately about that pencil.

Q. Was there any talk between you and Melvin about packages that were to go to the Post Office? A. There was.

Q. When was that? A. Right after Frank Ulrich came back, two or three weeks after he came back.

(At this point the hearing was adjourned indefinitely).

Sixth day, January 29th, 1923.

LANGLEY J. BURCHILL, recalled to the witness stand and testifies as follows:

Direct Examination continued by Mr. McCran.

Q. At the close of the last hearing you began to explain the incident referred to as the Eversharp pencil incident which occurred in January after Frank Ulrich, the son of Franz Ulrich had returned

to the mill. Will you kindly tel us what that incident was? The incident, I may say this to refresh your memory, relating to the packages to be taken out in the afternoon. A. It was one night or late afternoon when the boy Melvin Ulrich had taken Mr. Franz Ulrich home that afternoon with the truck and I believe that was around four o'clock or quarter to four and in the afternoon we keep our packages and shipment until around five o'clock, half past four or quarter to five, then take them to the post-office and express office. So the truck hadn't come back until around a quarter to five or somewheres around that neighborhood and we had a delivery to make at a certain mill in town and the driver stood in the office waiting for the truck to come back to make this delivery and take his stuff to the post-office. So when Melvin brought the truck back and when he came back I said to the driver you take the truck and get down to this certain mill and make the delivery and also get your packages for the post-office and express office. So Melvin said he was going to take these shipments and I said no, the driver will take it; he has stood around here from a quarter to four to a quarter to five, he has stood around here doing nothing. As far as the Eversharp pencil goes I never heard about it before this case came up here.

Q. How long should it have taken Melvin to take the father home and get back to the office? A. Ten or fifteen minutes would be plenty of time.

Q. How far is the post-office from the mill? A. Two blocks, two and a half blocks so then the boy made some remark, he said he would take the packages to the post-office, and I said no, the driver would

take them. He said he had a package for his father that his father wanted to be sent and this was the Eversharp pencil, it comes out now, he was talking about.

Q. It was worth what? A. I suppose half a dollar. I don't know just what it was but that was the cause of this trouble and of Frank Ulrich leaving, as I understand.

Q. After the close of business on that day where did you go? A. I walked home to my home.

Q. When did you see Mr. Franz Ulrich with reference to your leaving the mill that afternoon? A. I went home and after I was home a few minutes I heard this loud talk down stairs.

Q. In whose apartment? A. In Mr. Franz Ulrich's apartment.

Q. Did you go downstairs? A. I did.

Q. Who was down stairs when you got there? A. Melvin Ulrich, the son of Frank Ulrich.

Q. Did you see Mr. Franz Ulrich from the time you left the mill until you saw him downstairs with Melvin? A. No, sir.

Q. Had you gone to the grandfather and talked to him about Melvin before you came downstairs? A. No, I had just got home, just got into the house.

Q. What occurred downstairs? A. When I went in Melvin was talking to the grandfather very loudly and when I went in and listened to what he had to say and when he said to the grandfather, who shall I take orders from down there, who is the boss down there?

Q. What did the grandfather say? A. The grandfather struck himself on the breast this way and said he was the boss there.

Q. Meaning who was the boss? A. Franz Ulrich. Then Melvin said he would take orders from his father and the old gentleman and that these were the only ones, and then Mr. Franz Ulrich said to him, "You will take orders from the bookkeeper because you are the shipping clerk."

Q. When the grandfather said "I am the boss" did you say to him "Who is the boss?" A. I did not.

Q. Did the grandfather say he wasn't the boss but that you were the boss? A. That I was the boss?

Q. Did he? A. Certainly not. No one was the boss only Franz Ulrich there.

Q. What was Melvin's reply if any, to the grandfather when the grandfather said he would have to take orders even from the bookkeeper? A. He said if he had to take orders from anyone other than the father and his grandfather he would get out.

Q. What did the old gentleman say? A. The old gentleman said, "All right, suit yourself."

Q. Did you see Frank Ulrich, Mr. Franz Ulrich's son that night? A. I believe I did.

Q. Where? A. He came up in my house.

Q. To your apartment? A. Yes, sir.

Q. When was that? Around what time? A. Around eight o'clock at night, between seven and eight, I cannot say what time.

Q. What were his actions at that time? A. He was very excited and came up to my house and said to me "You Catholic son-of-a-bitch, you got me out of the mill and now you got my son out." I tried to reason with him but he wouldn't listen and he invited me downstairs to take me outside. I said,

"Listen, Frank, come back" and Mrs. Ulrich and my wife held me back from going. I went downstairs and told him if he would come back to listen to reason but no, he was too excited. He wouldn't come back.

Q. The next morning were you back at the mill? A. I was.

Q. Was Frank at the mill? A. No, he wasn't.

Q. I mean the day after this occurrence at his father's house. A. No.

Q. I mean the occurrence of the last day when Frank was at the mill when the grandfather claimed Frank knocked him down. A. That was the next morning.

Q. The next morning after this conversation? A. Yes, sir.

Q. What occurred then as far as you know? A. I wasn't there at the time it happened.

Q. Did the father, Franz Ulrich, speak to you about the incident afterward on that morning? A. Yes, sir.

Q. What did he tell you? A. That Frank had struck him in the breast and knocked him down.

Q. What did he tell you, if anything, in reference to Frank's statement concerning yourself? A. He told me the night before. That caused this trouble.

Q. What did he tell you? A. That Frank came over there after Melvin had gone away and he said to him if I didn't get out, he would. He said if I, Lang, meaning me, didn't get out Frank, himself, would get out.

Q. The father told you that the next morning? A. Yes, sir.

Q. Did the father say what he said in answer

to that? A. He said he could not put me out. He brought me down there to the mill taking me away from my position in New York and he couldn't put me out and wouldn't put me out.

Q. Did the father tell you that was what he told Frank the night before? A. That is what he told Frank the night before.

Q. What was Frank's general treatment of the father at the mill? A. I never seen anything wrong with Frank's treatment to the father. I never saw him treat the old man anyway wrong.

Q. Do you remember the incident of the bill of sale for the Allentown business being given to the father by Frank the son? A. I remember that, yes.

Q. Tell us what Frank said? A. Frank handed him this bill of sale and he said, "There, damn you, now you are satisfied." He said that in handing the paper over to the old man.

Q. Did you at any time say anything to the father for the purpose of estranging or making a difference between the father and son or between the father and grandson? A. I did not.

Q. Did you ever say anything to the grandfather after Frank left the mill that time against him or to influence the grandfather in any way against Frank or the grandson? A. I never mentioned Frank Ulrich's name or his son's name but his father mentioned Frank Ulrich two or three times, that is all, only two or three times all the time he was away.

Q. After Frank did leave the mill for the last time did you do anything to try to get Frank to come back to his father's employment? A. Yes, sir.

Q. What did you do? A. I have seen several customers and I spoke to friends of Frank and told them to tell him not to be so foolish but to go on back to his father's business.

Q. Did you speak to Mr. Crutchlow? A. I did.

Q. Did you ask him to try and convince Frank to come back to the mill? A. I did.

Q. After Frank left the last time? A. I did.

Q. Can you name any other man you spoke to after that? A. I believe, Mr. Bannigan.

Q. What Bannigan? A. Mr. George Bannigan from New London, Conn.

Q. You took the father down in the automobile to Mr. Dunn's office? A. I did.

Q. What did the father say, if anything, about going down there? A. He wanted to go and see the prosecutor.

Q. At the time he spoke about going down did he tell you for what purpose he was going down there? A. No.

Q. Had you ever spoken to the father at any time, that is, to Mr. Franz Ulrich, about making a will? A. I did not.

Q. Or about leaving things to you? A. I did not.

Q. How many times did you take Mr. Franz Ulrich down to Mr. Dunn's office? A. Three or four times, I am not sure.

Q. Were you in the office when Mr. Ulrich and Mr. Dunn or with them at any time when Mr. Ulrich was at Mr. Dunn's office? A. I was at Mr. Dunn's office.

Q. I mean in the same room with them? A. No.

Q. What part of Dunn's office were you in when Mr. Franz Ulrich was with Mr. Dunn? A. He has four offices there and I believe the part I was in was the library.

Q. What office was Mr. Ulrich in with Mr. Dunn? A. In Mr. Michael Dunn's front office.

Q. While they were doing their business was the door of the room in which they were in open or closed? A. Closed.

Q. Had you spoken to Mr. Dunn at any time about drawing a will and how it should be drawn by Mr. Ulrich? A. I did not.

Q. When did you first learn what the conditions were of the will that is now under probate? A. When Mr. Dunn opened it after the funeral in Franz Ulrich's home.

Q. That was on the night of the funeral? A. Yes, sir.

Q. Did the grandfather on any of these visits to Mr. Dunn's office make any remarks in reference to a will? A. I believe he did. Yes, the last time he was there.

Q. What did he say so far as you can remember? A. "Now I am satisfied. I can rest in peace. I have made by will."

Q. Where was it he said that to you? A. Coming down the stairs from Mr. Dunn's office.

Q. Did the grandfather tell you what was in the will? A. He did not.

Q. Did you know then whether or no the grandfather had taken the will away with him or left it in Mr. Dunn's office? A. I did not. I didn't know what he had done with it.

Q. Did you ever see the will at Mr. Dunn's office? A. I did not.

Q. Did you get any data or information for the grandfather for use in the making of his will? A. I did not.

Q. What was the method of Mr. Ulrich in reference to the payment of bills of his own and of the business? A. He discounted all bills at ten days.

Q. In other words he paid cash? A. Yes, sir, it was a cash business.

Q. Did he follow that method with reference to his private affairs so far as you know? A. Everything, yes, sir.

Q Did you ever play cards with Mr Franz Ulrich? A. I did.

Q. How often? A. A couple of times a week.

Q. Had you done that before you went to work for him? A. I did.

Q. For how long about before you went to work at the mill? A. For the past ten years.

Q. Prior to your going to work at the mill? A. Yes, sir.

Q. You continued that after going to work at the mill? A. Yes, sir.

Q. Did Mr. Ulrich play cards after January 1, 1921? A. After January?

Q. Yes. A. He did.

Q. And for how long? A. I would say to a month before he died.

Q. Who played cards besides you with Mr. Ulrich? A. Mrs. Franz Ulrich.

Q. Who else? A. Mrs. Albert Ulrich.

Q. His daughter-in-law? A. Yes, sir.

Q. Who else? A. And myself.

Q. How often did Mrs. Albert Ulrich play with

you and Mr. and Mrs. Franz Ulrich during 1921? A. It was the same thing, a couple of times a week.

Q. Did Mr. Ulrich understand how to play? A. He played very well and always counted his own cards.

Q. What game did you play? A. Pinochle.

Q. Did you during the time you played cards with him notice that he showed any mental deterioration with reference to understanding the game? A. He understood the game all right.

Q. Were you any more attentive to or did you do any more things for Mr. Franz Ulrich and his wife Mrs. Ulrich after you had gone to work in the mill than you had done before during the entire period of your married life? A. No, sir, I did not.

Q. You did the same things? A. The same things as I always did.

Q. I wish to ask you this question. If at a meeting of the family at Mrs. Franz Ulrich's house after the funeral you put up your hand and said "So help me God, I don't know if there is a will or if there was a will"? Did you say that? A. I did not.

Q. Did you go out with Mr. Frank Ulrich and Mr. Otto Handwerk for the purpose of finding a will of Mr. Ulrich's? A. I believe I did.

Q. Where did you go with them first? A. To the shop.

Q. From the shop where did you go? A. To the United States Trust Company.

Q. After you came out of the United States Trust Company what happened? A. In the United States Trust Company when the safety deposit box was opened there wasn't any papers, nothing there

at all and we walked out and as soon as we got on the side-walk Frank Ulrich was pretty angry and he said to Mr. McDermott, "I suppose you will find the will over at Munson Force's office." Then he turned and left the bank and walked over to his car.

Q. Did you at that know where the will of Mr. Franz Ulrich was? A. I did not.

Q. What was the action or conduct of Mr. Frank Ulrich on that occasion immediately after the funeral of his father? A. He wanted that will right away. That is what he wanted and that is all he wanted. He wanted the will right away and nothing else.

Q. That is what seemed to concern him most at that time? A. More so than his father, yes, sir, it did.

Q. When did you learn about Mr. Dunn coming to the house for the first time to read the will? A. I believe when I got home that night.

Q. Did Mrs. Ulrich, the widow of Franz Ulrich, at any time at the house call out to you and to Mr. Ulrich and say to you and the father or to you and her husband or to her husband to stop that referring to a conversation that was then going on between you and Mr. Ulrich? A. I don't remember.

Q. Did she at any time go out and say to you to stop talking about Frank or to the grandfather? A. No, sir.

Q. Did you ever tell Mr. Crutchlow that Frank had left the employ of the father at any time because Frank had refused to take an order from the Bethlehem Ribbon Company? A. I did not.

Q. Did you tell Melvin on the occasion of the package going to the post-office or the Eversharp pencil incident as it is called, that if he were not

satisfied with the job he could get out? A. Not that I know of, but I would have told him if anything came up that way, no doubt I would have mentioned that to him but I don't remember saying that to him.

Cross Examination by Mr. Harding.

Q. I understood you on your direct examination to say that before you went to work for testator you had another position which you regarded as a good position. Did you? A. I did.

Q. You were getting $60.00 a month? A. I was getting what?

Q. I mean a week? A. Oh, a week. Yes.

Q. With prospects of a gain in your salary? A. Yes, sir.

Q. Was it a position which seemed to you to offer a successful, permanent position for you? A. Yes, sir.

Q. Your mind up to that time and your health had been set upon staying in that position? A. Not necessarily staying in that position, no.

Q. It seemed to be a good position for you permanently? A. That line of business, yes.

Q. Did you leave that position against your will? A. Kind of, yes, I did.

Q. You say kind of? A. Yes, sir.

Q. What induced you to leave that position? A. Franz Ulrich asked me to come down and work for him.

Q. Did anything else or any other person induce you to leave that position and come to work for him? A. My wife also.

Q. What did she say about him? A. That I had better go down there.

Q. Did Franz Ulrich say anything to you as to what he was willing to pay you if you went down there? A. Not at the time, he didn't, but before I went down he told me what he would give me.

Q. Did you tell him what you were receiving? A. No.

Q. You didn't tell him what you were receiving? A. No.

Q. Did you experience any unwillingness about leaving the position you then had and going to him? A. No.

Q. You didn't? A. I did not.

Q. Well, finally when you agreed to go had you agreed upon what you were to receive if you should go? A. Yes, sir.

Q. You had agreed upon receiving $40.00 a week? A. I believe it was $40.00.

Q. Who made the first proposition as to what you were to receive, Mr. Ulrich or yourself? A. Mr. Ulrich.

Q. Although he offered you that you didn't tell him you were getting sixty dollars? A. I did not.

Q. You didn't say a word about it? A. No.

Q. You didn't tell him your inclinations were to keep your old position rather than to go with him? A. No.

Q. You indicated to him that you had no reluctance about leaving but you wanted to go with him? A. Not that I wanted to go with him but that he wanted me to go with him. He was the man that wanted me to go with him.

Q. You didn't express any reluctance or anything

of that kind upon his suggestion of forty dollars a week. You just expressed to him your willingness to go. You didn't say you didn't care to go or that your own inclinations were to stay where you were rather than to go with him, or that your fixed intentions had been to stay with the company you were with? A. My fixed intentions had not been to stay with the company I was with.

Q. Did you ask him what he was willing to give you or did he ask you? A. He said it himself. I didn't ask him.

Q. Forty dollars a week? A. Yes, sir.

Q. You expressed no opinion as to whether it was worth that sum or less? A. No.

Q. I suppose if he had offered you thirty dollars it would have been the same? A. That is a question.

Q. Or if it had been twenty dollars? A. You see when Franz Ulrich gave me forty dollars a week that could run up to fifty or sixty dollars a week. I want to show you where my salary came in. When with Franz Ulrich I paid no rent, gas, heat or anything like that and in looking at all that it was worth it.

Q. How about before that what had you done? A. I had that same thing before.

Q. There was no change then? A. No, but if I said I wouldn't go with him that might be cut off.

Q. There was in fact no change but you had it just the same as you had before but you thought if you should not go he might cut off these advantages you had and make you pay rent? A. He could, yes.

Q. You just kept still because of thinking of what he might do? A. At the same time I always had in mind my wife's interests.

Q. What was your wife's interest? A. What was her interest?

Q. Yes, that you kept in mind. A. What she would receive some day from her father.

Q. Why do you say you had that in mind when the proposition was made to you by your father-in-law to go to work for him? You wouldn't let that interest of your wife influence you toward going to him or toward making a bargain with him? A. I didn't make any bargain.

Q. He was making one with you? A. No, he said he would give me forty dollars a week.

Q. You have made the statement that you had your wife's interests in thought when you were going there or rather when you were going through these negotiations with your father-in-law? A. Yes, sir.

Q. I want you to tell us what you mean by that, how were her interests involved in the subject? A. Well, for instance if I said no, I will not come with you, I am going to stay where I am in New York, he might have said to me, "Well, then, get out of here and find rooms for yourself."

Q. How would that affect your wife's interests? A. She would also have left with me, left his home and left him and the old lady alone there and I put myself in his position if I had a daughter and son-in-law who should leave me like that I would do something else at the time of my death.

Q. That was your idea of the situation? A. Yes, sir.

Q. If you had stood up and told him that you had your position and that you wanted to stay on there and didn't want to go with him and couldn't accept

forty dollars a week salary, would you think it would be just for Mr. Ulrich to have done these things which you anticipated he might have done just because you didn't want to accept his offer? A. I looked at it this way. If I said to him no, I am getting sixty dollars a week he might have said, "don't you think you are getting sixty with me, too?"

Q. You just said you were fearful Mr. Ulrich would do something to affect your wife's interest. Did you consider or do you consider it would be the act of a just man to have put the penalty on your wife by doing any of these things you anticipated if you had refused and told him you didn't want to go? A. Do I think what?

Q. Do you think his actions would have been that of a just man if he had done any of these things?

Mr. McCran—I object. He is not an expert.

Q. I am asking for his opinion. A. I do.

Q. On account of that I take it you mean to say you didn't come out and tell Mr. Ulrich just what your own feelings were about the matter? A. Yes, sir.

Q. You concealed the fact that you didn't care about going with him and giving up your old position.

Objected to by Mr. McCran.

A. I didn't conceal or I wasn't concealing anything.

Q. Well, for the reasons you have spoken of? A. I was willing to go with him.

Q. But you didn't want to go, so you said. A. Yes, sir, that is a fact.

Q. And you kept back that fact that you didn't want to go for the reasons you have now spoken of? A. Yes, sir.

Q. That was on account of your wife's interests? A. It was partly that, yes, sir.

Q. Partly on account of your wife's interests? A. Yes, sir.

Q. She had importuned you to go? A. Yes, sir.

Q. She said you had to go? A. No, I didn't say that.

Q. Did you say that on your direct examination? A. No, I didn't say that.

Q. Didn't you? A. If I did I will change it now.

Q. Didn't you say this on your direct examination? Counsel put this question to you: "Up to that time had you ever tried to enter his employ?" and you answered as follows: "I had not, neither did I want to." Then he asked you: "What did he say about going down to work?" and you said, "He wanted me to come down to work for him and I said, 'all right, all right' and I put him off for weeks and weeks and he kept asking me all the time and at last I had to give my notice in where I was working and Mr. Ulrich was a man who if he wanted you to do a certain thing he insisted on you doing it and he insisted on my giving my notice where I was working and I had to leave my job." A. You said that my wife said that.

Q. I am asking you now whether or not you testified to what I have just read to you on your direct examination. A. If it is there I suppose I did.

Q. Whether it is there or not, is it true what is there stated? A. What, that I had to leave my job? No, I didn't have to leave for anybody.

Q. What you stated on your direct examination, was it true? A. If you wish to put it that way.

Q. You said, "I had to leave my job." Did you say it or not? A. If it is in there, I did. I left my job and that is true but nobody could compel me to do it. I left my job however.

Q. But if that is in there or not with regard to what you testified before is it a fact you had to leave your job? A. I had to leave my job to take my position with him.

Q. Do you say now you were compelled to leave your job because he insisted on it? A. I left it because he was insistent upon me going there.

Q. Why did you give up your position with the American Thread Company for less money with Mr. Ulrich? A. Mr. Ulrich thought forty dollars a week was enough.

Q. Did your wife speak to you about it? A. She did.

Q. Then let me read this. Question put by your counsel: "Did your wife speak to you about it? A. Yes, she did and at last she said I had to do it." That is the question. Did you say that on your direct examination? A. If it is there, yes.

Q. You said to me a few minutes ago as I recall it that your wife didn't say to you that you had to do it. A. She might have said to me you better as I say had and better mean the same. She might have said "You better take the position with my father," and I did it.

Q. The question as now revised is what you said

on direct examination. Did in fact your wife say to you that you had to do it? A. I would rather put that "that you better do it."

Q. You change it to that now? A. Yes, sir.

Q. "She said, 'you better give up your job and do it because the old gentleman was kicking about me not doing it, and I said, 'I will go over and consult Frank Ulrich,' and I told the old gentleman that, and he said, 'All right, you go over and see him.' So I went to see him and he sat there and listened to what I said. I told him his father wanted me to come down to work and I said before I went down I wanted to make sure it was agreeable to him. He said it was all right and I went down there and started in to work for him. I never went back to New York. My wife said I better stop right now, and in the morning I had to send a telegram to New York saying that I couldn't be there." Is that true your wife said you had better stop right now? A. Yes, sir.

Q. Do you remember why she said that to you, "You better stop right now"? A. Yes, because the old gentleman had spoken of it before.

Q. That means then you didn't give your employers any notice whatever of your intentions of leaving? A. Yes, sir, I did. I told him before that.

Q. As sudden as that you determined right away to go to work for Mr. Ulrich? A. Yes, sir.

Q. I take it from your testimony that your wife was very insistent about you going to work there. A. She was.

Q. Do you know why she was interested in that? A. It was the father that wanted me there and he asked me on every occasion he saw me.

Q. Why was it just at this time your father-in-law wanted you to go there? A. Why was it?

Q. Yes. A. Why, to hear him talk and he told me he wanted me down there and he told her several times. He was always tellin gme "I want you down there, when are you coming down?" He asked me that several times.

Q. I ask you now if you have in your mind any reason why he should have gone all these years without asking you to come and just about this time be so insistent upon your coming? A. It was after the death of his son.

Q. Then the question arose for the first time as to the possibility of your going there? A. I don't believe so.

Q. Give us any reasons that you have in mind why you don't think so. A. There were times before where my name was mentioned as taking a position.

Q. Before that time? A. Yes, sir.

Q. Before that time you had always refused to go there? A. It was never put up to me.

Q. Why? A. It was put to somebody else.

Q. To whom? A. To Mr. Albert Ulrich at the time they were running the Allentown shop.

Q. Did Franz Ulrich ever ask you personally to go to work in his place before Albert died? A. No.

Q. He never suggested anything to you until after Albert died. Is that so? A. That is my best recollection.

Q. You had always understood as a member of the family in their general discussions that it was anticipated that Frank and Albert would be the successors in that business after Mr. Ulrich's death? A. I never got that direct.

Q. But that was a correct understanding? A. What?

Q. That Albert, the one who died, and Frank were expected to continue the business of the father after his death? A. Continue the business, run it, yes.

Q. Do you distinguish between running and owning the business? A. I am running the business down there now.

Q. Was it or was it not the general understanding of the family as you heard it expressed by all that the old gentleman wished the boys to have the business? That his two sons should continue that business after his death and have the business? A. I have heard many a time arguments about the same thing.

Q. You heard who talk about it? A. The women folks.

Q. Up to that time, that is until after Albert's death, you had never seriously thought you would go into that business, did you? A. No.

Q. Did you know that Franz Ulrich, your father-in-law, had a will that was in existence or had made a will that was in existence at the time of Albert's death? A. No.

Q. Did you ever hear or understand that he had a will at that time? A. No.

Q. Up to that time had you ever been concerned at all as to whether or not he had made a will in favor of your wife in which your wife was considered? A. No.

Q. Your relations with the whole family had been friendly? A. Yes, sir.

Q. Until the time you went in to work there? A. Yes, sir.

Q. Until you were employed by your father-in-law? A. Yes, sir.

Q. Your relations with him were friendly? A. Yes, sir.

Q. Your relations with Mr. and Mrs. Handwerk had been friendly? A. Yes, sir.

Q. And also with Frank? A. Yes, sir.

Q. And with your mother-in-law? A. Yes, sir.

Q. Up to the time you went to the mill? A. Yes, sir.

Q. The family had been friendly and as close as families go? A. Yes, sir.

Q. You never knew of any serious trouble? A. No, sir, no serious trouble, just the question about wills.

Q. There seemed to be the ordinary affection between parents and children? A. It ran along all right and at times they would have little tilts the same as any other family about wills, etc.

Q. But nothing unusual? A. No.

Q. Did your father-in-law when he made this proposition that you should go in there after Albert's death. This proposition was made after Albert's death, was it not? A. It was.

Q. I understood you to say he wanted you to see Frank about it. A. I don't know whether he wanted me to go and see Frank or whether I went over and saw him myself. Perhaps he might have said to me, "Go over and see Frank," but I went over and seen Frank anyhow.

Q. You said here "The old man said, 'You go over

and see him' and he sat there and listened to what I said." A. That is right.

Q. You don't change that testimony? A. No.

Q. You say the old gentleman did tell you to go over and see Frank? A. Yes, sir.

Q. Frank was perfectly willing to have you come? A. Yes, sir.

Q. He told you he wanted you to come? A. I don't believe he told me he did want me to come but he said all right. He didn't say anything about that he wanted me to come.

Q. He certainly didn't say anything to suggest to you that he didn't want you? A. No, he didn't give me any encouragement that he did either.

Q. You didn't want to go there unless Frank was agreeable to your going? A. No.

Q. You said that on your direct examination? A. That is what I just said to you.

Q. If he didn't throw out any encouragement to you why did you go? A. Because his father asked me.

Q. Was there any doubt in your mind? A. I went over to see Frank and he said, "all right, come on down."

Q. The thing I am trying to get at is this. The old gentleman had been insisting on your coming there to such an extent that you gave up a job you didn't want to give up worth fifty percent more than what you got. I want to know why it is if you didn't go there unless it was agreeable to Frank why it was you went there if Frank didn't express himself as perfectly willing or hold out any encouragement to you. A. That is all I can say. His father told me to go over there and I told him what his

father said and that I was going down there.

Q. That is the best answer you can give? A. Yes, sir.

Q. When you first went there I think you said there was nothing that occurred of any consequence? A. Certainly.

Q. There was no trouble between Frank and the father, no friction between them until this question came up about the Allentown Mill. I understood you to say that on your direct examination. Is that so? A. I suppose that is what it was.

Q. Whatever you said about it the truth is, is it not, that the first thing that occurred in the nature of a substantial turmoil between Frank and the father was in reference to this Allentown mill? A. Yes, if you may call it trouble.

Q. That is the first thing that did arise that you could call in the nature of a difference. Is that so? A. Yes, sir.

Q. As I understood it you said that after you went there Mr. Ulrich, this is first of all I mean, your father-in-law first of all asked you to act for him for the purpose of getting his daughter-in-law, Mrs. Albert Ulrich, to give him a bill of sale of the interest his son had in the Allentown mill. Is that so? A. Yes, sir.

Q. How did he come to have you act for him in doing that? A. Because Mr. Frank Ulrich and Mrs. Albert Ulrich were not the best of friends although not enemies, and Frank Ulrich had no dealings with Mrs. Ulrich where I did either every day or two or three times a week.

Q. Your father-in-law chose you to be the one to bring about this agreement? A. Yes, sir.

Q. He chose you? A. He did.

Q. So far as you know he didn't say anything to Frank about it? A. So far as I know.

Q. He wanted you to get Mrs. Ulrich to give him a bill of sale? A. He said that in the presence of Frank Ulrich.

Q. Is that all he said to you in the presence of Frank Ulrich about that matter when he told you to get the bill of sale? A. I believe it is.

Q. That is the first the old gentleman had ever said anything to you about it in the presence of Frank? A. Yes, sir.

Q. Had he ever spoken to you about it before that not in the presence of Frank? A. I believe he did.

Q. Just briefly state to me what it was he told you to do about that thing? A. He told me to go over and see Mrs. Albert Ulrich about this bill of sale and then go to Henry Smith.

Q. Did he tell any details, any facts, or just tell you he wanted you to go and ask her for a bill of sale, or did he tell you why? A. Yes, sir, he told me that. He told me that that place up there was his.

Q. He told you that? A. Yes, sir.

Q. Yet after telling you it was his, did he also instruct you to give Mrs. Ulrich a check for twenty-six hundred dollars? A. Yes, sir, about that.

Q. Did you give this check signed by Franz Ulrich for twenty-six hundred and some dollars to her for her interests? A. I did.

Q. Tell me why it was if he owned it he gave his check for it? A. Why?

Q. Yes. A. I believe he discovered that this place was in the name of Frank and Albert Ulrich instead of being in Franz Ulrich's name.

Q. Did he claim they owned it or he owned it? A. That he owned it.

Q. Why then did he give a check for twenty-six hundred dollars? A. It was in the name of the Ulrich Company, but the sons were the Ulrich Company, that is Albert and Frank Ulrich were the Ulrich Company up there.

Q. You understand, don't you, that your father-in-law was getting Mrs. Ulrich to give a bill of sale for some property, that you understood? A. Yes, sir.

Q. Did your father-in-law claim he already owned that property for which he was asking a bill of sale? A. Why, he believed he owned that property.

Q. Yet he got a bill of sale from Mrs. Ulrich in order to get her interests? A. No, that he believed first, then he found it was in the name of Albert and Frank Ulrich.

Q. What difference did it make if he claimed he owned the property? A. He claimed it should have been his.

Q. Why did he get the bill of sale? A. Because it wasn't in his name.

Q. I am asking you if you can give us any reasons that are sensible ones why he should give twenty-six hundred dollars for a bill of sale for property he already owned.

Mr. McCran—I object to the question. It does not make any difference whether he can give any reasons or not.

Question withdrawn.

Q. Can you give us any reasons expressed by Mr. Ulrich why this should be done and your own reasons—

Objected to by Mr. McCran.
Question withdrawn.

Q. Did Mr. Ulrich explain to you any reason why he should have given the twenty-six hundred dollars for something he claimed he owned? Did he explain any reason to you? A. He claimed, you see, he claimed he owned it. He should have owned it.

Q. I am asking you the question whether he expressed any reasons why he should have offered the twenty-six hundred dollars for property which you say he believed he owned. A. Yes, sir, before he made this offer he did.

Q. Can you give us any? A. He believed he owned this property and on finding out it was in the name of Albert and Frank Ulrich he wanted the property back in his own name and Frank Ulrich and Mr. Franz Ulrich talked it over and at last Frank suggested to give it back.

Q. You continue to get away from the question I am asking you. Did that old gentleman express to you any reason why, if he believed he owned this property in the name of Ulrich Company in Allentown, why he should have given Mrs. Ulrich twenty-six hundred dollars for the transfer of this property? A. At the time he offered that he didn't believe it was in his name. He didn't believe he owned this property, but previous to that time when this thing was started in Allentown he bought the machinery and deposited money and, in fact, started

that plant in the name of Ulrich Company. And he was buying things up there the same as he was doing business down here in every way. Supplies and everything were shipped from Paterson to the Allentown and he thought that the business of course, was his. After discovering it was not his or rather that his name was not in the Ulrich Company but was being run by his two sons and that sixty or seventy-five percent of Ulrich Company's business was being done up there in the name of Albert and Frank Ulrich, he said, "Here if my name is not in there, I want to know why it is not." That was how the question came up and when the old gentleman found out his name wasn't there and that it was not in his name, he said, "I want it back." He said, "I want that in my name. It belongs to me."

Q. You had explained it now as fully as you can? A. I think so.

Q. I gather now that he believed he owned the business and afterward found out it was in the name of Albert Ulrich and his brother, but still after that he believed he owned the business. A. I don't think so.

Q. He believed he really owned it only it was in their names? A. After he found out it was in their names he knew he didn't own it.

Q. Didn't you say it had been bought with his money and put in their name, but that he really owned it? A. If it is bought and put in somebody else's name, I don't see how he could own it.

Q. Suppose you gave me fifty dollars to go down to the store to buy you some merchandise. A. For me?

Q. Yes, and I took it; would you consider that I owned it if I put it in my name? A. But that is a different thing. If you went over there on the corner and bought a piece of property and had it put in your name, then it wouldn't belong to me even if I gave you the money to buy it.

Q. If the old gentleman believed that somebody else owned it, that is, his two sons, why didn't you think or why don't you think he could compel Frank and his wife to give it back to him? A. I don't think so.

Q. Didn't he think so? A. I don't know what he thought. I don't know what the man's thoughts were.

Q. Did you think Frank owned it and Albert owned it? A. I didn't even think they did when it was in their names, I knew they did.

Q. Even though it was bought with his money and put in their names, Burchill, you think they owned it? A. Yes, sir.

Q. Now to get back to this bill of sale. You obtained the bill of sale? A. Yes, sir, I went over with Mrs. Ulrich to Mr. Smith's and explained what we wanted and how we wanted that bill of sale made.

Q. Did he say anything to you about getting a similar bill of sale from Frank? A. About me getting it?

Q. Yes. A. No, of course not.

Q. Well, you got it? A. Yes, sir.

Q. When was that about? A. I don't know just when.

Q. You said you talked about this thing in the

presence of the son, Frank, about going to Mrs. Albert Ulrich? A. Yes, sir.

Q. And you said you talked about the whole thing before you had the conversation with Frank? A. No.

Q. You said you talked with the old gentleman about getting the bill of sale from Mrs. Ulrich before you talked to him about it in the presence of Frank? A. Probably I did.

Q. You said so. Is it a fact? A. I will say I did.

Q. How long before was it you had talked to the old gentleman about getting a bill of sale for the Allentown property? A. I cannot say how long before. It might have been a few days.

Q. He talked to you about the whole thing before he talked to you about it in the presence of Frank, several days before he talked to you about it in the presence of Frank? A. He had not spoken about the bill of sale but he had spoken about the Allentown shop.

Q. Did he say to you or not whether he intended to get one from Frank? A. Yes, sir, he did.

Q. What did he say he was going to give Frank for it? A. I believe he did not specify any amount he was going to give, but I believe there was a balance in the Allentown bank at the time.

Q. Did he tell you that? A. He did not but I seen the check that was made out there.

Q. Did he tell you that he was going to ask Frank to give this assignment to him of the Allentown property? A. No, but he gave orders for the check to be made out and give it to Frank.

Q. When was that check made out? A. I be-

lieve that was some time after Frank Ulrich had left Ulrich Company.

Q. Then the check had not been made out at the time you first talked to the testator about it? A. When I first talked to him about it?

Q. Yes. A. No, the check was made out after.

Q. The check for twenty-seven hundred dollars that was signed and sent to Frank in the letter which was sent on November 20th, 1920? A. I cannot say.

Q. Wasn't that about the time? A. I suppose it was about that time.

Q. You remember about the transaction? A. You are speaking of dates. I cannot say the date.

Q. You knew of the fact that a check was sent? A. Yes, sir.

Q. It was in the last part of November? A. You have the check there.

Q. That is about the time as you recall it, is it not? A. I believe so.

Q. What did the old man, as near as you can recall, say to you on this few days before he spoke to you in the presence of Frank about getting the bill of sale from Mrs. Albert Ulrich, what did he say to you during these days about his interests, if anything, in the Allentown mill? A. I cannot say.

Q. You say he spoke about it to you? A. Yes, sir.

Q. Do you mean to say the testator after especially choosing you to carry out these negotiations didn't talk to you or tell you about what he thought his rights were? A. He talked to Frank.

Q. I want to know what he said to you about it.

A. I cannot say in detail but I will tell you what he meant.

Q. I want you to tell in substance about his interest in that Allentown mill before he spoke to you about it in the presence of Frank. I want to know in substance what he said. A. He said to have this bill of sale made by Mrs. Ulrich and have her sign that over and he would have Frank make one out and sign it over to him.

Q. Was there any impressions you received from that talk you had between you? Did he show any feelings about it as if anything had been done wrong about not putting his name in the Allentown mill? A. He very often did in his office.

Q. When did he first begin that? A. Not to me but to Frank.

Q. I am talking what he told you. A. I don't believe, no, he didn't tell me anything else.

Q. What I am getting at is did he express to you on these days you have mentioned before he spoke in the presence of Frank, did he express any dissatisfaction on account of Frank and his brother having the mill in Allentown in their name? A. Yes, sir.

Q. He did express that dissatisfaction to you before you had this conversation in the presence of Frank? A. Very often.

Q. I am asking you if he did express that dissatisfaction to you before you had this conversation in the presence of Frank. A. I said very often before.

Q. He talked to you about that not in the presence of Frank? A. I heard him speak to Frank many times about it.

Q. What day did you go to work for Frank Ulrich? A. The day I can't tell you. It was sometime in March.

Q. Wasn't it April? A. No, I think it was March. It may possibly have been April, but I think it was March.

Q. Was it the latter part of March or the first of April? A. I can't tell you, you can find it in there but I think it was in March, I am not sure but you can take it from those papers there. You have papers there which shows the date.

Q. I show you a paper in evidence marked "Exhibit C-seventh" and which purports to be a bill of sale and which is for the sum and in consideration of twenty-six hundred dollars paid to me by Frank Ulrich of the City of Paterson and conveys the interest of Albert Ulrich to Frank Ulrich and I ask you if that is the bill of sale which you negotiated? A. I don't know whether that is or not.

Q. Look at it. A. I believe it is.

Q. You negotiated it, didn't you? A. Yes, sir.

Q. This is dated the twenty-fourth day of April, nineteen hundred and nineteen. Is that about the time this bill of sale was negotiated? A. There is no doubt it is if that is the paper. I can't tell. You might have a hundred of these here that would be marked that way but I will say, yes, that is the paper. It is three or four years ago and I don't just know. I cannot swear that is the same one but it looks like it.

Q. You negotiated the transaction? A. Yes, sir.

Q. Do you pretend now to say you cannot say whether that is the same transaction you negotiated? A. Perhaps if I could read that over and tell you that is the transaction all right.

Q. I wish you would. A. His father's name was Franz Ulrich and this bill of sale was made for Franz Ulrich and not Frank Ulrich and it was paid for by Franz Ulrich.

Q. What I am getting at, what I want to get from you is whether or not this is the bill of sale you negotiated. A. It reads that way. The conditions are the same.

Q. It was made very shortly after you went to work there? A. What time is that, 1919?

Q. Yes. A. If I went there in March it must have been right after.

Q. Have you got a check or the check that was paid for this? A. I don't believe so.

Q. Why shouldn't you have it? A. I don't know why I shouldn't.

Q. Haven't you all the checks that were returned to the business? A. We are supposed to have but there might be a few missing.

Q. Whose check was it paid for that bill of sale? A. I always believed it was Franz Ulrich's but I wouldn't say otherwise.

Q. Wasn't that check drawn on the Allentown account paid by Frank Ulrich? Do you swear it wasn't? A. I don't say I would swear it wasn't. It might have been paid by Frank Ulrich, I am not positive.

Q. Don't you know it was paid by Frank Ulrich? A. No.

Q. Don't you know you have that check now in your possession showing that it was paid by Frank Ulrich? A. I don't know.

Q. How long would it take you to find out? Is the check book here? A. Yes, sir, I believe it is. It might be made by Frank.

Q. You have got the return check? A. Sure we have.

Q. Don't you think it was paid by Frank Ulrich? A. No, I think it was paid by Franz Ulrich.

Q. First you didn't consider that there was any serious trouble between Frank and the old gentleman on account of this Allentown trouble? A. I don't think so.

Q You didn't consider there was any serious friction about this? A. I didn't say so.

Q. Was there? A. I should say there was.

Q. Before this transaction? A. As I understand, yes. It had been going on for some time.

Q. How long? A. I cannot say how long but I had heard it mentioned many and many a time.

Q. Do you know when Frank made out his bill of sale to his father? A. When Frank made it out?

Q. Yes. A. I cannot give you any time but it was long after.

Q. You remember that a check was sent to Frank Ulrich and that you asked him for his bill of sale? A. No.

Q. What do you know about the so-called gasoline proposition? A. What do you mean, what about it?

Q. Haven't you heard about there being trouble in reference to some trouble about the gasoline between Frank and his father and Frank's son? A. Yes, sir.

Q. That is what I am asking you about. A. The trouble between whom?

Q. Any of the three persons. A. I knew the gasoline bills were coming in and the old man objected to them.

Q. I think you said that you were employed there as a sort of, using the expression, jack of all trades, you were the whole thing? A. Not exactly the whole thing, but I did a little of everything.

Q. Just specify some of the things you did do. Did you act as salesman? A. I did.

Q. Did you act as a manufacturer? A. I did.

Q. Did you supervise or oversee the different things about the mill? A. I did.

Q. I take it to myself that shortly after you went there you were really the next man in charge after Franz Ulrich himself. A. No. Frank Ulrich was the boss.

Q. Did you consider that Frank was over you or you were over him, or what was the position you occupied? A. Frank Ulrich, I didn't consider him my boss but anything that came up I always mentioned it to him before I did it. I never took anything or any authority on anything worth while without mentioning it to Frank Ulrich.

Q. I take it before you would do anything serious of your own accord your positions were such that you would rather refer it to Frank? A. Yes, sir.

Q. In that sense you considered him over you? A. I wouldn't say he was over me.

Q. Before you went there you consulted your father-in-law about the advisability of asking Frank and you knew Frank generally had charge? A. What do you mean about asking Frank?

Q. About the advisability of your going. Whether it would be agreeable. A. I told you his father

wanted me to go down there and wanted me to go over.

Q. It was quite natural that you considered that Frank would keep his position with reference to his rights in his father's business just as he had before you went there? A. Sure.

Q. If there was anything wrong with reference to any business transaction or anything important Frank would be the first one you would speak to about it when you first went there? A. Frank or the father.

Q. So I think you said finally you discovered there was trouble about the gasoline. Gasoline bills were coming in without any slips on them, is that so? A. Yes, sir.

Q. Then you found out that some gasoline bills had been marked with some strange initials? A. Yes, sir.

Q What did these initials indicate to you? A. That it wasn't anyone in our employ.

Q. And you became suspicious of these gasoline bills? A. No, I didn't become suspicious.

Q. Did the gasoline bills indicate to you that Ulrich Company ought not to pay them? A. Yes, sir.

Q. Due to the fact that there were certain initials on them? A. Yes, sir.

Q. Just what did the gasoline bills indicate to you? A. That somebody was using the gasoline and we were paying for it. Someone other than people in our employ.

Q. Who would be the party who would be responsible for having you pay for these bills which you thought were not chargeable against the Ulrich

Company? Who would be directly responsible for them? A. The bills were checked by the stenographer. The stenographer had them.

Q. Who do you suppose or who did you suppose was getting this gasline for these bills on which these initials were? Was it Melvin? A. Yes, sir, he or someone else through him.

Q. You learned that Melvin had been driving a Buick car? A. Yes, sir.

Q. And the person who owned this Buick car had these initials? A. Yes, sir.

Q. Your inference was then that gasoline for this Buick car owned by somebody else was being paid for by Mr. Franz Ulrich or was being put on Mr. Franz Ulrich's bill? A. Yes, sir.

Q. I think you said Melvin had driven this car? A. Yes, sir.

Q. The inference was that Melvin had been using gasoline for another purpose in another car for which bills charged to the grandfather had been made out. That was the inference indicated by these bills to you? A. Yes, sir.

Q. I think you said on your direct examination that you were looking after the interests of your father-in-law? A. Yes, sir.

Q. You thought that wasn't right? A. Yes, sir.

Q. And you told him about it? A. I don't know. I believe I did.

Q. You told him about it, didn't you? A. Yes, sir.

Q. You thought it was your duty to tell him about it? A. Yes, sir.

Q. As soon as you found it out you thought it

was your duty to tell him about it? A. Yes, sir.

Q. And you did it immediately in pursuance of your duty? A. Yes, sir.

Q. Did you speak to anybody else about it before you spoke to your grandfather or your father-in-law? A. I don't believe so. When it was drawn to my attention by the stenographer I think I spoke to him.

Q. The fact is you did go to the grandfather or father-in-law? A. Yes, sir.

Q. Your relations were friendly with Frank. Why didn't you tell him without going direct to the father, why didn't you go to the boy's father? A. His father knew he was riding around in that car.

Q. Your relations were friendly with your brother-in-law at that time when you discovered something that indicated to you that something wasn't right with the son, Melvin. Why didn't you go to the father and take the matter up with the father about the conduct of his son instead of taking that in to your father-in-law? Tell me why you didn't do that? A. I didn't always go to Frank Ulrich. It was either one of them.

Q. You didn't want to do anything to incite the anger of the grandfather against this son? A. No.

Q. Or any trouble between father and son? A. No, sir.

Q. Why didn't you go directly to the father? He was a friend to you, and find out about the son, find out about this matter, instead of taking it up with the testator? A. I suppose at the time he was the first one I came in contact with and I told him.

Q. That is the only reason you can give, is it? A. I guess so, yes.

Q. You knew what friendly relations had been in this family always before that time? A. Yes, sir.

Q. On account of that gasoline trouble the result was that there was serious trouble and difference between Frank Ulrich and his father in consequence of which Frank Ulrich no longer remained in the employment of his father for sometime to come? A. I don't know whether that was the last time about the gasoline or not. No, I don't believe it was.

Q. Was there any serious trouble between Frank and his father on account of this gasoline incident? A. What would you call serious trouble? I believe Frank went away for a while but he came back. Possibly a couple of weeks.

Q. So far as you know was there or not any serious trouble between Frank and the father as a result of this gasoline incident? A. If you consider that serious, Frank leaving the place or going away.

Q. Did you consider it serious? A. No, not at the time.

Q. You expected that Frank would come back? A. I thought so, sure.

Q. You still remained friendly to Frank so far as this trouble was concerned. You had nothing against him? A. No.

Q. You had no feeling toward Frank? You were perfectly friendly and he was perfectly friendly toward you? He treated you as a gentleman, didn't he? A. Yes, sir, he did.

Q. Then you remember the fact that Mr. Crutchlow had a conversation with you while Frank was away? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Frank's son still remained there while Frank was away the first time? A. Yes, sir.

Q. After your conversation with Crutchlow Frank came back, didn't he? A. He did.

Q. You still felt friendly to him? You had nothing against him when he came back? A. No.

Q. You wanted him to come back? A. Sure.

Q. You wanted his boy to come back? A. Yes, sir.

Q. Your feelings were absolutely kindly toward him and his son? A. Always so.

Q. They are still, I suppose? A. That is a question.

Q. You are the only person who could answer the question. Are you friendly to him or not? A. My feelings are more friendly than his to me.

Q. When did your feelings change? A. I met him after he went out of there and spoke to him and he never spoke to me.

Q. When did your feelings toward Frank change? A. When he called me some of those names he did.

Q. When did he call you names? A. When he came to my house. He said, "You Catholic son-of-a-bitch."

Q. When was that? A. After his son had trouble with the grandfather.

Q. When was that? A. Before Frank Ulrich left us the last time.

Q. Naturally after a man said that to you, you resented it? A. Yes, sir.

Q. Your feeling has entirely changed towards him? A. Well, yes.

Q. What did you say to Mr. Ulrich about this gasoline to Franz Ulrich, your father-in-law? A. I just told him there was bills coming in there with someone else's initials on it and we were to pay for it and then we returned it back.

Q. Then after Frank came back I think you said to your own counsel this morning that you never saw any trouble between Frank and his father. You personally never saw any trouble? A. No, I never saw any trouble.

Q. Did the relations between Frank and his father continue to your knowledge or did it indicate any change while you were there? A. No.

Q. Did the testator ever express to you any ill will he had toward his son, Frank, at any time? A. About this Allentown business, yes. He was pretty sore about it.

Q. That was expressed along when you first went there? A. It was when I was there.

Q. He was pretty sore about it? A. When I first went there that went on all the time. He harped on that.

Q. I ask you to specify the different things he found fault with and you say that trouble with the Allentown mill? A. Yes, sir.

Q. Was anything else said to you except that? A. The Allentown trouble was.

Q. Yes? A. There might have been minor things and then there was the incident there one time when Frank mentioned to him about the Miesch order.

Q. The Allentown and Miesch things were the important things and everything else was minor so

far as trouble between them was concerned? A. Then of course when he left.

Q. Up to the time he left? A. That is the best of my recollection, yes, sir.

Q. What about this Miesch order? A. There wasn't anything about it at all. That was a mere trifle in our business.

Q. What was the order that came from the Miesch people, or I will put it this way. There was an order that came from the Miesch people that you are now talking about, is that right? A. Yes, sir.

Q. At the same time this occurred the Bethlehem Ribbon Company was a customer of yours, a good customer? A. Yes, sir.

Q. The Miesch Company was not a good customer? A. I don't know much about them.

Q. Frank had told you? A. I don't know.

Q. Your understanding was that? A. Yes, sir.

Q. Your understanding was that the Miesch Company had given you in an order at that time that you were not very anxious to take, that was not favorable to you as a business proposition to accept the Miesch order? A. Yes, sir.

Q. You talked about that with Frank? A. I believe I did.

Q. Frank was the one that caused that order to be turned down, the Miesch order? A. Yes, sir.

Q. I think you said you talked with Franz Ulrich about the Miesch order? A. Yes, sir.

Q. How did you happen to say anything to him about the Miesch order? How did it come up? A. I believe it was on account of the labor situation.

Q. Why should you think of this particular order

when speaking about the labor situation to the old gentleman? Why did you mention the Miesch order? A. This was the only one we had to turn down.

Q. Did the old man, so far as you know, know anything about Miesch as a customer? A. I should say he did.

Q. You hadn't been there only a little while, hadn't you? A. Yes, sir.

Q. How did you know he knew anything about Miesch? A. Why, they were like relatives. They were just like brothers.

Q. Who, Miesch and Franz Ulrich? A. Yes, sir.

Q. You called his attention, did you, to the fact that the Miesch order had been turned down by the company? A. Yes, sir.

Q. You have said that Mr. Ulrich was active in the business himself, attended to the correspondence, etc. How was it he didn't know about the Miesch order being turned down himself? A. That order could possibly have been given to the salesman you know.

Q. Tell me why is it that the question of the Miesch order came up in any conversation privately between you and the testator when he was that at the time, down to his business himself and tending to the business and overseeing it. Why should you at his home call his attention to the turning down of this order? A. It was just that question of the labor situation. If we could get more men.

Q. I understood you said on your direct examination in your conversation with him that you spoke to him about this Miesch order? A. Yes, sir.

Q. Why did you do it? A. We were speaking of our labor troubles. We couldn't get help and we nad to turn orders down because we couldn't get help.

Q. What did you say to him? A. I didn't say anything.

Q. Nothing was said? A. No.

Q. Did you say anything about the order from the Bethlehem Ribbon Company? A. No.

Q. You never said anything to him about the Bethlehem Ribbon Company? A. No.

Q. You know, don't you, that he charged Frank with having turned it down, this Miesch order, and that it was an injury to his business? A. Frank told me that.

Q. Didn't you know that the old gentleman was angry with Frank about it? A. I never heard him speak about it.

Q. Didn't Frank say to you that you had told the old gentleman he had turned down the order of the Bethlehem Ribbon Company instead of the Miesch Company? A. Not as I know of.

Q. You heard him testify to that? A. Yes, sir.

Q. You heard Mr. Crutchlow say that he told you what the old man had told him? A. Yes, sir.

Q. You heard Crutchlow say that you told him, Crutchlow, that Frank had turned down the Bethlehem Ribbon Company order? A. Yes, sir, I heard him say so.

Q. Mr. Crutchlow didn't tell the truth about that? A. No.

Q. You heard Crutchlow say that you said Frank had left on account of it? A. I didn't say that.

Q. I take it from what you say now that so far as you could see it there was nothing so far as you know that ever amounted to anything in this Miesch order or the Bethlehem Ribbon Company order? A. Yes, sir.

Q. It just came up in that way? A. Yes, sir.

Q. After you went there was it customary for you and the testator to have a great many private conferences about the business of a private nature? A. No.

Q. Did you go out in the back garden and discuss things with him all alone by yourself? A. No.

Q. You heard Mrs. Ulrich testify to that? A. She didn't say that.

Q. Did you hear the old lady testify anything with reference to your going out privately with Mr. Ulrich in the evening and at other times? A. If she said that it was wrong.

Q. You heard her? A. I cannot say.

Q. Well, whether she did or not, is it true? A. It is wrong.

Q. You never went out and had private conversations with him? A. I talked to him in the back yard and Mrs. Ulrich came out and sat there and listened to it too.

Q. The testator was always very friendly with his wife? A. Yes, sir.

Q. Before you went there he used to talk to her about different things and confide in her? A. I don't know.

Q. Don't you know she helped him start very largely to get on his feet? A. Yes, sir.

Q. Was it not your general understanding that it was her money that she gave him to start with? A. I believe so.

Q. It was your understanding that usually he confided with her and the rest of them in his business, not only in reference to the reed and harness business, but with other business he talked with his wife? A. That was years ago.

Q. His relations with his wife were very close? A. The money that went into the reed and harness business he made himself.

Q. His relations with his wife were very close? A. They were as man and wife, sure.

Q. When did he first ever speak to you about making a will? A. He never spoke to me about making a will.

Q. Never? A. No.

Q. When did he ever speak to you about Mr. Dunn? A. Before he made his will.

Q. When was that? A. I don't know just the date, but it was some time in February.

Q. How long before you first went to Mr. Dunn's office was it Mr. Ulrich first spoke to you about going to him? A. A day or two before.

Q. Have you thought about that subject before this? A. No.

Q. It just comes to you now? A. It was a couple of days before.

Q. Did you ever hear he had made a will up to that time? A. No.

Q. You never heard anything about a will? A. Oh, yes. I heard something about a will often times.

Q. You heard about whether he had made a will? A. No, you said about a will.

Q. I mean about this testator's will? A. Yes, sir.

Q. Did you ever hear or know before this time whether he had made a will? A. No.

Q. Or whether he intended to make a will? A. No.

Q. The question then of the testator's will in no way had ever been considered by you and you had never heard of it? A. I never heard he made a will or intended to make a will.

Q. You never heard the question of whether he intended to make one or had made one discussed? A. No.

Q. You never heard he had made a will leaving the business to Frank and Albert? A. No.

Q. You never talked about that with your wife? A. Not about making a will and leaving it to them.

Q. Did you and your wife ever talk about whether the father-in-law had made a will leaving the business or the major part of it to his two sons Albert and Frank? A. No, I don't believe I did.

Q. When was the first, then, that you ever heard he made a will or contemplated making a will? A. After he made the will.

Q. When he first spoke to you and asked you to carry out this transaction with his daughter-in-law he asked you to go and see Mr. Smith? A. Yes, sir.

Q. As his lawyer? Is that right? A. I never understood or considered Henry Smith as his lawyer.

Q. He asked you to go? A. I believe he did.

Q. And the paper was made and signed in Henry Smith's office? A. Yes, sir.

Q. Didn't you know he had consulted Mr. Edward Weiss, the lawyer, before that time? A. Consulted him about what?

Q. Consulted him about anything as his lawyer? A. I knew he had done work for him.

Q. What kind of work? A. I don't know. I can't say.

Q. Didn't you have a general understanding and didn't your wife have a general understanding that Mr. Weiss had drawn his will? A. Yes, sir, I believe he did.

Q. You knew that? A. Yes, that is right. Sure I did.

Q. How was it he happened to go to Mr. Dunn to draw this will after having this other lawyer, these two other lawyers, who had done business for him? A. If he was here I would ask him.

Q. Do you know? A. No.

Q. Mr. Dunn never did anything for him? A. No.

Q. You never knew Mr. Dunn acting for the testator or performing any business transactions for him? A. No, not at that time.

Q. You had been employed by Mr. Dunn at that time? A. Yes, sir.

Q. In what capacity? A. As a deputy.

Q. You were very friendly with him in a political way? A. Not necessarily.

Q. Not necessarily? A. Not very friendly, but friendly.

Q. He is a good friend of yours? A. No, there is no reason why he should be a good friend. I knew Mr. Dunn and he hired me as a deputy. I didn't say whether that showed he was a good friend of mine or not.

Q. Just what did the testator say to you in reference to Mr. Dunn? A. I want to go see the prosecutor, Mr. Dunn.

Q. Had you ever spoken about Mr. Dunn to him at that time? A. No.

Q. Did he ever mention Mr. Dunn's name to you in any way before that time? A. No.

Q. Where did he tell you this? A. I believe in the office.

Q. Was anybody else present? A. The stenographer might have been.

Q. What time of day was that? A. It might have been the afternoon or it might have been the morning.

Q. Of course it might have been but can you tell? A. No, I can't.

Q. He said I want you to take me to the prosecutor's, is that all he said? A. To the prosecutor, Mr. Dunn.

Q. What did you say? A. I said all right.

Q. You were in his confidence, you thought he was trying to do some business? A. If he was going there he must have been.

Q. Did you ask him why he was going? A. No.

Q. Why? A. It wasn't any of my business.

Q. You were friendly with him all along? A. Yes, sir.

Q. You had his confidence? A. Yes, sir.

Q. You were not afraid of him? A. No.

Q. Then why didn't you ask him? A. I didn't ask him. It wasn't any of my business.

Q. Was here anything in your mind that caused you to refrain from asking him this natural question? A. I don't consider it natural.

Q. Did he ask you to drive him? A. Yes, sir.

Q. In what car? A. The Buick.

Q. Who was driving the Buick car at that time? A. I was.

Q. Was anybody else driving it in the course of the business? A. No.

Q. You are positive you were the only one driving the car at that time, there were no other drivers there that could drive the Buick or did some times drive the Buick? A. No.

Q. After Melvin left you took Melvin's place in driving the car? A. In taking the old gentleman home, yes.

Q. There must have been some one that took Melvin's place? A. He drove the truck.

Q. The old man sometimes went in the truck? A. Yes, sir.

Q. Well, he asked you to drive him? A. Yes, sir.

Q. Did he ask you to take him at once? A. No.

Q. What did he say? A. He said, "I want you to take me to the prosecutor's office, Mr. Dunn." And I believe he went home and got dressed up.

Q. He got dressed up for this occasion? A. Yes, sir.

Q. It was sort of a ceremony? A. Yes, sir.

Q. Who took him home? A. From the shop?

Q. Yes. A. I took him back to the shop.

Q. You said he spoke to you about going when in the shop? A. Yes, sir.

Q. And you took him to the house to dress up? A. No.

Q. Where did he dress up? A. In the house.

Q. The house and shop or not together, are they? A. No.

Q. Didn't you say he asked you to take him when he was in the shop? He asked you to take him to Mr. Dunn's? A. Yes, sir.

Q. Then he went and got dressed up? A. Yes, sir.

Q. Who took him to the house? A. I took him home every day.

Q. Did you take him from the shop to the house? A. I believe I did but it would be possible he went home on the truck.

Q. Did you go in the house with him? A. I don't believe I took him home from the shop that noon time.

Q. You believe that now but you didn't a few minutes ago? A. Yes, sir.

Q. Now what do you mean? A. You see the driver drove him home and I drive him home also but I don't bring the car down every day and perhaps that was a day when the driver drove him home.

Q. I want your best recollection now as to whether or not you drove him from his house to the shop so he could change his clothes. A. No.

Q. Why did you say you thought you did at first? A. I bring him down sometimes and the driver brings him down some mornings and on second thought I considered that I didn't bring down the car every day at that time.

Q. You use it now? A. Yes, sir.

Q. You say you had to think the question over but it has been fresh in your mind ever since this litigation started, hasn't it? A. I never gave a thought about driving him home.

Q. Haven't you prepared yourself to answer questions on this examination? A. Just to tell the truth.

Q. What you say now brings from your present memory without refreshing it? A. Yes, sir.

Q. Does that mean you have not constantly been talking to counsel? A. Constantly, no.

Q. Have you gone over this subject? A. No, not what you are asking now.

Q. Have you gone over the subject at all as to the circumstance of making this will? A. Not as to that stuff about driving home and whether he went home on the truck or in the Buick car.

Q. Now after thinking the thing over on the stand you are quite sure you didn't drive him up to the house? A. I cannot say positively.

Q. You are sure, are you, he changed his clothes? A. Yes, because I drove him down after one o'clock.

Q. How is it you can remember about his changing his clothes? A. He was all dolled up and looked pretty good.

Q. Where did you see him with his clothes changed? A. At his home.

Q. Were you there with the automobile? A. Yes.

Q. Did you go into the house? A. Yes, sir.

Q. Did you see him dressing? A. Yes, sir.

Q. Did you see Mrs. Ulrich, his wife? A. Yes, sir.

Q. Did he talk with her? A. Sure.

Q. Did he tell her where he was going? A. No. Not in my presence.

Q. You never heard him say anything to Mrs. Ulrich about making a will? A. No.

Q. Nor anybody else? A. No.

Q. You went down to Dunn's office? A. Yes, sir.

Q. What happened when you got there? A. I brought him down.

Q. Where? A. I brought him down to Dunn's office and then up in the building.

Q. Where was the car? A. I left the car down stairs.

Q. Did he tell you then what he was there for? A. No.

Q. Did he tell you how long he was going to stay? A. No.

Q. Not a word? A. No.

Q. Not a word was said to you but you just went up to Dunn's office. Where did you go when you got to Mr. Dunn's office? A. We sat in one of Mr. Dunn's offices.

Q. Did you see him meet Mr. Dunn? A. I did.

Q. What happened then? A. Nothing happened.

Q. Did you go right in the office? A. Yes, I went right in one office.

Q. What did Mr. Dunn say to you when he came in? A. They started to talk about old time stuff, Greenwood Lake and fishing and all that.

Q. You didn't have any notion of what he was going there for? A. At the time I don't believe so.

Q. He never gave you any reasons to know why he was going, is that right? A. Yes, sir, no reason.

Q. Did he shake hands with Mr. Dunn? A. Sure.

Q. Did you go right into the office with Mr. Dunn when he did? A. Yes, sir.

Q. What did he say to him? A. I cannot give you the words he said to him.

Q. What did Mr. Ulrich say to Dunn? A. They were talking about Greenwood Lake.

Q. How long did you hear him talking about Greenwood Lake? A. A few minutes.

Q. Five minutes? A. Maybe.

Q. Ten minutes? A. Maybe.

Q. Fifteen minutes? A. Maybe.

Q. Twenty minutes? A. It might have been twenty.

Q. And you sat there and took no part in it? A. Yes, I took a little part in it.

Q. Did you stay there? A. No.

Q. Did you go out of the room? A. Yes, sir.

Q. When? A. When Mr. Dunn asked me to step out.

Q. Nothing had been said about the nature of the business that was to be transacted? A. I don't remember whether Mr. Ulrich mentioned to him that he wanted to speak to him privately or not.

Q. If he had said that Mr. Dunn wouldn't have asked you to go out? A. Yes, sir.

Q. You didn't expect to have to go out at all? A. No.

Q. You didn't think there was any secret? A. No.

Q. And suddenly without any reason so far as you know Mr. Dunn asked you to go out? A. Yes, sir.

Q. But Mr. Ulrich didn't? A. No.

Q. Mr. Dunn had some reason which was not disclosed to you? A. Yes, sir.

Q. You had been talking all together right in Mr. Dunn's place when you first came there? A. Yes, sir.

Q. And that is all he said, "You better go out"? A. Yes, sir.

Q. Did you ask Mr. Ulrich what he wanted you to do about going or staying? A. No.

Q. Why didn't you ask him whether he wanted you to go home or stay there? A. Mr. Dunn said, "Just step out in the other office a few moments" and I stepped out.

Q. You had no conception of what was going on? A. I wasn't there.

Q. Didn't you have any idea that a will was going to be drawn? A. No, not the slightest notion of it.

Q. How long did you stay outside after that? A. Until they opened the door and let me in.

Q. Who opened the door? A. Mr. Dunn.

Q. What did he say? A. He opened the door and said, "Come in, it is all right."

Q. Did he tell you what they had been talking about? A. No.

Q. Nobody said anything? A. No.

Q. How long did you stay after that? A. Ten or fifteen minutes.

Q. Did they ask you any questions about the business or about the estate or Ulrich Company with reference to the will? A. No.

Q. In all the time you were there, while you were there—you were there four times? A. I guess so.

Q. In all the time you were there I understand you to say you never knew of a will had been drawn until you stepped down stairs the last time? A. Yes, sir.

Q. When was the first intimation or thought you had that one was being made? A. Never.

Q. Such a thing never entered your mind? You thought it was any ordinary business transaction? A. There might have been a will made.

Q. What was in your mind? Did you or not in the four times you were there until you went downstairs and he told you he had made his will, did you think or not, or have in mind that he was making his will? A. That part I cannot be sure. I wasn't sure he was making a will.

Q. Did the thought occur to you whether he was making a will? A. No.

Q. Then you say you were not called into the room while Mr. Dunn was there? A. Well, yes. While Mr. Dunn was there I think I told you he called me in.

Q. You said he called you in after they got through talking? A. Yes, sir.

Q. And you said when he did call you in he didn't tell you anything about what they had been talking of? A. No.

Q. So far as you know in any of these interviews that took place between Mr. Dunn and the testator, was anything said by the testator or by Mr. Dunn to you about anything with reference to the will? A. He might. He did I believe call me into the room while they were there. I was in once or twice, I wouldn't say sure, for a few seconds.

Q. What was said to you? A. I don't know whether he asked me the middle name of Frank Ulrich or not.

Q. Who did? A. Franz.

Q. Who, the old man? A. Or Mr. Dunn, I am not sure. I was called in to say what the middle name of Frank Ulrich was.

Q. On which occasion? A. I cannot say.

Q. On only one occasion were you called in? A. I said once or twice.

Q. When was the occasion? A. I cannot say.

Q. Well, that was the only occasion they called you in to get the middle name of Frank Ulrich? A. Yes, sir.

Q. Didn't the testator know whether or not his son had a middle name? A. This was not his son but his grandson.

Q. There was nothing else asked you but that, so far as you know? A. Yes, sir.

Q. You are sure of that now? Quite positive? A. No.

Q. You can't think it over and change it? A. Yes, sir.

Q. That is all they asked you? A. That is one thing I know I was called in for.

Q. Did you give any thought as to the reason why they asked you this? A. No.

Q. And you didn't ask why they wanted to know this? A. No.

Q. When the old gentleman went out the first time about how long was he there altogether? A. I suppose he must have been there about an hour, I guess.

Q. Did he say a word to you about whether he had made a will then or not? A. No.

Q. Did you take him home? A. I took him to the shop, I believe.

Q. Did he say a word about that transaction with Mr. Dunn until you went there the second time? A. No.

Q. Then how long after that was it that next anything came up about going to Mr. Dunn? A. I cannot say how long after that that was.

Q. About how long? A. I cannot say whether it was a week, two weeks or three weeks.

Q. What did he say the second time? A. That he wanted to see the prosecutor.

Q. Did you ask him why? A. No.

Q. Why didn't you? A. It wasn't any of my business.

Q. Did it occur to you that he wanted to make a criminal complaint against anybody? A. No, I didn't think of that.

Q. Mr. Dunn was actively engaged as the prosecutor then. Did he go to the court house? A. No, he went up to his office.

Q. Can you see any reason why he should want to know the middle name of his grandson if he was going to make a complaint? A. No.

Q. What were his relations with the grandson? A. Friendly.

Q. He criticised him? A. He was friendly, he didn't criticise him.

Q. Didn't he criticise or object on account of the grandson's habits? A. Yes, sir, I suppose so.

Q. He drank to excess? A. I never heard him speak about that.

Q. Haven't you heard him use epithets towards the grandson calling him a drunkard, etc.? A. No.

Q. You went the second time to Dunn's office and you didn't ask him why he was going? A. No.

Q. You didn't think he was going to do anything in a criminal way against him? A. No.

Q. Did it occur to you? A. It might have.

Q. Well, did you go in and sit there the same way? A. Yes, sir.

Q. Did you meet Mr. Dunn the same way? A. Yes, sir.

Q. Did you go in the office too? A. Yes, sir.

Q. Did you talk with them a little while? A. Yes, sir.

Q. About how long? A. A few minutes.

Q. What about? A. About the same thing.

Q. Then what happened? A. I walked out again.

Q. Who asked you to? A. Mr. Dunn.

Q. You went out the same way and they didn't tell you what business they were discussing or anything? A. No.

Q. How long did you stay? A. Half an hour or an hour.

Q. Then they called you back again? A. Yes, sir.

Q. How long did you stay after that? A. Until we left.

Q. Was anything said about the will? A. No.

Q. Nothing happened and there was no talk with reference to the business they had been transacting? A. No.

Q. Was any question asked with reference to the transaction they had? A. Not as far as I heard.

Q. You went away again, drove away again, you went away and never asked him what he did down there? You were not interested in it? A. No. That was his business. I wouldn't interfere with personal business.

Q. You didn't know it was personal business? A. I thought it was his business.

Q. Why did you make that remark you wouldn't

interfere with personal business? A. That would be a personal question.

Q. You didn't mean to distinguish between your asking him with reference to personal business or other business but mean to say now you thought it would be a personal question? A. Yes, sir.

Q. Did you think it was a personal question to ask him about his general business? A. No.

Q. Why, when you didn't know what business they had and you knew he was going there to transact business, why was it you refrained from asking him about what he was going there for the second time? A. That would be a personal question.

Q. Why? A. For me to ask him, "Where are you going, what are you going to do here."

Q. Did you think there was anything different from the ordinary business about him going there? A. If I did think so I wouldn't interfere.

Q. Well, you went away and came back the third time? A. So I believe.

Q. About the same thing took place? A. Yes, sir.

Q. You stayed about the same time? A. I think so.

Q. You went into the room fifteen minutes, talked about general things? A. Yes, sir.

Q. You went out and sat in the other room and after a certain length of time they called you back and talked about general things again and you went off in the same way? A. Yes, sir.

Q. Nothing was said by any of you as to what was being done there? A. No.

Q. Were you asked about or for any facts? A. No. I said there was one time I was in there.

Q. That was about the middle name of Frank? A. Once was but I don't know what trip that was.

Q. What was it that is in your mind that you put so much emphasis on the once? But possibly there was more than once? A. I cannot say.

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

Q. You don't remember that you were called in at all? A. Yes, sir.

Q. Now what troubles me about it is I cannot understand why you can remember the fact that you went in there at all and not have any way to tell us how many times and what for. I cannot understand why you can be positive you were called at all and yet not be able to tell us anything more. A. I can say I was called once or twice. That is all I remember.

Q. You were asked about the middle name of Frank on that occasion? A. Yes, sir.

Q. But I can't see why you don't remember that you were called in on another occasion. A. If I was called in a dozen times I can't tell you what did happen.

Q. You were called in only twice? A. Yes, sir.

Q. So far as you know of there wasn't a question asked you except the middle name of Frank on any occasion? A. I didn't say that.

Q. What did you say? A. That is all I remember.

Q. That is all you remember that was said? A. Yes, sir.

Q. But whatever was said there was nothing said that indicated to you that they wanted any information from you with reference with what they were doing? A. Only those two instances.

Q. Well, at last he told you he made his will? A. Yes, sir.

Q. When did he tell you that? A. Coming down stairs.

Q. What did he say to you? Just what did he say to you about that? A. I told you he said, "Now I am satisfied, I will rest in peace. I made my will." I believe those were his words.

Q. Just when you were going down stairs? A. Yes, sir, on the elevator.

Q. That is the first intimation you ever had that he made his will? A. Yes, sir.

Q. You had been in there talking for fifteen minutes, talking to Dunn and himself? A. Yes, sir.

Q. You had been there fifteen minutes? A. Maybe ten or fifteen, I can't say.

Q. And Mr. Dunn or he didn't say anything to you about making a will? A. No.

Q. Did you see any paper when you went in that Mr. Dunn had? A. No.

Q. Who asked you to come in? A. When?

Q. After it was over and you were in another room, who came out and asked you to come in? A. He opened the door and called me in.

Q. When you went back what did your father-in-law say to you? A. He didn't say anything to me.

Q. You stayed there ten or fifteen minutes? A. I don't know.

Q. What did you talk about during that ten minutes? A. I suppose the same old stuff.

Q. What was that? A. Fishing and Greenwood Lake, etc.

Q. They didn't say a word to you about what Mr. Dunn had been doing? A. No.

Q. They made no intimation at all? A. No.

Q. Then the thought didn't occur to you whether he had made a will? A. No.

Q. And after that you went out and while going down stairs he told you about the will? A. Yes, sir.

Q. That is the first time it ever occurred to you that he had made a will or intended to make a will? A. Yes, sir.

Q. What did you say to him? A. I didn't say anything.

Q. Why didn't you? A. I don't know what I could say to him.

Q. After he told you he had made his will don't you think it would be natural to say something about it? A. I don't know what I could ask him.

Q. Didn't you ask him where it was? A. No.

Q. Didn't you ask him where he left it? A. No.

Q. You even shied at that? A. I didn't see why I should ask such a question.

Q. You thought it would be impertinent? A. Yes, sir.

Q. Unbecoming? A. Yes, sir.

Q. You were not afraid of the old man? A. He would have told me it was none of my business.

Q. He didn't have it in his hand, did he? A. No.

Q. He didn't say he had it? A. No.

Q. You didn't see it in his hand? A. No.

Q. You didn't hear anything about it? A. No.

Q. Did they have any other paper there at that time? A. I didn't see any.

Q. Was any other paper, any other will, or anything there? A. No.

Q. You didn't understand there was any other will? A. No.

Q. Did you at that time know there was another mill made? A. No.

Q. Did you ever hear it? A. When?

Q. Had you ever heard it up to that time? A. Yes, I had heard it.

Q. Made by whom? A. By Mr. Weiss.

Q. When did you first know that? A. A long time before that.

Q. How long before? A. I cannot say.

Q. It was before the first visit to Mr. Dunn? A. Yes, sir.

Q. Then you had heard that Mr. Weiss had drawn a will? A. Yes, sir, some time before.

Q. It was in 1920 that that will was drawn by Mr. Weiss? A. I cannot say.

Q. You heard about it at that time? A. I don't know just what time it was.

Q. Didn't you and your wife talk over the facts that a will had been made by Mr. Weiss in which Frank had been given the business? A. We might have.

Q. Didn't you and your wife talk over the fact that a will had been drawn in 1920 by Mr. Weiss? A. We didn't know, we weren't positive a will was drawn.

Q. You had heard such a will had been drawn? A. Yes, sir.

Q. By Mr. Weiss? A. Yes, sir.

Q. You had heard that Frank had been given the business? A. I cannot say.

Q. Will you deny it? A. What?

Q. That you and your wife did or had discussed in 1920 that a will had been drawn by Mr. Weiss in which Frank had been given the business? A. I won't say. We may have.

Q. You and your wife? A. Yes, sir.

Q. Both you and your wife were dissatisfied that Frank had been given the business? A. No.

Q. Don't you know that is one of the reasons your wife urged you to go with your father-in-law when he asked you to go there? A. That is not the question you asked me before. You asked whether or not my wife and I had understood a will had been drawn by Mr. Weiss and discussed it. Now you say my wife and I were dissatisfied. I was not because I wasn't interested.

Q. Didn't you understand from your wife that this will had been drawn by Mr. Weiss in 1920 in which Frank had been given the business and didn't your wife express her dissatisfaction to you? A. That is right, yes, sir.

Q. And you agreed with her on it? A. I agreed with her?

Q. Didn't you agree it was unjust that such a will should be made? A. No.

Q. How did this discussion with your wife before you went to work for Mr. Ulrich, how did that start? A. I don't know.

Q. You had this discussion before you went to work for Mr. Ulrich, didn't you? A. Yes, sir, I believe so.

Q. Didn't your wife want you to go there because or against your will and accept forty dollars a week instead of sixty dollars a week because of the fact that that will had been drawn? A. No.

Q. Did that enter into it in any way whether or not you should go down there? A. No, not in any way.

Q. Did you hear of the circumstance of your wife saying that they were trying to get you and calling you Lang and herself say to get Lang out of the business? Did you hear that testimony by Mrs. Handwerk about what they heard your wife say? A. I didn't get that.

Q. Did you hear of the fact that your wife had gone to your father-in-law on one occasion and complained about the fact that they were going to get you out of the business? A. Yes, sir.

Q. You heard Mrs. Handwerk's testimony about that? A. Perhaps so.

Q. Did you ever hear of that circumstance? A. No.

Q. Did you and your wife talk together about the provisions of this will of 1920 that had been drawn by Mr. Weiss and which you had heard of? A. We didn't know the provisions.

Q. Did you talk about it? A. We may have.

Q. What facts did you have from which you inferred this will had been drawn, this will of 1920? A. I don't know. I suppose from my wife through her father.

Q. Did you understand her father had told her he had drawn this will at Mr. Weiss's? A. I understood so.

Q. You understood the father had told her? A. Yes, sir.

Q. Then at the time you went to Mr. Dunn's office you had heard about this will and you had had this talk with your wife about it? A. That, this other will?

Q. You had talked about that before you went to work for the testator? A. I don't know whether that was before I went to work.

Q. I ask you again. You said you were there a little while ago? A. I am not sure whether it was before or after. It would be kind of hard for it to be before.

Q. I am asking you. A. It must have been after. If I said before, it was a mistake.

Q. Is that so? Didn't you fall in some such error also when you said the testator a month before he died was down taking care of the furnace? A. No, he was.

Q. You didn't say a single word to the testator in response to him after he told you, "I have made a will" after the last time you left Mr. Dunn's office? A. No.

Q. From that time down to the day of his death did he ever refer to the fact of making a will? A. Not as I know of.

Q. As you remember it now there never was a word said by you to the testator or by the testator to you with reference to that last will drawn in Dunn's office excepting the words said when he went down the stairs. Is that right? A. Yes, sir, that is my recollection.

Q. Did you ever tell your wife he had made that will? A. Not as I know of.

Q. You didn't say a word to your wife anything about going to Dunn or about the fact he had drawn the will? A. Not as I know of.

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

Q. You were perfectly friendly with her at that tie? A. Yes, sir.

Q. Up to the time of your father-in-law's death? A. Yes, sir.

Q. Did you ever say a word to Mrs. Handwerk about it? A. No.

Q. Did you ever say a word to Mrs. Albert Ulrich about it? A. No.

Q. Mr. Handwerk? A. No.

Q. Mrs. Albert Ulrich? A. No, not as I know of.

Q. Do you swear that? A. No.

Q. Did you ever say a word to young Frank Ulrich, the grandson of the testator, about it? A. I don't remember mentioning it to him.

Q. Will you swear you didn't mention it? A. I don't remember.

Q. Will you swear you didn't mention it to him? A. I say I don't remember.

Q. Will you swear you didn't mention it to Mrs. Albert Ulrich? A. I don't remember mentioning it to her.

Q. Did you mention it to any person whatsoever the fact that Mr. Dunn had drawn a will? A. I may have but I don't remember.

Q. Did you say a word home or to the widow, Mrs. Franz Ulrich, your mother-in-law? A. I don't remember.

Q. Not a single word? A. No.

Q. Do you know whether or not your wife knew when your father-in-law died that this will made by Mr. Weiss was still in effect? A. I don't know.

Q. Did you say anything to your wife up to the time of the death of your father-in-law as to your knowing anything about a will having been made? A. I don't remember.

Q. Did she say anything to you indicating that she thought the will made by Mr. Weiss was still in force when he died? A. No.

Q. Do you remember saying anything about the will one way or the other to her or indicating—or she to you, indicating she thought it was from the time this will was drawn by Mr. Dunn to the death of your father-in-law? A. No.

Q. Didn't you say a word about it? A. No.

Q. Yet you were friendly with her all the time? A. Yes, sir.

Q. Did the testator ever tell you after he spoke of the fact that a will was made that he spoke of it to any member of the family? A. No.

Q. There was some question after the death of Mr. Ulrich as to whether any will was in existence? A. What was that question?

Q. After Mr. Ulrich died there was some question arose among the relatives as to whether there was a will in existence? A. I don't know.

Q. Didn't you say on your direct examination that you went with some one to the safe deposit vault to find out if there was a will? A. No, it was a case of where the will was.

Q. What was said by you or by anyone about it so far as you know? A. When we were coming out

of the United States Trust Company where the will was supposed—

Q. When did the question first arise as to where the will was? A. I cannot say.

Q. Did your wife ask you? A. No.

Q. Did Frank ask you? A. I cannot say whether he did.

Q. Did he tell him there was no will? A. No.

Q. Did you tell Mrs. Burchill, your wife, there was a will? A. No.

Q. Did you tell your sister-in-law or her husband? A. No.

Q. Did you tell your mother-in-law? A. Not as I know of.

Q. They were all anxious to know where the will was? A. I don't think so.

Q. Why don't you think so? A. Why would they the day after a man's death, the day before he is buried?

Q. Didn't you say you were with some one to find out if it was somewhere? A. Yes, sir.

Q. Where did you go? A. We went to the United States Trust Company and to the shop.

Q. You helped look for it? A. I did.

Q. Who else? A. Mr. Handwerk and Mr. Frank Ulrich.

Q. They were looking through the shop and you were with them and you thought they were rather hasty in doing this so soon after the death? A. Yes, sir.

Q. You went where else, to the safe deposit vault? A. Yes, sir.

Q. Where? A. In the United States Trust Co.

Q. You knew they didn't know where it was? A. I didn't know whether they knew or not.

Q. You didn't know whether they knew the will was there or not? A. No.

Q. You knew the question was asked about the will and you didn't say a word to them about the fact that a will had been made? A. It was a question of where it was then.

Q. Because the question of where the will was came up and you understood that one had been made and just because that was the question of where it was you didn't think it was necessary to tell them there was a will? A. I did not.

Q. You didn't think that was necessary? A. They knew a will was made.

Q. Who? A. They.

Q. You didn't tell them the will Mr. Dunn had drawn in March of 1921 had been made? A. No.

Q. You let them look around through the shop and in the safety deposit vault and you didn't tell them a word about it? A. No.

Q. You didn't tell them a word about that at all? A. No.

Q. Then you went away? A. Yes, sir.

Q. When you went away with Mr. Ulrich and Mr. Ulrich didn't have a will the presumption was that the will had been left with Mr. Dunn, wasn't it? A. I didn't understand that after a man makes a will he must leave it in the lawyer's office. I never had any experience.

Q. You went in and stayed fifteen or twenty minutes after it was drawn? A Yes, sir.

Q. You didn't see any will in the possession of Mr. Ulrich when he went out? A. No.

Q. You didn't ask him where it was? A. No.

Q. Wasn't it your presumption that it was left with Mr. Dunn? A. No. It wouldn't take a man but a moment to put a will in his pocket.

(At this point a recess was taken until 2 P. M.)

LANGLEY J. BURCHILL, recalled to the witness stand and testifies as follows:

Cross Examination continued by Mr. Harding:

Q. So far as you knew on the last visit you had made at Mr. Dunn's office when the testator told you he had made a will you didn't know whether it was left with Mr. Dunn or whether the testator had it? A. No, sir.

Q. But when you were looking for the will at the shop and looking for it at the safety deposit vault you then didn't know where the will was? A. No.

Q. That is the reason why you didn't tell any of these persons where this particular will that was made by Mr. Dunn was? A. No. As I said when Mr. Frank Ulrich came out of the bank he was all worked up about it and he made this remark to Mr. McDermott at the rest and he walked away from us and as soon as he did I walked away and went toward the shop.

Q. You didn't tell them at all the fact that Mr. Dunn had made this will? That didn't occur to you as necessary? A. No.

Q. So far as you know the first that any member of the family knew that Mr. Dunn had

made a will was when he came to the house and read it to them? A. No, when I got home some one told me he had phoned and said he was going to come and read the will.

Q. You didn't tell anybody that any will had been made? A. No.

Q. You didn't tell them after that about it? You didn't think it was any of your business to tell them? A. No.

Q. That is, I mean you didn't tell them that Mr. Dunn had ever made a will? A. At the time I got home they had been notified that Mr. Dunn had the will.

Q. In other words the fact that Mr. Dunn had made the will was never related by you to any member of the family but they got it from Mr. Dunn directly so far as you know? A. Yes, sir.

Q. Did you ever see Mr. Dunn after the will was made until the time of Mr. Ulrich's death? A. Yes, sir.

Q. How frequently did you see him? A. Maybe once every week or two weeks.

Q. In a business way? A. No.

Q. Did you see him once in every two weeks? A. Yes, sir.

Q. Did you ever ask him what this transaction was? A. I did not.

Q. You never said a word to him about having drawn the will? A. I did not.

Q. Did he say anything to you about it? A. He didn't.

Q. After your father-in-law died and before Mr. Dunn made known to the rest of the family there was a will did you speak to Mr. Dunn about him? A. I did not.

Q. Did you hear Mr. Dunn's testimony? A. I did.

Q. Do you recall he said the envelope had been broken that contained the will after he heard of the death? A. I don't remember Mr. Dunn saying it had been broken.

Q. Will you say you were not present in Mr. Dunn's office after your father-in-law's death when he opened the will? A. I was not.

Q. I show you exhibit C-6 which purports to be the will Franz Ulrich made on the 26th day of July, 1920, and ask you when you first ever saw that will? A. I can't say a definite date.

Q. Let me ask you this? That is the will I suppose that was discussed between you and your wife that you have already testified about? A. If that is the will that was in effect, yes. My wife spoke to me about some will he had made but whether it is the one of 1920 or not that I don't know.

Q. You presume this is the one? A. If you say that is the one I suppose so. I don't know when that will was drawn.

Q. How long was it after you discussed the subject of the will with your wife was it that you saw this will dated the 26th of July, 1920? A. I don't know it might be a year. I don't know just how long.

Q. You say it might have been a year? A. It might have been a year, might be two years, I don't know just how long.

Q. When did you see it first? A. It might have been a couple of years.

Q. State the circumstances under which you first saw this will dated the 26th day of July, 19290? A. That will was in our safe.

Q. What do you mean by our safe? A. Where I am now located, the Ulrich company, and there was a question about some deed for Mrs. Handwerk. The deeds made out for the property at 211 and 213 Park Ave. and the time came to give her the deeds and this will was among the papers in an envelope with the deeds.

Q. Did you find it there? A. Yes, sir.

Q. You were not looking for the will? A. No.

Q. You found it in looking over the other papers? A. Yes, sir.

Q. Was that the first you knew it was there? A. Yes, sir.

Q. Can you state where or whether you found this will of 1920 before or after the death of Franz Ulrich? A. It was after the death of Franz Ulrich.

Q. You said it might be a year, it might be more. A. I say it was after the death of Franz Ulrich.

Q. About how long after the death of Franz Ulrich? A. I cannot say, maybe two or three months.

Q. Were you alone when you found it? A. There were other people in the office.

Q. Did you make known to anyone the fact that you found it? A. No.

Q. Did you ever make known that fact to anyone that you found this will? A. I might have to my wife.

Q. Did you? You say you might have but did you? Do you remember? A. The chances are I did.

Q. Can you state whether you told anybody else you found this will? A. No.

Q. When you say no do you mean you didn't tell it to anybody else? A. I said no.

Q. That is you mean you didn't tell it to anybody else? A. I take it for granted no means no. I didn't say anything to anybody else.

Q. Did you ever say anything about it to Mrs. Albert Ulrich? A. I did not.

Q. Or to Frank Ulrich, the grandson? A. I did not.

Q. When was it you told your wife you found this will of 1920? A. When I found it.

Q. What did you do with it? A. I just stuck it in my pocket.

Q. Why did you put it in your pocket? A. What else could I do with it? I thought when I got a chance I would look it over thoroughly but I never got a chance to go over it.

Q. You found it about two months after the testator's death and put it in your pocket without reading it? A. Without reading it fully.

Q. You say you put it in your pocket and told your wife about it? A. I don't know whether I told here the day I brought it home but I told her some time.

Q. How long did you carry it in your pocket? A. I cannot say whether it was a month or more.

Q. You think you might have carried it in your pocket a month? A. Yes, sir.

Q. Do you think you carried it in your pocket a month before you told your wife? A. No.

Q. Yet you didn't read it thoroughly up to the time you told your wife about it? A. No.

Q. Though you had carried it in your pocket a month? A. Yes, sir.

Q. Do you think you carried that for two or

three weeks before you spoke to your wife? A. Possibly, I could have.

Q. When you spoke about it did you give it to her to read? A. I don't think I did.

Q. Did you tell her you had it in your pocket? A. I don't know. I don't suppose I did.

Q. Will you tell me what your object was in carrying it around in your pocket for a month? A. With the thought of going over it.

Q. That was the only object? A. Yes, sir.

Q. How long would it take you to go over it? A. It wouldn't take long. It was only a couple of pages.

Q. Did you discuss it with your wife, the provisions of this will? A. I don't believe so.

Q. Did you take it from its place merely for the purpose of reading it over? A. Yes, sir. I didn't know what it might come in for.

Q. Your only object was to take it home and read it over? A. I thought I would take it home and read it and read it to my wife.

Q. What was your object in doing that? A. If you find an old will you would take it home and read it to your wife or any person pertaining to the old man that would be interested to hear it.

Q. Did you read it over to your wife? A. I cannot say whether I did nor not.

Q. Mr. Burchill, as a matter of fact didn't your wife take this will out of your pocket without your knowledge? A. I believe she did.

Q. You didn't consent to her taking it? A. No.

Q. You never told her of the existence of it only when she did take it? A. Oh, yes.

Q. You didn't tell her of the provisions until she took it? A. She knew it then.

Q. When she took this will from your pocket you didn't know she had taken it, did you? A. No.

Q. You never had spoken to her of having this in your pocket? A. No.

Q. Before she took it you never spoke to her about having it in your pocket? A. No.

Q. In this way she got it before you carried out your intentions? A. No.

Q. What did you say? A. I had spoken to her about it before she found it and when I change my clothes this was among other papers as I changed my clothing for the purpose of sending the suit to the cleaners and this was among other papers and she went through them and took all the papers out and threw them to one side and this was among the other papers I had in my pocket.

Q. The first you knew she had this will was when it was produced down in court? A. No.

Q. When did you first know she had it? A. I knew it long ago.

Q. How did you come to know it? Did she tell you she had it or how? A. I believe she did.

Q. Did your wife charge you with having unduly influenced the testator to make the will that was made by Mr. Dunn? A. She did not.

Q. Has she ever or not made such charge to you as that? A. Not to me.

Q. Has she to anybody? A. I don't know.

Q. Hasn't she charged you with having injured her brother Frank in causing this will made by Mr. Dunn to be made? A. She did not.

Q. Your wife was present when the will was read? A. She was.

Q. She was very angry when she learned the terms of it? A. She was, yes.

Q. She ran out of the house in her stocking feet? A. I don't know about that. I wasn't there when she went out.

Q. Didn't she there charge you with having influenced the testator to make this will in which an injustice was done to Frank and the mother? A. She did not.

Q. Don't you know that has been her attitude to you ever since this will has been made or read? A. She has never said to me once that I did that.

Q. What? A. Charged me with that.

Q. Hasn't she expressed to you time and time again her dissatisfaction with the will and said it was unjust? A. Yes, sir.

Q. Hasn't she criticized you for never having told her that the will was made by Mr. Dunn until she learned it after her father's death? A. No.

Q. Why didn't you tell her that such a will had been made as was made by Mr. Dunn. Your relations with her were friendly why didn't you tell her? A. I didn't think it was her business.

Q. You didn't think it was the business in any way of the daughter of a father to know anything about it and yet you say she induced you to go to work for your father-in-law and that you did it having in thought and in mind her own interests? A. Yes, sir.

Q. Notwithstanding all that and being perfectly friendly with her you didn't tell her as a matter of fact that her father had made this last

will that was made by Mr. Dunn? A. I didn't think that was necessary.

Q. You didn't tell her this important fact? A. I didn't think that was an important fact.

Q. You didn't think it was important? A. No.

Q. You never considered it was? A. The will itself was, yes, but as for mentioning it to my wife I don't see why I should mention it to my wife.

Q. The day when they were looking for the will Frank and Handwerk and Coogan and yourself wer looking through the office for the will, were you not? A. Yes, sir.

Q. And looked through the safe for the will, was that right? A. Yes, sir.

Q. And you looked through the same safe in which you now say you found these other papers and deeds and will of 1920? A. Yes, sir.

Q. Did you find that will of 1920 on this first search? A. No.

Q. Can you tell me why you did not? A. I can't say why not.

Redirect Examination by Mr. McCran:

Q. When you went through the safe looking for the deeds for some property relating to the Handwerks where was this will of 1920? A. In an envelope inside of these deeds.

Q. Inside of the deeds? A. Yes, sir.

Q. Do you mean in the envelope with the deeds or inside of one of the deeds? A. Inside of one of the deeds.

Q. Was that the reason why the will wasn't found when you went through the safe after the father's death? A. It was in the envelope but inside of the deed.

Q. Were there many papers in the safe? A. Hundreds and hundreds. There were deeds back to twenty-five years ago.

Q. You knew when you found this will later referred to by counsel and marked Exhibit C-6 did you look at the date? A. Yes, sir.

Q. Did you attach any importance to it under the circumstances? A. I knew it was an old will.

Q. Did you think it was of any value? A. No.

Q. Did you attach any value to it? A. I did not, otherwise I wouldn't have carried it around in my pocket as I did.

Q. In the manner of the difference that arose about the gasoline bills did you speak to him first or did he speak to you first? A. Mr. Franz Ulrich opened the mail and would go through the bills, etc., and he mentioned several times about the gasoline.

Q. To you? A. To me and to Frank too.

Q. Do I understand you to say you didn't go to the father in the first instance and tell him about the gasoline incident? A. No, he complained about the gasoline first.

Q. Where did you spend your time in the mill during his life time? A. All over.

Q. Were you in the office very often? A. Not in the private office.

Q. In the private office where Mr. Ulrich spent his time? A. I was not.

Q. What were the feelings, if you know, as expressed by the father toward Frank after Frank had knocked him down and left the mill?

Mr. Harding—I object to the question because the witness doesn't know that the father was knocked down. As I recall this witness' statement is that the fact was told him that Frank knocked his father down.

Question withdrawn.

Q. What were the feelings, if you know, expressed by Mr. Ulrich after the occasion which is alleged to have resulted in the son knocking down the father and his leaving the mill? A. He was very sore, about it, very sore.

Q. Was Mr. Ulrich a man in the habit of talking about his private business? A. Not often, no.

Q. You said this morning you were a deputy for Mr. Dunn? A. Yes, sir.

Q. What kind? A. A special deputy once a year.

Q. On what kind of work? A. Election work.

Q. You mean you were a deputy on election day? A. Yes, sir.

Q. And how many of the same deputies as you were there on that day? A. Twenty-five or thirty.

Q. Did you ever do any other work for Mr. Dunn of any kind? A. No.

Proponent Rests.

FRANK ULRICH recalled to the witness stand in behalf of the Caveators and testifies as follows:

Direct Examination by Mr. Merrey:

Q. Caroline Barnes testifies that you had trouble with your father over a check incident, is that true? A. No, sir, it is not.

Q. There was some such incident about a check, wasn't there? A. Yes, sir, there was an instance of a check where perhaps a customer would pay for two accounts, Allentown and Paterson, and all his books of Allentown and Paterson were kept on record here and if Paterson should take anything from Allentown then it was charged to Paterson and if they had—

Mr. McCran—May I say now that we are in rebuttal and the question must be put in the form it was testified.

Q. Mrs. Barnes testifies as follows, "His father drew up two one thousand dollar checks in the name of his wife and of course naturally Frank made all the checks out for the father and then the father would sign them and he said there he is now throwing away two thousand dollars more for the God dam girls." Is that true? A. No, sir, absolutely not.

Q. She further testifies as follows, "He said there won't be a dam cent left for us if he keeps on giving it to them." A. No, sir, I did not say it.

Q. Mrs. Barnes testifies in answer to this question. When Frank was working there again what

was his attitude toward his father, respectful or otherwise and she answered it "Far from respectful." Was that true? A. No, sir, it was not. It was far from disrespectful.

Q. Then Mrs. Barnes testifying that you had an argument with your father and after the argument you said "To hell with all your business, I am through." Then the question was asked her who did he say that to and she answered "To the father. He said to hell with your business. I can get along without you, and he went out." Is that true? A. No, sir, I didn't.

Q. She further testifies when the question was asked how long did he stay out that time and she answered "Two or three days, about." Is that true? A. No, sir, I did not. It was only twice when my father discharged me.

Mr. McCran—I ask that that be stricken out.

The Court—Strike it out.

Q. Mrs. Barnes testifies you said to your father concerning the gasoline bills "I will pay my own God dam bills and to hell with you. You can keep your own God dam business and I will go by myself." Did you use that language? A. Never. I never did.

Q. Do you remember this Mrs. Barnes working there at your father's place? A. Yes, sir.

Q. Did you ever have to reprimand her? A. Several times and Mr. Burchill knows it.

Q. What was the reprimand given about? A. About her untidy work and wanting to stay out all the time.

Q. Did she stay out? A. She wanted to but I would not allow her.

Q. Did you have trouble with her because another girl came to work in her place? A. Yes, sir, I did.

Q. Did you tell her she had been to see this girl? A. Yes, sir.

Q. Did she ask more money from you as wages? A. Yes, sir.

Q. Did you refuse to give it to her? A. Yes, sir.

Q. What was her attitude toward you after that? A. She would snub me and shrug her shoulders as if she was mad.

Q. Did you have a quarrel at any time over a bonus of five thousand dollars? A. No, sir, I did not.

Q. That is a quarrel with your father? A. No, sir, I did not.

Q. At one time when you were in the office with this girl Rosalie Gabriel and Mr. Burchill did Mr. Burchill say it was your duty to stay in the office and remain with your father and did you say you had stood it long enough and couldn't stand it any longer? A. Yes, sir.

Q. You said that? A. Yes, sir.

Q. Did you meet Mr. Burchill and call him a Catholic son-of-a-bitch? A. Absolutely not. My father was a Catholic and he knows it.

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

The Court—Strike it out.

Q. Did you say to young Frank Ulrich, your nephew, you will be sorry for sticking to those sons-of-bitches upstairs? A. No, I never did.

Caveators Rest.

EXHIBITS

PROPONENTS' EXHIBIT I.

WILL

I, Franz Ulrich, of the City of Paterson, in the County of Passaic and State of New Jersey, do make, publish and declare this to be my last will and testament in manner following, to wit:

1. It is my will and I do hereby order and direct that all my just debts, funeral expenses and testamentary expenses be duly paid and satisfied as soon as conveniently can be after my decease.

2. I give and bequeath annually from the income of my entire estate, both real and personal, to my wife, Rosina Ulrich, for and during the term of her natural life, a sum not exceeding Ten thousand dollars. The income derived therefrom in excess of the said sum of ten thousand dollars, shall be divided equally between my grandson Frank Ulrich, son of Albert Ulrich, and my son-in-law, Langley J. Burchill.

3. Upon the death of my wife, I give, devise and bequeath all my interest in the real estate known as the mill property in Paterson, New Jersey, situated at Nos. 158 and 160 Ward Street, unto my son-in-law, Langley J. Burchill, to him, his heirs and assigns forever.

4. I give and bequeath to my grandson, Frank Ulrich, son of Albert Ulrich, and to my son-in-law Langley J. Burchill, all the money and accounts due and owing to me in my business of Ulrich Company in Paterson, New Jersey, and Allentown, Pa., at the time of my wife's decease, together with all machinery, stock and fixtures appertaining or belonging thereto, and the stock and material belonging thereto now stored at the premises known as No. 821-823 Madison Avenue,

Paterson, N. J., the same to be divided between them, share and share alike. I also give to them the automobile truck owned by me and used in connection with my said business.

5. I give, devise and bequeath to my grandson, Frank Ulrich, and to my son-inlaw, Langley J. Burchill, all the money which is to my credit on deposit at my decease in any bank in Allentown, Pa., the same to be divided between them, share and share alike, and the money on deposit in the bank, devised by this item, shall be a separate and distinct gift to them, and not to be included as a part of the entire estate on which my wife is to receive income, as mentioned above in the second item of my will.

6. I also give to my grandson, Frank Ulrich, son of Albert Ulrich, and my son-in-law, Langley J. Burchill, all the money which shall be on deposit in my account as Ulrich Company, in the United States Trust Company of Paterson, N. J., at the time of my decease, after first deducting therefrom the sum of five thousand dollars, which I give to my daughter, Catherine Handwerk, the balance of the said moneys to be equally divided between them, and to be paid on the decease of my wife.

7. All the rest, residue and remainder of my estate, real, personal or mixed, wheresoever situate and of whatsoever the same may consist, I give to my daughters, Rosina Burchill and Catherine Handwerk, the same to be divided equally between them, share and share alike, to them, their heirs and assigns forever. Owing to gifts and donations heretofore made by me to my son Frank Ulrich, and owing to the fact that he has

recently engaged in business, in the same line as mine and is now one of my competitors, I have made no additional provision for him in this will.

Lastly: I do hereby nominate and appoint my grandson, Frank Ulrich, and my sons-in-law, Langley J. Burchill and Otto Handwerk, and the survivors and survivor of them, the executors and executor of this my last will and testament, and I do also give to them full power and authority to grant, bargain sell and convey any real estate of which I may die seized, not herein specifically devised, at such time and for such price as in their judgment will be for the best interest of my estate, and to make, execute and deliver good and sufficient deeds in the law for the same. It is also my will that none of them be required to give any bonds or other security as such executors or executor.

I do also hereby revoke all former wills by me made.

In Witness Whereof, I have hereunto set my hand and seal this twenty-fourth day of March, A. D. 1921.

Franz Ulrich (Seal)

Signed, Sealed, Published and Declared by the testator, Franz Ulrich, as and for his last will and testament, in our presence, and who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names at the same time as attesting witnesses.

Michael Dunn, Paterson, N. J.
Michael J. Murphy, Paterson, N. J.

Proponents' Exhibit 2

PROPONENTS' EXHIBIT 2.

(1).

The Barbour Flax Spinning Co. to Albert Ulrich.	Warranty Deed. D., Mar. 1, 1899. A., Mar. 3, 1899. R., Mar. 3, 1899. Book Q-13-194. Cons. $1.

Beginning on easterly side of Dale Ave. 442.9 ft. from Grand St. & runs (1) northerly along Dale Ave. 99.6 ft. to Ward St. (2) easterly along Ward St. 50 ft.; (3) southerly parallel with Dale Ave. 102.6 ft. to a line drawn parallel with Grand St. from place of beginning (4) thence parallel with Grand St. 50 ft. to place of beginning.

(2).

Albert Ulrich, et ux. Maggie, his wife, to Franz Ulrich and Frank Ulrich.	D., June 12, 1902. A., June 12, 1902. R., Dec. 2, 1902. Book S-15-448. Cons.

Conveys equal undivided 2|3 interest, an undivided 1|3 to vest in each of the grantees.

(3)

Will of Albert W. Ulrich	Book Y-2—255. Probated, Apr. 13, 1919

Leaves all to his wife, Margaret A. Ulrich.

Proponents' Exhibit P-3—P-66

NEW JERSEY COURT OF ERRORS AND APPEALS

STIPULATION IN RE PROPONENTS' EXHIBITS P-3 to P-66

In the Matter of the Appeal from a Decree of the New Jersey Prerogative Court, reversing and setting aside an Order of the Passaic County Orphans' Court admitting to probate a certain paper writing as the Last Will and Testament of Franz Ulrich, deceased.

It is hereby stipulated and agreed between William B. Gourley, Proctor for and of Counsel with the Appellant, and Edward F. Merrey, Proctor for and of Counsel with the Caveators-Respondents, in the above entitled cause, that the following exhibits offered in evidence at the hearings in said matter before the Passaic County Orphans' Court, need not be printed in full in the State of the Case on this appeal, but that the same may be referred to as follows:

Exhibit No.	
P- 3	Stubs of Ulrich Co. check book containing Voucher No. 16669.
P- 4	Stubs of Ulrich Co. Allentown National Bank Check Book beginning February 27, 1918.
P- 5	Ulrich Co. Check No. 17534 to Taylor & Co., $24.22.

P- 6 Ulrich Co. Check No. 17032 to M. Freidus, $37.50.

P- 8 Ulrich Co. Check No. 17161 to Fay & Egan, $311.60.

P- 9 Ulrich Co. Check No. 17031 to Fay & Egan, $100.00.

P-10-A Ulrich Co. Check No. 17445 to Burlington Blind Co., $426.85.

P-10-B Ulrich Co. Check No. 17417 to Burlington Blind Co., $564.74.

P-11 Ulrich Co. Check No. 18312 to F. A. Chase Co., $189.91.

P-12 Ulrich Co. Check No. 17094 to Woodcraft Equipment Co., $80.00.

P-13 Ulrich Co. Check No. 17257 to John Royle & Son, $30.00.

P-14 Ulrich Co. Check No. 17108 to S. Freidus, $23.00.

P-15 Ulrich Co. Check No. 17465 to Hersh Hardware Co., $12.12.

P-16 Ulrich Co. Check No. 17421 to Lehigh Valley Light & Power Co., $16.46.

P-17 Ulrich Co. Check No. 17783 to Lehigh Power Co., $22.00.

P-18 Ulrich Co. Check No. 17275 to Watson Machine Co., $45.31.

P-19 Ulrich Co. Check No. 17467 to Union Transfer Co., $22.47.

P-20 Ulrich Co. Check No. 17624 to Union Transfer Co., $5.77.

P-21 Ulrich Co. Check No. 17803 to Charles B. Chrystal, $20.15.

P-22 Ulrich Co. Check No. 17329 to Charles H. Marble, $38.22.

P-23 Ulrich Co. Check No. 17204 to Benjamin Eastwood, $21.22.

P-24 Ulrich Co. Check No. 17606 to E. H. Jacobs Mfg. Co., $140.90.

P-25 Ulrich Co. Check No. 17443 to Smythe & Co., $80.11.

P-26 Ulrich Co. Check No. 17333 to Hersh Hardware Co., $12.28.

P-27 Ulrich Co. Check No. 17662 to Lehigh Power Co., $30.80.

P-28 Ulrich Co. Check No. 17616 to Hersh Hardware Co., $2.98.

P-29 Ulrich Co. Check No. 17663 to Hersh Hardware Co., $2.29.

P-30 Ulrich Co. Check No. 17533 to Trexler Lumber Co., $6.38.

P-31 Ulrich Co. Check No. 17491 to Lehigh Power Co., $23.50.

P-32 Ulrich Co. Check No. 17716 to Lehigh Power Co., $19.20.

P-33 Ulrich Co. Check No. 17677 to Helfridge & Botmer, $32.24.

P-34 Ulrich Co. Check No. 17715 to Trexler Lumber Co., $12.65.

P-35 Ulrich Co. Check No. 17618 to Trexler Lumber Co., $4.00.

P-36 Ulrich Co. Check No. 17736 to Trexler Lumber Co., $5.49.

P-37 Ulrich Co. Check No. 17110 to American Machine Co., $245.00.

P-38 Ulrich Co. Check No. 17801 to Kech Bros., $3.02.

P-39 Ulrich Co. Check No. 17633 to Berkmeyer-Kech Co., $2.75.

Proponents' Exhibit P-3—P-66

P-41 Ulrich Co. Check No. 17569 to Smith Electric Co., $2.45.

P-42 Ulrich Co. Check No. 17800 to Kech Bros., $4.39.

P-43 Ulrich Co. Check No. 17464 to Trexler Lumber Co., $40.97.

P-44 Ulrich Co. Check No. 17323 to American Machine Co., $10.33.

P-45 Ulrich Co. Check No. 17613 to Alex. Turtle, $75.00.

P-46 Check of Albert & Frank Ulrich No. 2— to E. C. Smoyer, $8.50.

P-47 Ulrich Co. Check No. 17334 to E. C. Smoyer, $8.40.

P-48 Ulrich Co. Check No. 18225 to F. A. Chase, $102.12.

P-49 Ulrich Co. Check No. 17805 to F. A. Chase, $123.74.

P-50 Ulrich Co. Check No. 17150 to Rome Mfg. Co., $38.67.

P-51 Ulrich Co. Check No. 17771 to F. A. Chase, $72.36.

P-52 Ulrich Co. Check No. 17898 to F. A. Chase, $98.65.

P-53 Ulrich Co. Check No. 17481 to E. C. Smoyer, $24.80.

P-54 Ulrich Co. Check No. 17792 to Allentown Gas Co., $35.20.

P-55 Ulrich Co. Check No. 17490 to Allentown Gas Co., $1.20.

P-56 Ulrich Co. Check No. 17680 to Bell Phone Co., $1.90.

P-57 Ulrich Co. Check No. 17679 to E. C. Smoyer, $14.20.

Proponents' Exhibit P-3—P-66
Caveators' Exhibit 1

P-58 Ulrich Co. Stubs No. 13631 to 14230, containing Voucher No. 13720 to Frank Ulrich, $800.00; Voucher No. 13810 to Frank Ulrich, $87.25.

P-59 Ulrich Co. Stubs No. 16031 to 16630, containing Voucher No. 16336 for Insurance, $8.50; Voucher No. 16390 to F. R. Reynolds, $34.41; Voucher No. 16371 to Charles A. Bergen, $1125.00; Voucher No. 16434 to Charles A. Bergen, $3825.00; Voucher No. 16394 to Hugh Kelliher, $110.00.

P-60 Ulrich Co. Stubs No. 11895 to 12394, containing Voucher No. 12178 to Oscar Hulser, $125.00.

P-61 Stubs of Franz Ulrich Check Book.

P-62 Stubs of Franz Ulrich Check Book.

P-63 Stubs of Franz Ulrich Check Book.

P-64 Stubs of Franz Ulrich Check Book.

P-65 Stubs of Franz Ulrich Check Book.

P-66 Stubs of Franz Ulrich Check Book.

Dated, June 21st, 1926.

William B. Gourley,
Proctor for Appellant.

Edward F. Merrey,
Proctor for Caveators-Respondents.

CAVEATORS' EXHIBIT 1.

Know All Men by These Presents: That I, Frank Ulrich, of the City of Paterson, in the County of Passaic and State of New Jersey (trading and doing business in the City of Allentown, in the State of Pennsylvania under the name and style of Ulrich & Company) party of the first part, for and in consideration of the

sum of One Dollar, lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents, by Franz Ulrich, of the said City of Paterson, and trading and doing business therein under the name and style of Ulrich & Company, party of the second part, the receipt whereof is hereby acknowledged have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators and assigns, all the goods and chattels particularly described and mentioned, that is to say, all the machinery, goods and chattels, of every kind and description, owned by me, contained in the office and mill occupied and used by me in the conduct of the reed and harness and general mill supply business at 1135 Maple Street in the said City of Allentown, together with all cash on deposit in the Allentown National Bank, accounts receivable and good will, it being the intention hereof to convey to the party of the second part all of the assets of said business owned by me at Allentown, Pa., said assets including all the machinery, goods and chattels in my possession in said mill and office not heretofore owned by the party of the second part. It is understood and agreed that the party of the first part has acquired and is the owner of the undivided one-half portion of said assets lately owned by his brother the late Albert W. Ulrich.

And the party of the second part, as a part of the consideration of this conveyance, hereby covenants and agrees to pay all the liabilities of

the party of the first part trading as aforesaid in the said City of Allentown.

To Have and to Hold, the same unto the said party of the second part, his executors, administrators and assigns forever. And I do for myself, my heirs, executors, and administrators, covenant and agree, to and with said party of the second part, to warrant and defend the sale of said above described property hereby sold unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever.

In Witness Whereof, I have hereunto set my hand and seal the tenth day of May, in the year of Our Lord One Thousand Nine Hundred and nineteen.

Frank Ulrich (L. S.)

Signed, Sealed and Delivered in the presence of Burdict M. Zeitlinger.

CAVEATORS' EXHIBIT 2.

No. 477

Ulrich Company. Allentown, Pa., Nov. 20, 1920

Pay to the order of Frank Ulrich $2700.00

Two Thousand Seven Hundred Dollars.

To the

Allentown Nation Bank,

Allentown, Pa.

(Signature torn off)

CAVEATORS' EXHIBIT 3.

Office of

Ulrich Company

Ulrich Mill at

Ward St. and Dale Ave.

Paterson, N. J. Nov. 20, 1920.

Mr. Frank Ulrich,
821 Madison Ave.,
Paterson, N. J.
Dear Sir:

Enclosed find check for $2700 in full settlement for your part of Allentown Mill.

This is the same amount that was paid to Mrs. Albert Ulrich for her share.

Very truly yours,
Franz Ulrich.

CAVEATORS' EXHIBIT 4.
42167

Estate of Franz Ulrich, Surrogate's Certificate Filed in Commercial Department.
Franz Schmidling Ulrich.
Waiver Filed May 17|24.
213 Park Ave.

Date	Deposited	Balance
May 31, 1921	$4500.00	$4500.00
Int. Nov. 1921	65.63	4565.63
Int. May 1922	79.89	4645.52
Int. Nov. 1922	81.29	4726.81

CAVEATORS' EXHIBIT 5.
14489

Franz Ulrich.

Date	Withdrawn	Deposited	Balance
Jan. 9,	13	$5000.00	$5000.00
Int. May, 1913		58.33	5058.33
Int. Nov. 1913		88.52	5146.85
Int. May, 1914		90.05	5236.90
		5000.00	10236.90
Int. Nov. 1914		135.38	10372.28
Int. May, 1915		181.51	10553.79

Int. Nov. 1915		184.68	10738.47
Int. May, 1916		187.91	10926.38
Int. Nov. 1916		191.21	11117.59
Int. May, 1917		194.55	11312.14
Int. Nov. 1917		197.96	11510.10
Jan. 26,	18	3000.00	14510.10
Feb. 23		250.00	14760.10
Int. May, 1918		227.68	14987.78
Int. Nov. 1918		263.73	15251.51
Dec. 9		800.00	16051.51
Int. May, 1919		278.56	16330.07
Int. Nov. 1919		285.77	16615.84
Feb. 24	20	4000.00	20615.84
Int. May, 1920		290.76	20906.60
Int. Nov. 1920		289.18	21295.78
Jan. 7,	21	802.95	22098.73
Int. May, 1921		386.71	22485.44
27	22485.44		

CAVEATORS' EXHIBIT 6.
42138

Rosina Ulrich Burchill.
213 Park Ave.

Date	Withdrawn	Deposited	Balance
	(Int. from May 1, 1921)		
May 27,	21	22485.44	22485.44
Nov. 1921 Int.		393.49	22878.93
May 1922 Int.		400.36	23,279.29
Int. Nov. 1922		407.38	23686.67

CAVEATORS' EXHIBITS 7.
42167

Waiver Filed May 17, 1924.
Estate of Franz Ulrich.
Surrogate's Certificate Filed.

I hereby agree to the By-Laws of the United States Trust Co. of Paterson, N. J.

In Commercial Dept.

Sign Here—Franz Schmidling Ulrich.

Residence—213 Park Ave.

CAVEATORS' EXHIBIT 8.

WILL

I, Franz Ulrich, of the City of Paterson, New Jersey, make, publish and declare the following as and for my last will and testament, that is to say:

First: It is my will and I order and direct that all my just debts, funeral, and testamentary expenses be duly paid and satisfied as soon as conveniently can be after my decease.

Second: I give and bequeath the use and income of my entire estate, real and personal, unto my wife, Rosina Ulrich, for and during the term of her natural life.

Third: Upon the decease of my wife, I give, devise and bequeath all my interest in the real estate known as the mill property in Paterson, New Jersey, situated at No. 158 and 160 Ward Street, unto my son, Frank Ulrich, absolutely and forever, but I expressly charge the same with the payment of Five Thousand Dollars to each of my daughters.

I give and bequeath to my son, Frank Ulrich all the money and accounts due and owing to me in my business of Ulrich & Co. in Paterson, New Jersey and Allentown, Pa., at the time of my wife's decease, together with all machinery, stock and fixtures (including the automobile truck) appertaining or belonging thereto, and the stock

and material belonging thereto now stored at the premises known as No. 821 and 823 Madison Avenue, Paterson, N. J.

I also give and bequeath to him all the money which is to my credit on deposit in any bank in Allentown, Pa., and one half of all the money which shall be on deposit in my account as Franz Ulrich Co. in the United States Trust Company of Paterson, New Jersey, at the time of my decease, to be paid to said Frank Ulrich on the decease of my wife.

Fourth: I give, devise and bequeath unto my two daughters, Rosina Birchell and Catherine Handwerk, the sum of Five Thousand Dollars each, which I have expressly charged upon the share devised and bequeathed as aforesaid to my son, Frank Ulrich, and also all the rest, residue and remainder of my estate, real and personal, wherever situate to have and to hold them, their heirs, executors, administrators and assigns forever.

Lastly: I hereby nominate and appoint my wife, Rosina Ulrich, my son, Frank Ulrich and my sons-in-law, ang Burchill and Otto Handwerk, and the surviors and survivor of them the executors and executor of this my said will, and request and desire that none of them be required to give any bonds or other security as such executors or executor.

In Witness Whereof I have hereto set my hand and seal this twenty-sixth day of July, Nineteen Hundred and Twenty.

Franz Ulrich (Seal)

Signed, sealed, published and declared by the testator, Franz Ulrich, as and for his last will

and testament, in our presence, and we at his request, in his presence and in the presence of each other, subscribed our names hereto at the same time as attesting witnesses.

Edward R. Weiss
Peter Cimmino

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New Jersey Court Of Errors and Appeals

In The Matter of a Certain Paper Writing Purporting To Be The Last Will And Testament of Franz Ulrich, Deceased.	On Appeal From Prerogative Court

BRIEF FOR APPELLANT

This is an appeal from a decree of the Prerogative Court reversing a decree of the Orphans' Court of the County of Passaic, admitting to probate a certain paper writing purporting to be the last will and testament of Franz Ulrich, deceased.

Franz Ulrich died on July 24th, 1921, at his home in Paterson. He was then 83 years of age. His will, which is the subject of this controversy, was executed March 24, 1921. It was drawn by Mr. Michael Dunn, who was at that time Prosecutor of the Pleas for the County of Passaic and a lawyer of wide experience having been admitted to the bar in 1882.

The validity of this will is challenged on the usual grounds of undue infuence and of mental incapacity. The allegation of mental incapacity seems not to be strongly pressed by the respondents. They seem rather to rely upon the allegation of undue influence which it is alleged was exercised by a son-in-law, Langley J. Burchill.

While Franz Ulrich was of advanced age the whole testimony clearly shows that he was a man of the most marked character of vigorous bodily health, firm, independent, dominant, forceful, resolute and

master of his business where he spent his whole business day until about two weeks before his death.

He was a manufacturer of reed and harness and had built up a successful business of which he was very proud. He formerly owned the mill where this manufacture was carried on but later gave a one third interest in the property to each of his two sons, one of whom died before him, so that at the time of his death he had only a one third interest therein, p. 80. The business was not incorporated. It was carried on by him individually under the trade name of Ulrich and Company.

He had drawn several wills before the two set out in the State of the Case, p. 285. One will was executed in July, 1920. The last will was executed in March, 1921, four months before his death. There is no substantial difference between these two instruments which will be pointed out later in detail, except that the son Frank Ulrich, is omitted from the last will and the testator's grandson Frank J. Ulrich and his son-in-law, Langley J. Burchill are substituted instead.

Several of the persons in interest were employed at the mill owned by the testator. Mr. Burchill and wife lived in the same house with the testator but on a different floor. We set forth here the substance of the main testimony so far as it affects the condition of the testator.

THE PHYSICAL AND MENTAL CHARACTERISTICS OF THE TESTATOR.

The testator as stated was a strong, virile man, positive in character, emphatic in his opinions, mentally strong and physically capable to attend to his business up to the last two weeks of his life. This has been established completely by the evidence.

MICHAEL DUNN, a counsellor-at-law, testified that he was intimately acquainted with the testator for about 25 or 26 years; that they had been neighbors for many years; that they had travelled together on many occasions and had numerous discussions and conversations on current affairs; that he had acted professionally for the testator three or four times; that in reference to his last will he had conferences with him on four different occasions which he specifies; that he had gone deeply into his affairs and had found him perfectly normal and rational at the time the will was executed, p. 65, and that in this repect no mental change had taken place. Throughout these various interviews Mr. Dunn saw no sign of any mental weakness whatever, p. 71. He said that he had made a donation to Frank of about $50,000.00. The computation in this brief hereinafter set out taken from the checks and other proofs shows how very exact this estimate of his benevolence to his son was, p. 73.

Surely it will be conceded that a lawyer of more than forty years practice must have attained some understanding of the requirements and knowledge necessary to clothe the testator with the essentials for disposing of his property. Here the testator was not on his death bed half unconscious and requiring aid to make his mark. We find the testator in fair physical condition and judging by the terms of his will, mentally capable of disposing of his property.

FRANK QUINN was a foreman in the employ of the Ulrich Company for 15 years and had therefore an opportunity to observe and measure the qualities of the testator. He states that the testator came into the mill early in the morning and looked over the help and if there were any faults to find he would tell the witness. He could always pick out the good work from the bad and he always looked over the stock every morning and afternoon. He was at the mill every day up to about two and one half weeks before he died. He was a little cranky about telling me what I had to do and that went on that way until two or three weeks before his death. He says that there was no particular change in his mental condition up to the time that he left the shop. p. 356-357.

RHINEHARD GIGER saw him every day eight or ten times. He knew him for 42 years. He was employed at the shop and saw him nearly every morning and talked to him nearly every day. p. 367. He looked at the work and watched the men. I saw no change. He was just the same when he was talking to me like he always was and I knew him for 42 years. He wanted his own way in everything. In everything he did he had his own way. p. 368.

OSCAR EGG visited him at his home five or six times a year for quite a number of years. p. 369. "I think I was there the last time about May before he died." He was a strong minded man, a positive man. He played a good game of cards. Last game was about New Years. He counted his own cards correctly.

"He was the same man all the time as far as his mental condition is concerned: he was weak physically, but as far as his mind is concerned, he was clear." p. 370.

On the last occasion he said, "We played cards for about an hour or two hours maybe." Witness states that he met him on the street in February, 1921, and stood on the corner of 18th St. and Park Avenue and had a conversation with him. His mental condition was just the same. He talked about business and other things. The conversation lasted about 15 minutes. He complained about his son Frank, that he was trying to get everything away from him. He felt very bad about the trouble with Frank at the office when he pushed him down; that Frank was going into business for himself and the father was very much hurt about it. p. 372. In the early spring, April or May, the witness said he saw the testator sitting on the back stoop, that he "kind of collapsed" and afterwards revived again. The witness learned the next morning when he inquired how he was, that he was down at the shop.

This shows that any temporary disability was only for a very limited period.

He told the witness that Frank Ulrich wanted him to put Mr. Burchill out of the business, and he answered that he needed Mr. Burchill; that he was old and feeble and had to have someone now that he was alone. p. 373. He said that Burchill helped him in the shop and in the house. He had very positive ideas; he was positive in politics. p. 375. The whole time the witness says he saw no change. He could not be influenced. He had his own mind and what he wanted to do he did. He always found fault with

Frank. p. 379. He was very much excited and mad because Frank went into business for himself. He said that Frank was either going or gone into business. The witness says that after the incident when the testator dozed on the stoop that he could make a will right afterwards.

JACOB P. BROWN was formerly employed by the Ulrich Company. He had left there about a week before he gave his testimony. He was also formerly employed about 25 years ago. p. 398. He served in different departments and had conversations with the testator at different times. The testator was at the mill till about three of four weeks before he died. He spoke of his examinations of the harness and found most of the time he was right where there was a difference.

> "We had some ribbon harness that we had to turn out and I was not absolutely sure how it should be done or how to do it and I asked him how it should be done and he told me how it should be done and it was alright."
>
> "Q. You were puzzled about it? A. Yes, sir." p. 379.

The harness was made according to his directions. This was about six or eight months before he died. p. 400. There was no change in his mental condition. He got a little cranky; that's all.

As long as I have been there he was always the same. p. 400.

MRS MARGARET ULRICH, the widow of the testator's son Albert, speaks of him playing cards.

She played at his house up to about three weeks before he died. He could memorize the cards just as good if not better than she could. This was up to about three weeks before his death. p. 403. She went there every Thursday after her husband died. The game usually lasted from 7:30 to 9:30, until three weeks before his death. p. 404. She gives an illustration on p. 404. He counted correctly. He was a very strong willed man. Whatever he said, you would have to do. He was not easily influenced. He would let no one influence him in any way. She consulted him about the sale of some property and followed his advice, p. 405. When speaking he always tapped you on the shoulder and on the chest. p. 406. He had a great way of using his hands whenever he talked. She gave several instances on pages 407 and 408, as to following his advice. She was asked if there was any change as to his mental capacity. The answer was, "no difference only after my husband died I remarked one day to my daughter, 'Grandpa is going down slowly, he is starting to look bad'.' That was because of his age, and not because of his mind being affected in any way.

> "Q. Down to within three weeks of his death was he the same man mentally that you had known him for years before? A. Yes sir, the same as ever."

MRS. CAROLINE BARNES, a former stenographer, saw the testator at his mill from June, 1919, to October 1920. She was not working in the mill when she gave her testimony. She says that the testator opened the mail and then passed it on to Frank to answer the letters. Then he would make

another trip through the mill, examine the stock, direct orders for new stock, examine the monthly statements and made comments upon them. They had to be ready for him right on the first of the month. I had to make each department separate and then he compared them and then I had to make a compound statement of all the departments, p. 421, 422, 423. He was a very positive man, and was able to exercise judgment about business affairs and could give reason for statements he made. She saw during the time that she was there no change in his mental attitude as compared with the time when she began to work there. p. 431. In answer to this question her answer was, "Positively not."

ROSALIE GABRIEL:

The later stenographer, Rosalie Gabriel, went to work in the mill as stenographer in October, 1920 and was there to the time of the testator's death. p. 458.

> "Q. Was there anything in his conduct, his actions, or his speech or things he did or things he said, that indicated there was any change in his mental condition? A. From the time I went there to the time I left he was always the same very strong-willed man and he was strong up to the last time he was there.
>
> "Q. He knew what he was doing, did he? A. Yes sir."

JOHN COOGAN was a bookkeeper and office manager and was there from March 1, 1920 to the death of Mr. Ulrich. The testator got to the mill ahead of

him, read the paper and made comments thereon; he would go through the mill and see the work. He called attention to the stock on different occasions. He gives a particular instance of some English harness which was manufactured. He wanted to see the job and the kind of work done on it. If the bills were not sent out he wanted to know why. He corrected some mistakes I made in a customer's bill, p. 483.

When he opened the mail and saw letters about the discounts—some customers didn't allow it, and he wanted to know why. He recognized faces and names. This is true of some customers whom he had not seen in a long time. I did not notice any change in his mental condition, up to the last time he was there. He was physically weak.

FRANK J. ULRICH. This is the grandson of the testator and a son of Albert Ulrich who died in 1919. He was employed in the establishment and describes his grandfather making examinations of the work done and of the departments which he visited twice a day, until he died. He worked on the French looms himself at times. This continued up until four or five weeks before he died. He noticed the number of men working in each department, watched the machines as to speed. He had a patent on the French looms. p. 522. He said that it was difficult to make a warp on these French looms. He arrived at the mill before the witness. He was a very positive man and could not be led. He was boss all the time. p. 524.

LANGLEY J. BURCHILL. This witness says that the testator was a powerful man, very vigorous in

talking and had a very strong mind. p. 539. What he wanted done, had to be done and the way he wanted it too. Nobody could say to him to "wait until tomorrow." He would say, "do it now." He arrived at the shop early, went about the departments, inquired from me why there were so many men in certain departments. There were three floors and a basement in the mill. There was no elevator. He walked up until a short time before his death. He opened the mail until he left the shop. He would pass the mail over to Frank who had a desk there. This witness wasn't in the inner office 10 minutes a day. P. 546.

He always watched the stock. There was no change in his mental condition up until the time he left the shop.

> "He was just the same the month before he left there when he said to me, 'Don't you know you are buying too much stock'."

He played cards until a month before he died. I played with him, his wife, and Mrs. Albert Ulrich, a couple of times a week. The game was pinochle. P. 569.

He understood the game all right. He counted his own cards.

Mr. Dunn who drew the will explains in detail the conversations with the testator and the particulars of the execution of the will. He was called to the stand by the caveators. He had a conference with testator on February 7, February 17, March 21, and March 24th, 1921, when the will was executed. He

spoke of the advances to Frank as compared with the donations to the other children. Mr. Ulrich's son had started in business for himself in opposition to his father. p. 23. The caveator admits this. p. 224. He stills had hopes that he might persuade him otherwise.

> "He felt that Frank after he had done so much for him had abandoned him and was starting in business for himself and was going around soliciting his customers thereby seeking to depreciate the value of his business and destroying it to that extent."

He was still hopeful of Frank's return. He spoke of how much he would give to Mrs. Handwerk and how much he would give to Mrs. Burchill and how much he would give to his grandson Frank. He brought the 1920 will with him. P. 27.

"My draft conformed to the then existing conditions that were before me as they had been changed by the attitude of Frank." P. 28.

This conversation lasted about half an hour.

February 17th was the next conference. Mr. Dunn took notes. As the witness recalled on February 17th, he seemed to be satisfied that Frank was going to pursue an independent course. P. 29.

The next conference was on March 21st. Some details had been left open which related to the last two or three paragraphs. It was now settled that Frank would not come back but defied his father in every particular. This conference lasted about an hour. The witness gives the details of the real es-

tate as he obtained them from the testator. He said that all are mentioned in the will but the daughter of Albert. He said that the testator had spoken to Mrs. Albert Ulrich the widow of his son and asked her if she would take care of the girlie (her daughter Viola) if he would take care of the grandson Frank, and she said she would. He did consequently take care of the grandson. P. 51.

He talked of the devise of his property. He talked of Mrs. Handwerk. He was perfectly normal, perfectly rational. He was a positive character and he didn't change in that respect.

> "Q. Having known Mr. Ulrich for the period of years you mention, having seen him as you say, and talked to him on various occasions and having had four conferences with him in reference to the will, is there any question about his mental capacity to make a will? A. Absolutely not.
>
> "Q. He understood the extent of his property? A. He was perfectly competent.
>
> "Q. He knew the natural objects of his bounty? A. He was perfectly competent.
>
> "Q. Was there any mental weakness indicated to you at any of these conferences preparatory to the final signing of the will, was there any mental weakness on his part indicated to you? A. No."

Mr. Dunn says that he went all over his investments and income. P. 51, 55, 57; that he had in some bank $50,000. on deposit drawing interest at

the time the will was made. p. 57. This is now shown to be true. Mr. Dunn at his direction put the will in a sealed envelope and put it in his (Mr. Dunn's) safe in his box of wills. P. 38. It was opened by him when he heard he was dead. He opened it at his office, read it, placed it and the broken envelope in another envelope, notified the family and read it to them on the evening of the funeral. P. 40. His testimony is incontrovertible.

These caveators among their other suspicions suspect Mr. Dunn because of the manner in which he opened the envelope. P. 234.

We turn now to the testimony offered below by the caveators on this branch of this case.

The caveator, Frank Ulrich, admits that his father was a positive man and acted like a boss up to November, 1920, p. 214; that he kept his eye on his business and was perfectly capable of doing so. His testimony relating to his father's mental condition from January 1921 until his death is vague, indefinite and uncertain. It seems to be based on nothing but conjecture and misrepresentation. He could not testify to facts upon which he based his opinion because he admitted that he left his father's employment for the last time about January, 1921. He visited his mother's home at intervals during that time. These visits were made when his father was not at home. It is apparent that he was in no position to observe and therefore could not offer testimony relating to his father's mental condition on or about March 24, 1921, when the mill was executed. The conversation and quarrels about substantial business affairs show that the father was acute and

observing. He first noticed the change, p. 211, when he went back after the holidays, that is to say, January 1921. He admits that his father was at the mill every day. P. 213. He states that the quarrel with his father was the last part of January or the first part of February, 1921. P. 217. There is no evidence that this son saw his father from the time he left in the latter part of January or the first part of February, until he died in July. He did not know what his father did at the mill after he left there in January preceding his death. P. 227.

WILLIAM CRUTCHLOW called at the mill to get orders for different goods and would generally have a little conversation with the testator. He testifies that the testator was as usual until November 1920 and that he was a most positive man. We respectfully call attention to the unsatisfactory and confusing testimony of this witness; his apparent desire to evade the truth during the course of his examination and that in consequence it is entitled to very little credence. He gives the conversations at different times. There is nothing in it to show any want of mental capacity or anything affecting undue influence. This witness spoke about the shuttles and said at that visit he could not make him understand just exactly what he wanted; that the testator always used to go about the shop, p. 241. He thought this was in November, 1921. The testator was not alive then. Its significance is therefore lost as time is the important point. He denied that Mr. Burchill had gone to his house to intercede with him to get Frank to go back to his father's mill after one of the contests between father and son. P. 261.

He could not remember any such occasion. Yet after Mr. Burchill testified to this fact this witness was recalled and finally admitted, p. 547, that Mr. Burchill called at his home and asked him to intercede with Frank to return to the mill. This is a remarkable statement from an adverse witness who denied at first that the man charged with trying to take the place of Frank Ulrich is his father's life, actually went out of his way to attempt to reconcile the father and son.

MR. HENRY C. CHRISTMAN, MR. ROBERT FORDYCE and MR. EDWARD R. WEISS were officers of The United States Trust Company. Mr. Christman said that Mr. Ulrich in May, 1921 (two months after the will was made) came to the bank and wanted to open an account in the name of Franz Ulrich Schmittler. It appears that he had done business with this bank at least ten years personally. Schmittler was his mother's name. He wanted to make a deposit of $4500. The amount was correct. There was not much conversation about putting it in the name of Schmittler. P. 278. It only lasted a few minutes.

"Q. Could you understand him well?
A. Yes, sir.
"Q. Could he make you understand him?
A. After awhile."

He drew out of the bank on May 21, 1921, $22,485.44. This sum went to his daughter Rosina. He gave the same amount to his daughter Catherine Handwerk. This was two months after the execution of the will and two months before he died.

"A. He understood what I said to him.

"Q. There wasn't any doubt in your mind that the old gentleman so far as his mind was concerned was all right? A. No."

MR. ROBERT FORDYCE said he told him that the name Schmittler was his mother's maiden name.

"Q. Did he understand you readily? A. Yes, sir, he was very slow in replying." P. 284.

MR. EDWARD R. WEISS had prepared a number of wills for him and also had drawn the last will of 1920.

"Q. Was he a good business man? A. I think he was.

"Q. Did he understand his business affairs? A. Yes, sir, he showed that by his success.

"Q. The year before he died, did you see him often? A. I didn't see him very often after the will was made.

"Q. Did you see him after? A. I did.

"Q. Did you notice any change? A. He didn't come down to the bank as often as he used to and was generally a little more feeble.

"Q. Could you make him understand as readily? A. You could make him understand, I don't know as you could make him understand as readily as before." P. 287.

FELIX SELL said he talked in a loud tone at his place, p. 288.

MELVIN ULRICH, son of Frank Ulrich expresses no opinion about his condition. He however narrates an alleged incident that requires observation. Upon inquiry from him of his grandfather as to the person from whom he should take orders he said his grandfather stood up and patted himself on the chest and said, "I am boss" and that Mr. Burchill looked at him and said to him, "Who did you say was boss?" and the grandfather looked at him and sat down and said, "Mr. Burchill is boss," p. 315. Mr. Burchill denies this incident and it is singular that nobody else throughout the whole voluminous testimony attempts to show that this old, positive, dogmatic, dominating man quailed in the presence of anybody. No member of his family, no employee at the mill, or any other person makes such an outrageous allegation. This young man left the employment of his grandfather in January and so far as appears from the evidence did not see his grandfather alive again.

CATHERINE HANDWERK, a daughter of the testator, was examined for the caveators below and said not a single word about his mental condition or that he was affected or influenced by anybody, p. 329.

MRS. ROSINA ULRICH, widow of the testator, said she was 85 years of age. Her husband looked after his business until three weeks before he died. She expresses no opinion whatever of any incompetence or influence, p. 344.

MAURICE LAUCHER came to the mill about orders. After Frank left he traded with Frank's firm. No date is given of any occurrence except that one was after the fight. He describes his appearance, p. 355. He speaks of his clothing being disarranged. The time is not fixed. He speaks of Frank and Burchill being there when the old gentleman wanted to tell him about the fight with Frank, yet Frank himself says after that affair he left the mill not to return.

DR. ANDREW F. McBRIDE, a physician, was called by the caveators. He said that he had only seen the testator on three or four occasions in 1921 when he went to the testator's home in attendance upon Mrs. Ulrich; that up to the first part of 1921, Mr. Ulrich had a great deal of will power, his judgment was very good, he was a very active man, for his years, and was very much interested in his affairs, and in fact was a remarkably robust man; that after the early part of 1921, Mr. Ulrich began to show symptoms of senility which rapidly progressed, affected the mental, as well as the physical condition of the testator until his decease. During this latter period, he seemed to exhibit a lack of his previous forcefulness and became more apathetic, ***although he still seemed to be very much interested in his business.*** The substantial part of Dr. McBride's testimony related to his professional attention to the testator during his last illness which only covered a period of two weeks prior to his death which occurred on July 24th, 1921, ***about four months after the will was executed.*** Dr. McBride does not say that there

might not have been times during the period from January to July, when the testator was perfectly capable of understanding any undertaking in which he might have been engaged. This point was made very clear on direct examination. The witness simply stated, as a matter of opinion, based on a few visits, of long intervals during that period, that in his judgment there were periods when Mr. Ulrich was not capable of fully comprehending his actions. His testimony however, on this very important phase of the case is absolutely indefinite and devoid of certainty as to point of time. Assuming that at intervals during that period from January to July, 1921, the condition of the testator's mind was as Dr. McBride in his opinion states, he has entirely failed to establish, by that quality of testimony which the law requires, ***what the mental condition of the testator was on March 24, 1921,*** when the will was executed. In this connection the courts have uniformly held that the point of time to be considered is that at which the testator executed the writing in dispute. The legal presumption is that he was then sane.

In re "Craft's Estate," 85 N. J. Eq., 125.

The testimony of Dr. McBride because of its indefiniteness as to point of time, and his own admission that there might have been some times during the period from January to July when the testator might have been capable of comprehending his actions considered in conjunction with his characterization of the testator supporting the testimony offered by the proponents relating to the testator's mental condition in 1921

brings the determination of the testator's capacity within the ruling of our courts. No matter what the mental or physical condition of Franz Ulrich may have been either before or after March 24, 1921, if, on that date, he had a disposing memory, if he was then capable of recollecting his property, and the manner of its distribution, the natural objects of his bounty and the nature of his business in which he was engaged then he was possessed of that degree of capacity which the law requires for the purpose of executing a will.

As stated, Dr. McBride said he saw him mainly when he went to see Mrs. Ulrich. As the testator was at the mill every day until a few weeks before he died it would seem that the occasions to see the testator must have been few. He says:

> "I think his mental faculties were not as good as they were before; in other words there was a gradual decay; he didn't talk about things he formerly had; he did not exhibit the same interest in business he had formerly and when I went to the house I would find him dozing off in a chair which he didn't do before that. In other words ***while still interested very much in business*** he did not appear to be the same man and did not to me present the same forcefulness; in other words he was more apathetic." P. 203.

How does this condition debar a person from making a will?

Again he says:

> "To me Mr. Ulrich was always a remarkably robust man, both as to his physical and mental capacity." P. 296.

Again:

> "Q. As you conversed about different topics with him did he appear to understand as before? A. I would not say he did not understand but he did not take the same interest as before." P. 297.

He is asked on his direct examination:

> "Q. In your judgment, doctor, was Franz Ulrich during this time you have testified to, in a mental condition to properly carry on a business transaction? (from January to June, p. 298) A. ***There might have been times.*** But I personally think that persons suffering the way I found him to be would be practically incapable of doing important work. I don't say there might not have been times, ***he would not have been perfectly clear.***"

Mr. Dunn says at the preparation and execution of the will, "he was perfectly clear."

A prepared question was put to him embracing in the main the qualities that our courts have fixed for testamentary capacity.

Dr. McBride said that he thought he did not possess them, and then to qualify this he said, still on his direct examination, "I would not want to be positive all the time. His condition was such that most of the time he would not have been able to do anything of that kind." P. 299.

Here it will be noticed that no date is given nor can we in any way come within months in this

testimony of the execution of the will. This witness did not see him under his daily round of work. He disclaims seeing him frequently before, "the early part of the year" p. 291, 292, and says he "saw him at intervals only during that time," p. 292. Between January and two or three weeks before his death he saw him "three or four times probably." He does not fix these visits. No memorandum of his visits refreshed his memory. It is fair to presume that most of these visits were made during his last illness at his home. He never saw him at his mill. What value then is this testimony on the important condition of the testator on or about March 24, 1921? He was not asked separately whether he knew the nature of his property, the different kinds of property. He was not asked separately whether he understood who his relatives were, or any separate question touching these necessary elements, but they were all grouped into one long question on page 299. He admitted that he could get into an automobile without assistance, p. 301. He was physically capable of standing around the mill, and examining the work done by the workmen and saw the work and knew what it was when he saw it.

> "Q. Would you say that his judgment on that subject was all right? A. I do not think he was able to do the work he had before." P. 301.

This is a confession of sufficient physical and mental strength for this purpose.

He further states that it was remarkable that he kept up physically and mentally fully, as long as he did, p. 302. Doctor McBride always qualifies his answer that he did not exhibit the

same amount of vigor due to the disease from which he was suffering which was quite a common complaint among old men and some young men, p. 303. The Doctor never heard of any paralytic stroke. The testimony of this witness upon analysis supports the testimony of the appellant.

It is a very significant fact that not one of the relatives other than Frank and his son was asked anything about the physical and mental condition of the testator. His widow, his daughter, Mrs. Handwerk, were witnesses for the caveators below. Evidently counsel feared to put the widow and daughter to this test, although they are caveators. This is an impressive fact.

The best evidence of the soundness of the testator's mind is a comparison of both wills. It is conceded that the testator was in full possession of his faculties when the will of July 1920 was made. It is interesting to compare the two documents. With the exception of the substitution of the grandson, Frank J. Ulrich and the son-in-law, Langley J. Burchill, for Frank Ulrich, they are in the main identical.

COMPARISON OF THE TWO WILLS

WILL OF 1920.	WILL OF 1921
Paragraph 1. He directed his debts to be paid.	Paragraph 1. He directed his debts to be paid.
Paragraph 2. He gives his entire income to his widow for life.	Paragraph 2. He gives to his widow "a sum not exceeding $10,000 per annum."

There is no change in this as the total assets of the estate at the time of his death were, $129,611.51. There was in addition $44,790.88 in the bank at the time of the execution of the will which he, two months later, drew out and gave to his two daughters. With this sum added the amount of his estate at the time of the execution of the will of 1921, was $174,582.39. The only exception is that the moneys in the Allentown bank were not included in this income. It does not appear what this amount is. We know the father gave $5400 for the whole business. It is fair to assume therefore that the cash in hand could not reasonably be large. Therefore these two paragraphs are in substance the same. This sum could not pay more than $10,000 a year. In other words her life interest in this sum under the will of 1920 could not be more than $10,000 a year. There is no provision in either will, it will be noticed for continuing the business, so that all she could get would be the interest upon the investment.

Paragraph 3. His one third interest in the mill real estate, upon the death of his wife, goes to his son, Frank Ulrich, charged with the payment of $5000 to each of his daughters.

He bequeathes to his son Frank, all the money and accounts due to him in his business

Paragraph 3. His one third interest in the mill real estate, upon the death of his wife, goes to his son-in-law, Langley J. Burchill.

He bequeaths to his grandson, Frank J. Ulrich, and his son-in-law, Langley J. Burchill, all the money and accounts due to him in his busi-

at Paterson and Allentown at the time of his wife's decease with all the machinery, stock and fixtures and material stored at 821-823 Madison Avenue, including an automobile truck.

He bequeaths to his son Frank one half of the money in the United States Trust Company upon the death of his wife.

ness in Paterson and Allentown at the time of his wife's decease, with all the machinery, stock, and fixtures and material stored at 821, 823 Madison Avenue, including an automobile truck.

He also bequeaths to them the money in the Allentown Bank.

He bequeaths to his grandson, Frank Ulrich and his son-in-law, Langley J. Burchill, all the money in the United States Trust Company after deducting $5000 for his daughter Catherine Handwerk, all to be paid on the decease of his wife.

The amount on deposit at the time of his death in the United States Trust Company was $4500. As the sum of $5000 was to be deducted and paid to his daughter, Catherine Handwerk, this would leave nothing to the grandson and son-in-law.

Paragraph 4. All the residue to his two daughters, Rosina Burchill and Catherine Handwerk.

EXECUTORS: his wife, Rosina Ulrich, his son,

Paragraph 7. All the residue to his two daughters, Rosina Burchill and Catherine Handwerk.

EXECUTORS: The grandson, Frank J. Ul-

Frank Ulrich, his sons-in-law, Langley J. Burchill and Otto Handwerk.

Mrs. Burchill received a legacy with her sister of $5000 under the will of 1920. As her husband was made a legatee under the will of 1921 this bequest was not continued. This act confirms the capacity of the testator.

It appears by this analysis that the wills of 1920 and 1921 are practically identical except the substitution of the names of his grandson and son-in-law to that of his son. It is conceded that the testator was in full possession of his faculties at the time the will of 1920 was drawn. It follows therefore by this examination that he was in full possession of his faculties at the execution of the will of 1921.

He knew his property, he knew his relatives, and measured their worth and made distribution accordingly.

We set forth below a statement showing the value of the estate and the advances to his children.

VALUE OF ESTATE OF FRANZ ULRICH

1. ⅓ interest in mill property at Nos. 158-160 Ward St., Paterson, N. J. as appraised by Feliz Pettit—Land $8000 and building $42,000. Total, $50,000 ..... $ 16,666.67
2. 497-499 Park Ave., Paterson, N. J. 2 vacant lots assessed at $2800 ..... 3,600.00

3. 315-321 Crooks Ave., Paterson, N. J. 4 vacant lots assessed at $1200 ..... 2,000.00
4. Cash in savings account U. S. Trust Co. 4,500.00
5. Buick automobile 800.00
6. Business inventory — two plants, Paterson, N. J. and Allentown, Pa. as per inventory.

Cash	$ 54,343.06	
Merchandise	16,689.31	
Accounts rec'ble.	19,128.48	
Machinery	12,881.04	
Furniture and Fixtures	561.00	
	$103,612.89	
Less liabilities accrued	2,208.05	
	$101,404.84	
Business auto	640.00	
		$102,044.84

Total $129,611.51

At the conclusion of the case before the Orphans' Court there was submitted to the court a statement of values with respect to properties of the estate etc., which does not appear in the record of the proceedings before that court. We have in our possession a carbon copy of the memorandum used, from which it appears that the value of the personal property was stated to be that fixed in the inventory. The value of the real estate was agreed upon as above.

GIFTS MADE BY DECEDENT TO HIS CHILDREN PRIOR TO HIS DEATH &c.

To his son, Frank Ulrich, a caveator.

House, 821 Madison Ave., Frank says it was worth $19,000, but in stipulation before Orphans' Court figures were placed at (p. 123)	$23,000.00	
Franklin Trust Co. stock—Frank was uncertain of number of shares received but check books in evidence, indicate his share to have been (p. 145)		1,720.00
8 shares U. S. Trust Co. stock at $500 (p. 148, 282)		4,000.00
2½ shares Remedial Loan Co. stock value unknown (p. 207)		?
Gift towards purchase of auto (p. 200)		800.00
Bonuses:—		
1917	$2,000.00	
1918	2,000.00	
(p. 138 Frank claims this was for rent of Allentown mill, but our witnesses claim it to be a bonus (p. 134)	5,000.00	
		9,000.00
⅓ interest in Ward St. mill property (p. 148)		16,666.67
Liberty bonds (admits 1 or 2 but Mrs. Handwerk says she got $3000 and that Frank and the others got the same) p. 343		3,000.00
		$58,186.67

Decedent also paid Frank's auto and life insurance, club dues, p. 131; water bills, repairs to his home (p. 130), telephone bills, (p. 130),

coal bills, and some light bills (p. 130), taxes on home (p. 129). Also purchased furniture for him when he was married (p. 143) and permitted Frank to live with him before he made his own home, without payment of rent, p. 144. So reluctant was this son to disclose these details that the protracted cross-examination of Mr. McCran covers over 100 pages of the State of the Case.

To his son, Albert Ulrich

Property, 828 Madison Avenue, Paterson	$23,000.00
Also received bonuses and other benefits from his father not particularly defined, except that Frank says that Albert always received the same gifts and benefits as he himself received.	

To his daughter, Catherine Handwerk

Property, 211 Park Avenue, Paterson	$15,000.00
Cash (given after the execution of the 1921 will)	22,485.44
Liberty Bonds	3,000.00
Stock of Franklin Trust Co., amount unknown	?
	$40,485.44

To his daughter, Rosina Burchill

Property, 213 Park Avenue, Paterson	$15,000.00
Cash (given after the execution of the 1921 will)	22,485.44
Liberty bonds (same as her sister)	3,000.00
	$40,485.44

The items of cash to his two daughters, $22,485.44 each as shown by the above statement were drawn by the testator in May, 1921, from the bank two months after the execution of the will and two months before his death. No suggestion was made in the court below that he was incompetent to do this.

THE ALLEGATIONS OF UNDUE INFLUENCE.

The allegations concerning undue influence are of such an unsubstantial character that it is within the compass of moderate speech to pronounce them ridiculous. They are that Mr. Burchill:

1. Told the testator that Frank had refused an order.

2. Told the testator that too much gasoline was used for some of the cars. (This was a fact but the charge seems to be that he told his employer.)

3. That he told Frank's son, Melvin, that the driver of the truck could not wait for him to wrap up an Eversharp pencil as delivery had to be made at once.

4. That when Frank charged his father with having said, at Sell's hotel that he was driving him to the poor house which he says his father denied, Mr. Burchill made inquiry about it, and said it was not true.

After two years of employment at the mill—March, 1919, to March, 1921—this is the sum total.

The mere statement of these charges carry their own refutation. They were denied but it is on

these allegations that the attack on the last will and testament of Franz Ulrich is sought to be supported.

The appellant charges that this whole machinery was set in motion by this undutiful son after the last will and testament was read, as a basis of attack to lend some credence to the charge of undue influence principally because of what occurred after the testator's death and before probate. It is sincerely believed by the appellant and so charged that if it were not for these post mortem events which will later be more fully developed, this contest would never have been begun. It was thought that they would so color the cause that immediate attention would be diverted from the evidence before the testator's death or at least that these trivial affairs would assume a relation to the cause at issue that would be out of all proportion to their intrinsic value without such later events.

We take up these charges in their order.

1. THE REFUSAL OF AN ORDER.

The son, Frank, says that a change in the relations between himself and Mr. Burchill occurred around the first part of 1920 when the question of not taking an order arose, p. 95. His father said that he, (Frank) had not taken an order from the Bethlehem Ribbon Company and that Mr. Burchill had told him so. Frank said it was not that company, it was the Meisch Manufacturing Company and it was done because we were so very busy. After the explanation the father became himself, p. 96.

Mr. Burchill says of this instance that he told the father that the Meisch Manufacturing Company order was not taken, that he said nothing about any order of the Bethlehem Ribbon Company. Frank asked him if he had told his father about turning down an order and I said, "What order?" He said, "The Meisch order." I said, "Certainly, we couldn't do it." In other words it was proper to decline the order. P. 554, 555, 556.

2. THE GASOLINE INCIDENT.

Frank Ulrich's statement about this is that things went along smoothly until September, 1920. "Then father kept hollering that the gasoline bills were too big." That Melvin, Frank's son, had got the car out, using the gasoline; that he had only had it out twice with his permission and that Mr. Burchill had told him so. You couldn't reason with him at all, p. 98. Then in October there was another difference between the son and father about gasoline and he said that Burchill told him. The father ordered him out, p. 100.

The whole testimony shows that the father himself opened the mail and these gasoline bills were examined by him before anyone else. Burchill had nothing whatever to do with the bills or the amount of them.

MRS. CAROLINE BARNES: who was the stenographer and married, and left the mill explains that each car had a separate bill, p. 428. She had to check the bills against the memorandums. Each one that purchased anything during the month put a separate memorandum on file for her and at the end of the month she checked them back. The whole affair was one time when the monthly bills came in and Mr. Franz Ulrich looked them over and one bill exceeded by far the others. Mr. Franz Ulrich was pretty much worked up over it and he said to me, "What car is this?" I said, "That is the Hudson." He said, "It is higher than the others, even the business cars." I said, "I didn't know about that, that is Mr. Frank Ulrich's private car. I don't know anything about that." When Frank came in he asked him what the cause was and Frank became a little dissatisfied because Mr. Franz Ulrich told him that he wanted a full explanation. He kept at Mr. Frank Ulrich for an explanation and of course Mr. Frank Ulrich could give no explanation as to why it was so high, p. 429. When he came back to the shop in the afternoon there was war in the air, and he started in. Mr. Franz Ulrich kept at him as to why the gasoline bill was so high and he said:

> "I will pay my own G— D— bills and to hell with you. You can keep your own G— D— business and I will go by myself, p. 430.
>
> "Q. How long did he stay out that time? A. Three or four days.
>
> "Q. Did he come back again? A. Yes, sir.
>
> "Q. Do you know how he came to come back? A. Mr. Burchill sent word with Melvin the same as before. That is to have him come back, p. 430.

"Melvin, (son of Frank) would not bring in the memorandums at different times and I called the attention of his father, that I could not check the bills if Melvin wasn't going to bring in the memorandums. Then the next month when checking them over I noticed the wrong initial."

She called it to Melvin's attention. He said:

"That is all right, I let a fellow sign it while I stood there. Pass it up. I drew Mr. Burchill's attention on account of a driver not making a couple of slips and he spoke to the driver for me."

MR. BURCHILL'S statement on this subject is this:

"The bills came in every month and Mr. Franz Ulrich would open the mail. I believe we had three or four cars running at that time. I would not be sure. Each bill was for the car using the gasoline. The first bill might be marked Reo, or Vim, or whatever car used it. The bill was an itemized account of the gasoline which had been purchased and whenever gasoline was bought it was necessary to get a slip and the person who got the gasoline had to sign for it.

"Q. The bills came in the mail? A. Yes, sir.

"Q. And the father opened the mail? A. Yes, sir.

"Q. Was anything said to you or anybody else in reference to the amount of a gasoline bill? A. I believe there was one

time a bill came in and was rather high for the touring car and was running much higher than the truck.

"Q. And was it? A. It was.

"Q. Did the father call your attention to it? A. He did.

"Q. What did he say? A. He said, 'Look at this bill here, here is the touring car running higher than the business car and the business car being out every day,' and I made some remark about there might be some reason for it, running so high and at that time that passed off. Then later the August bill came in and a slip came in with the initials E. B. on it and previous to the time this memorandum came in Frank's son, Melvin Ulrich, was driving a Buick runabout on Sundays. I seen him often on Sundays and the owner of the Buick runabout, his initials were E. B.

"Q. What was his name? A. Edward Bannigan. The girl showed me a slip and I advised her and she said she thought there were other slips coming in with other initials on it.

"Q. Was anything said about it? A. There was and after this they said we will not pay any slips that had anybody's initials on who is not working here and we will not pay the gasoline bills without a delivery slip.

"Q. What did you tell the father? A. I told him that there were bills coming in, delivery slips, with other people's in-

itials on them and I didn't think it was right for us to pay for gasoline when someone else was using it, and the outcome of that was that they changed the gasoline station over to The Oil Store.

"Q. Did you mention Melvin to the father? A. I did.

"Q. In addition to these slips coming in have you seen the boy using the car? A. I had on many occasions. He always drove his father's car.

"Q. The fact is he was using the car? A. There is no question about him driving the car. The question was did he use the gasoline, but if someone else was using the gasoline for which these bills were sent I didn't think it was right. I was brought down there to look after the old man's interest and I didn't think it was right." P. 556, 557, 558.

This is the whole story of the gasoline incident. No comment seems to be necessary. The father opened all the mail, saw the amount of the bill and knew the consumption of each car. This was upon the bill. He did not know, without inquiring whether there were memorandum slips to match this expense. The slips were signed by those who got the gasoline.

3. THE EVERSHARP PENCIL INCIDENT.

About the first part of February, Frank Ulrich, the son, says that he had an Eversharp pencil which he desired to send back to the manufacturer and asked his son, Melvin, to wrap it up, p. 111.

Melvin, the son, said the pencil was to be shipped with the other stuff, p. 313. Mr. Burchill came in and told him to take the parcels and letters to the driver and have him take them to the Post Office. The son said he wanted to send the pencil along. This would require not more than 10 minutes. The son walked over to his grandfather's at night, and told him about it. Burchill said it was not true that the driver and the bookkeeper and his cousin could prove it, p. 313, 314 and 315.

The stenographer, ROSALIE GABRIEL, p. 463, says that about five minutes to five or nearly five o'clock I heard Mr. Burchill and Melvin talking. It was that Melvin had been out with an order and stayed too long and he wanted to go out again to mail the pencil. Mr. Burchill didn't know he was going to mail the pencil but he asked him why the packages were not there and Melvin told him, he said it was his father's orders and he was going to do it the way he wanted.

"Q. What did Burchill says? A. That ended it."

Mr. Burchill is asked about the incident of the pencil. His answer was, "That is just new to me lately about that pencil."

"Q. Was there any talk between you and Melvin about packages that were to go to the Post Office? A. There was."

He describes that incident as follows:

"It was one night or late afternoon when the boy Melvin Ulrich had taken Mr. Franz Ulrich home that afternoon with the truck and I believe that was around four o'clock

or quarter to four and in the afternoon we keep the packages and shipment until around five o'clock, half past four or quarter to five, then take them to the post office and express office. So the truck hadn't come back until around quarter to five or somewheres around that neighborhood and we had a delivery to make at a certain mill in town and the driver stood in the office waiting for the truck to come back to make this delivery and take his stuff to the post office. So when Melvin brought the truck back and when he came back I said to the driver, you take the truck and get down to this certain mill and make the delivery and also get your packages for the post office and express office. So Melvin said he was going to take these shipments and I said no, the driver will take it; he had stood around here from quarter to four to quarter to five, he has stood around here doing nothing. As far as the Eversharp pencil goes I never heard about it before this case came up here."

This, in our judgment disposes of this incident.

4. THE INCIDENT AT SELL'S HOTEL.

Frank, the son, complained that his father had spoken disparagingly of him at Sell's hotel, which was sometime before the middle of October. He asked the father why he spoke that way, p. 101. Mr. Burchill was present when he charged the father with this conversation. The father said it was a lie, that he didn't say anything.

Frank says that Mr. Burchill went up to see Mr. Camphausen and he came back and said that Mr. Camphausen said it was a lie. The statement was said to come from Camphausen, p. 102. Camphausen was not called.

Feliz Sell, the proprietor of the Hotel, was called and does not attempt to say that the father spoke about the son in this place.

This embraces all the incidents charged by the respondents, to support the charge of undue influence. Without going at the present time more fully into these allegations we have to repeat here that they are without force to convince any reasonable person not interested in the cause to overthrow such a solemn instrument as a last will and testament. We purpose to show now the true cause of the estrangement between father and son. It was the conduct of Frank Ulrich which caused the ever widening differences between him and his father and led him, as he richly deserved, to be stricken from the list of recipients of his father's bounty.

CONDUCT OF FRANK ULRICH.

Chief among the incidents which alienated the father's affections from this undutiful son are the following:

The Allentown mill was acquired by the two sons, Frank Ulrich and Albert Ulrich about December, 1917, without knowledge on the testator's part that he was not connected with this plant. Frank's attempt to mislead the court in reference to the establishment of the Allentown branch has been clearly shown by his own testi-

mony. On his direct examination, he sought to give the impression that his father's connection with and contributions toward this mill amounted to little or nothing, but when he found, on cross-examination, that he was being confronted with incontrovertible proof to the contrary he was still reluctant to admit what was so evident that his father practically equipped the entire plant; that machinery and merchandise were purchased by his father and supplied from the Paterson mill; that light, coal, haulage, repairs and other miscellaneous business expense in connection with this branch were paid by his father, and that he and Albert had received $2000 from their father just before the mill was started. He contended, nevertheless that he and his brother paid most of the bills. When the vouchers and check book stubs from the testator's personal account at Paterson, as well as numerous other vouchers were produced, it was found that out of all that number, there were only about four bills for very small amounts which had not been paid by the father and that the moneys which had been paid by the father's account and the equipment furnished by him amounted to thousands of dollars. The cross examination of this witness at great length on this subject shows the numerous contributions by the father to him and among them, the contribution covering the Allentown branch. It is interesting to note that as soon as his son Albert died, the father immediately made demand that the Allentown business be turned over to him. It is probable with Albert gone, that he had no confidence in this son's management and integrity. On page 165 he de-

sires to have it appear that the reason his father did not want to associate himself with the Allentown business at the time it was begun was that he was too old. This was in 1917. Yet the father bought the business back in 1919 and ran it to his death in 1921. A bill of sale was drawn and signed by Albert's widow. Alber died in February, 1919. The bill of sale was in May, 1919. The amount of the check to Albert's widow was $2700. In November, 1920, the father sent Frank a check for the bill of sale that he had signed. This check was also for $2700 and was drawn after the difficulty between them began, and after as he says, he put him out. The father was indignant when he learned that he was not supposed to have an interest in the Allentown plant. He received a bill of sale from Albert's widow and on May 10, 1919, a bill of sale from Frank.

This is how the discovery was made. A check was received by the Ulrich Company for approximately $700 and Frank ordered Mrs. Barnes, the stenographer, to deposit it in the Allentown bank. The father made inquiry about this and wanted to know why the check had not been deposited in Paterson. No explanation was given. The father then learned for the first time that the money in the Allentown bank was in Frank's name. After bad feeling for three or four days, the money was finally transferred. During this discussion, Frank was very disrespectful to his father, the stenographer says, swore at him and acted like anything but a son. Mr. Burchill, and Mrs. Albert Ulrich whose statements are corroborated by Henry Smith, a witness offered by the

respondents below and an attorney-at-law, who drew the bills of sale in question said that the transfer was to the father and not to the son. Mr. Burchill says that at the father's request he arranged with Mrs. Albert Ulrich to transfer all Albert's title in the Allentown mill. Mrs. Albert Ulrich states that she never spoke a single word to Frank nor did she carry on any negotiations with him concerning the Allentown mill. Frank said she transferred her interest to Frank Ulrich and not to the testator. The statement of Frank Ulrich that he voluntarily gave his father the bill of sale on May 10, 1919, is denied by Mr. Burchill who says that he was present at the time of its delivery; that it was delivered by Frank in compliance with his father's insistent demand therefor and that when he handed it to his father he said, "There, damn you, now you are satisfied."

The statements relating to this affair on the part of the appellant are more reasonable and acceptable than the confusing, unbelievable and ***uncorroborated*** statements made by Frank in reference thereto.

The next incident relating to his conduct referred to by Mrs. Barnes, who was no longer in the employ of the company when she gave her testimony, is that shortly after the trouble over the transfer of the Allentown bank account, Mr. Ulrich made out two checks for $1,000 each to his wife; Frank learned about these checks and said:

> "There he is now throwing away $2000 more for the G— D— girl. There won't be a damn cent left for us if he keeps on giving it to them." P. 426.

The language she says on that occasion was everything but what it should have been.

Another incident was concerning an increase in the pay of Mr. Burchill of $5.00. The father told him to tell the stenographer to give Mr. Burchill a five dollar increase. He was not pleased, she says, at the suggestion. The father, Mr. Franz Ulrich said, "he is here long before you are here in the morning and he is here after all the employees have gone out of the shop at night and he is worthy and deserving of it." He did not get the increase that pay because Frank did not give her instructions. The father asked her if Burchill had received his raise and he and Frank had a dispute about it. He told the father that he and Burchill were plotting against him. Mr. Burchill came in and asked him to prove that and he told him a certain party's name and at the end of that argument, Mr. Frank said:

> "To hell with your business, I am through.
>
> "Q. Whom did he say that to? A. To the father. He said, 'To hell with your business, I can get along without you,' and then he went out," p. 427.
>
> "Q. How long did he stay out that time? A. Two or three days.
>
> "Q. Did he come back again? A. Yes, sir.
>
> "Q. How did he come to come back? A. Mr. Burchill sent for him with his own son for him to come back to the office

where his place was and not stay home any longer.

"Q. That is the message, you say Mr. Burchill gave to Melvin Ulrich to tell to the father? A. Yes, sir," p. 427.

Another incident relates to the bonus. Miss Rosalie Gabriel entered the employ of the Ulrich Company in October, 1920. She says about a month after she went there, there was a quarrel.

"Frank seemed to talk very angry to his father and it lasted about twenty minutes and then Frank walked out and after he walked out the father told me he was having trouble with his son Frank.

"Q. Over what? A. He said he had always had trouble with him, but the present trouble was about the bonus. He had given him a $5000 bonus this previous year but this year he could not do it because business was bad! he said he could not afford it but he wanted to give Frank $2500, his own wife $2500 and Mrs. Albert Ulrich $2500 but Frank wasn't pleased with that because Frank wanted everything, p. 467.

"Q. How long did Frank remain out after the day you referred to? A. He came back at Christmas time.

"Q. How long was he at the mill that time? A. As near as I can remember two days before Christmas.

"Q. How long was he there? A. Two days, I think, maybe one.

"Q. Did he go away then? A. He was preparing to leave, he put on his hat and

coat and Mr. Burchill came in and sat down at his desk and I, myself, heard Mr. Burchill tell Frank Ulrich it was his duty to his father to remain in the office and he should not leave, but Frank Ulrich said he had stood it long enough and he couldn't stand it any longer and therefore he would leave."

Two weeks after Miss Gabriel went to work there she tells the story of the key to the safe, p. 474. Mr. Franz Ulrich had instructed the bookkeeper, Mr. Coogan, to put that key on his, Mr. Coogan's key ring and Mr. Frank Ulrich objected.

"Q. Are you sure that was the first or wasn't that later? A. That was the first time.

"Q. That was the first quarrel between the father and son? A. Yes, sir.

"Q. What language did they speak in? A. English.

"Q. Did Frank say why he objected to that? A. From what I heard he seemed to think that the father didn't trust him by telling the bookkeeper to place the key on his key ring."

The next incident was about the Eversharp pencil which is above stated.

Miss Gabriel states that he returned shortly after the first of the year and remained for about two or three weeks.

We come now to the most astonishing act on the part of this faithless son. The incident relating to the Eversharp pencil has been stated ***supra,*** yet he says that it was on this occasion that his father told him that he didn't want him in the factory any more to get out and stay out p. 113.

> "I don't want you in the place any more. I said 'Father, do you mean that?' He said, 'yes.' 'Get the hell out and stay the hell out, I don't want you in the place any more,' and I said, 'all right, father, if you mean that I will come down to the mill tomorrow and get my belongings' and the minute I got to the door before he spoke to me, he had a large envelope in his hands and he hit me with it." P. 114.

Before proceeding further with this phase of the case we have to pause to ask if this witness can be believed—the father is dead. He wishes to have it appear that it was a statement that Burchill made about holding up shipments that helped to cause the trouble. If this were true, would it not have been a reasonable thing to have said to his father, "I will meet you and Mr. Burchill together tomorrow morning and have this out." He never spoke to Mr. Burchill about it, but immediately on his appearance next morning the assault on the father occurred. His statement is:

> "I walked over to the desk which I always occupied and stooped over to the bottom drawer where I had some communications and some things and he comes over and grabs me by the throat and starts choking me and I turned around that way and as I did his heel must have struck the stenographer's desk and he slipped down to the floor and I went over and I and my son went to pick him up. He states that the father called him names, then hollered for the bookkeeper who came and picked him up."

That the testator fell to the floor on his back is not disputed even by him. From the evidence offered by Miss Gabriel, p. 471—John Coogan, p. 495—Oscar Egg, p. 372, 383—Mr. Dunn, p. 680 and Mr. Burchill, p. 564, we charge that he was knocked down by his son Frank. The stenographer said that the father walked up to Frank and just started to say something and put his hands on his shoulder as was his custom when talking to anyone, when she heard Frank suddenly tell his father to keep his hands off him and at that moment Mr. Franz Ulrich fell to the floor very violently on his back on the opposite side of the office from where Frank's desk stood. She states that Mr. Ulrich did not trip on her chair (as Frank suggested) because he fell too violently and secondly she would have felt it if he had done so. If it was an accidental fall it was reasonable to assume that the father would have welcomed his aid to arise. The stenographer says that when the grandson came running in to pick him up Frank turned to him and said, "Let the son of a b— stay there." Then addressing himself to Coogan, he said, "Coogan, pick him up." Both Frank and his son walked out of the office and never returned to the mill again.

The son admits that while the father was on the floor he called him "all the dirty names and curse names he could" and "hollered, bookkeeper, bookkeeper" who came in and picked him up. Does not this support the testimony of the assault? p. 115.

Mr. Coogan, the bookkeeper, testified as follows:

> "Q. I am speaking of the language used by Frank? A. When he called me in he told me to pick him up, he said it in a very disrespectful way, he said, "Coogan, pick him up."
>
> "Q. How was that? A. I never heard anything said like it."

At another time prior to this fall, Coogan said that Frank said to his father:

> "Keep your hands off me or I will murder you.
>
> "Q. Who said that? A. Frank said that.
>
> "Q. To the father? A. Yes, sir, and he wrenched them off.
>
> "Q. Then he made the remark about keeping your hands off? A. Yes, sir, he said, 'Keep your hands off or there will be murder in the family'."

Oscar Egg, p. 383, testified as follows:

> "Q. Did he tell you there had been a row between him and Frank? A. He did.
>
> "Q. What was it? A. He said he knocked him like this (witness indicates by putting his hand on his chest), and again, p. 381 in "That is the time he told me that Frank treated him very bad and that he wanted to get everything away from him and he was very much excited and mad because Frank went in business for himself, he didn't like that at all."

This conversation was on the street in February, 1921, p. 381.

The father said that it was impossible to do anything with him; that, he, (Frank) was determined to go on in his own way and leave nothing undone to wreck the business which his father had built up and that he was doing this on the strength of the donations his father had made to him, p. 62.

After the final withdrawal which is alleged by him to have taken place sometime in February, 1921, he proceeded to make arrangements to go into business for himself and in the same line of business in which his father was engaged. It is quite apparent that he contemplated this for a long time. His own testimony on this branch of the case, which is one of its most important phases as well as the evidence of Mrs. Barnes, Mr. Coogan and Mr. Egg, absolutely contradict his own assertions. On direct examination he first testified that he did not contemplate going into business for himself until May, 1921. He later changed the date to March, 1921. On his cross examination he still insisted that the date was about the middle of March. After being questioned at some length about various other subjects and then brought back again to this subject he finally testified as follows:

> "Q. What was the name under which you carried on the business? A. The Royal Reed and Harness Company.

"Q. When did you get ready for this business? A. ***About the middle of February,*** I believe," p. 225.

Mr. Coogan says on p. 517, I heard him say it in my presence and he threatened to go into business for himself. The father was there, p. 518.

This witness gave a statement of his evidence to the counsel of the caveators. They did not call him. Proponents did, p. 518.

Here at last is the real issue. This old man, proud and sensitive about his position as a manufacturer of reed and harness saw his son about to embark in the same line of business and appealing to his old customers whom he had attracted by the industry of his whole life. Most successful men are proud of some achievement. He was intensely proud of what he had done. It would seem that he might forgive much but this was the proverbial last straw. In the will of July, 1920, he had forgotten the past and left the son his one-third interest in the mill and all moneys, etc., in the business but all the old differences arose again in his mind at this new attack. Who can say but this is a natural, a perfectly reasonable act in payment of the accumulation of wrongs and contumely of years? Even fathers have limits to their feelings. It is a marked characteristic of this son's conduct that through the whole course of dealings with his father that he never sought in any way to mollify him, never asked another to see him in his behalf, never acted toward him as a dutiful son, but apparently resting upon his fancied security, crossed him so much as to make him suffer.

We are not left to conjecture why the testator left him out of his will. The testator himself speaks to us. He says nothing about the assault upon him or any of the other indignities. He says this however in his will:

"Owing to gifts and donations heretofore made by me to my son, Frank Ulrich, and owing to the fact that he has recently engaged in business in the same line as mine and is now one of my competitors, I have made no additional provision for him in this will," p. 648.

He did advance these moneys and the son did become his competitor. These are not illusions, they are the cold facts. Who then can challenge his right to impress his own will upon his own property?

After his father's death, before the will was read and while the grandson was standing by the coffin, he uttered the foul language found on page 526.

It is one of the limitations of a court of review they cannot see the witnesses whose testimony they have to consider. We venture to say that if they could have seen this witness, Frank Ulrich, giving his testimony in the Orphans' Court a marked impression would have been created against him.

THE CONDUCT OF LANGLEY J. BURCHILL.

This witness married Rosina Ulrich, a daughter of the testator in 1905 and for about a year after

his marriage, lived with his wife's family at No. 213 Park Avenue, Paterson. The Ulrich residence was changed into a two family house and Mr. Burchill moved to the second floor, where he has continued to reside ever since. He entered the employment of the Ulrich Company in March, 1919. He had theretofore been employed at a salary of $60.00 a week in New York; his earnings however were materially reduced because of the fact that he commuted daily and was obliged to purchase his meals and under other miscellaneous expenses such as are incident to an employment of such a character. He said he "paid no rent, gas, heat or anything like that to Mr. Ulrich and in looking at it all, that it was worth it." He thought if he didn't "go with him that he might be cut off from these things," p. 573. At the solicitation of the testator as well as that of his wife, he consented to enter the employment of the Ulrich Company for a salary of $40.00 a week. It was argued below and presumably will be argued here that the change of employment in view of the reduced salary was significant of the fact that his motive to make this sacrifice must have been strong. This is one of the many deductions of counsel that run all through this case. What greater opportunity would be had at the mill that did not already exist in the house? And that he had for fifteen years. It was urged too that his wife connived with her husband toward this end and yet we find that Mrs. Burchill is one of the caveators in this case, and is one of counsel's clients. She sat daily in the presence of the Prerogative Court and was not called to the stand. According to this argument

Mrs. Burchill is now fighting to deprive herself of that for which she conspired and fought so hard. He went to work for the Company in March, 1919. The will of 1920 was drawn on July 26, 1920, over a year and four months after he was in daily contact with the testator in the mill and over 15 years at the home. He had made such little progress in this alleged scheme that the testator left his son Frank his interest in his business. This argument is like that which permeates the whole case. They assume facts which are not proven instead of arguing upon the facts presented. For about 14 or 15 years he had done about everything there was to be done about the Ulrich home, looked after the furnace, the tubs, attended to minor repairs upon the house, took the testator and his wife out driving, went on fishing and auto trips with the testator, played cards, helped nurse the testator nad his wife when they were sick, attended to testator's personal wants and calls at all hours, of the day and night, as well as performed like services for the testator's wife, p. 533-534. In the last few years, he cut his corns and feet and trimmed his nails and corns and gave him alcohol baths, p. 535. The testator's widow frankly admitted on the stand that he had always been good to her husband. Mrs. Margaret Ulrich said that the conduct of Mr. Burchill towards the testator was remarkable, that Mr. Burchill acted as everything from janitor up. Mr. Egg said that many times Mr. Ulrich spoke to him about how good this witness was to him. Mrs. Barnes and Miss Gabriel testified that in the course of different conversations the testator would remark about

Frank's conduct and spoke highly of Mr. Burchill's treatment toward him, and had compared Frank's ungrateful attitude towards him with the respectful treatment he had always received at the hands of Mr. Burchill. The testator tried again and again to have him with him. The need became more urgent after Albert's death which occurred on February 9, 1919, p. 79. Burchill went to work as stated in March, 1919; p. 537.

We have described in the incidents *supra,* charging undue influence, the unsubstantial character of the allegations against him in the mill. He says he did not have a word with Frank at the mill the whole time he was there, p. 555. He wasn't in the inner office 10 minutes a day, p. 546. He gave his time to the progress and success of the business. No single operative speaks a single word disparagingly of him. This whole change is a concoction of Frank Ulrich.

It appears too that Mr. Frank Ulrich could not get on with his sister-in-law, Mrs. Albert Ulrich, and that she had no dealing with him whereas Mr. Burchill had dealings with her every day, p. 583.

> "A. I didn't consider Frank Ulrich my boss, but when anything came up I always went to Frank. I never undertook anything or any authority on anything worth while without mentioning it to Frank Ulrich." P. 595.

His feeling changed toward Frank when he

called him some names, at his house after Melvin had had some trouble with the grandfather, p. 600.

HIS TESTIMONY ABOUT THE WILL.

The testator said that he wanted Mr. Burchill to take him to the Prosecutor's office, p. 610. He went each time with him and both he and Mr. Dunn state that he was not in the room with the testator when any instructions were given about the will, p. 616. He was told by the testator while going down the stairs on the last visit that "Now I am satisfied, I can rest in peace, I have made my will," p. 623. He thought it was not becoming to ask him where the will was. The testator would have told him, he said that it was none of his business, p. 623. The witness knew nothing further. He did not know where the will was and said he had so little experience that he did not know that the lawyer retained the will, p. 631. He supposed that it would be in his safe deposit box. Frank, Otto Handwerk and Burchill inquired at the United States Trust Company for the will where the safe deposit box was. The box was opened but there wasn't any will there. He first learned about Mr. Dunn coming to the house to read the will when he got home at night. It was read the night after the funeral, p. 39.

> "I believe I did hear that Mr. Weiss had drawn a will." P. 608.

He says on page 616, that he was not sure that the testator was making a will while at Mr. Dunn's office. That he did not tell his wife that the will had been made. It may be re-

marked here that neither did the testator tell his wife that he had made a will. It would have been highly indelicate to have given out this information without permission. The visit to the safe deposit box was not to find if there was a will, but was to find out ***where*** the will was, p. 629. The will was supposed to be in the United States Trust Company. (This is where the testator had his cash, and safe deposit box. The President of the bank, Mr. Weiss had drawn the will of 1920.) This quest for the will was the day before the testator was buried. He said, Frank wanted the will right away, that is what he wanted and that is all he wanted, p. 570. After looking through the shop for the will they went to the safe deposit box. "I thought they were very hasty," p. 630.

> "A. I did not understand that after a man makes a will that the lawyer retained it."

Everybody had been notified immediately after the funeral that Mr. Dunn had the will, p. 633.

The first he saw the 1920 will was in the mill. He was looking for a deed for Mrs. Handwerk of Nos. 211-213 Park Avenue. This will was among the papers in an envelope with the deeds, p. 635. It may have been two or three months after the death of Franz Ulrich. He told his wife. It remained in his pocket where he carried it about a month, p. 636.

It should be remembered that the testator died July 24, 1921. The petition for probate was filed Aug. 4th, 1921, a little over a week thereafter. The caveat was filed August 1, 1921. The 1920 will was found therefore two months after

the last will was offered for probate. After these occurrences the retention of the old will was not an important concern. He was one of the executors therein. The witness says that all he knew was that it was an old will and attached no value to it. If he had, he wouldn't have carried it around in his pocket, p. 641.

Frank Ulrich admits on page 645 that at one time when he was in the office with the stenographer, Rosalie Gabriel, and Mr. Burchill, Mr. Burchill said it was his (Frank's) duty to stay in the office and remain with his father and that he, Frank, said, that he had stood it long enough and could stand it no longer. This is his own testimony. This most important evidence in support of Mr. Burchill is wrung from the man who seeks to defame him. In addition Mr. Burchill to try and have Frank remain with his father sought the assistance of his son Melvin and of Crutchlow and Bannigan.

Counsel below put forward ingenious suggestions—all without proof—that Mr. Burchill ingratiated himself into the good graces of the testator with the fixed purpose of poisoning his mind against his son Frank.

The law demands proof. The caveators below answer this demand by suspicious fancies, surmises, suggestions, but no proof. For 15 years he lived in the same house and up to the execution of the will of 1920 for one year and four months worked in the same mill. Yet in July, 1920, the testator made his will leaving his business to Frank. Why if he could exercise any in-

fluence would it not have been easier to have had the testator bequeath the business to himself and Frank? He received only a half interest anyway. Why not take it all? Why share half with the grandson? Why did not his wife unduly influence her father for him? Here was a lost opportunity. They were friendly then. She induced him it is said to enter this employment for this purpose. Why did she not persuade her mother to induce the father to this end? Why should Mr. Burchill on three separate occasions try to induce Frank to return? It is asked why Frank was omitted from the will of 1921. We have given the reason. There was good ground for this. We may ask why Albert's son was omitted from the will of 1920? Albert was the eldest son and had been engaged in business with his father years before Frank. He died in 1919. Did the testator in the will of 1921 resolve to correct this injustice? Yet this natural claim on the bounty of the testator is destroyed if the decree of the Prerogative Court be affirmed. By what natural right should this undutiful son after the assault upon his father and after he had become a rival in business take the inheritance to the exclusion of Albert's son? It is a conclusion wanting in justice and equity.

Was the grandson exercising undue influence? What association was there between him and Mr. Burchill? If the will is the product of Burchill's undue influence what evidence is there before the court that it is the product of undue influence of the grandson? Is he to be disinherited that his uncle may prosper?

CONSIDERATION OF THE OPINION OF THE VICE ORDINARY.

> "The plant at Allentown having been meantime made over to the testator at the behest of Burchill." Opinion, p. XV.

There is no evidence to support this statement. Burchill had nothing to do with this transfer. It was done after the death of his son, Albert, when the testator discovered that it was claimed that he was not the owner. He paid Mrs. Albert Ulrich $2700 for her share, after a bill of sale was signed. After the differences between father and sonson (Frank) became acute in November, 1920, he sent Frank a check also for $2700 which he says he returned. As stated the whole establishment was paid for by the father.

> "Everything appears to have gone smoothly with the family and the business until Burchill entered the employ of the testator," p. XVI.
>
> "Shortly after Burchill entered the employ of the testator trouble began," p. XVII.

These statements are not supported by the testimony. We have shown ***supra*** the history of this case. Burchill had no quarrel with any employee, indeed he was popular with them all. We have previously examined these allegations and it is not necessary to repeat them anew.

> "Numerous instances appear in the testimony indicating that Burchill was a mischief maker and that he misrepresented facts from time to time in ***order to in-***

fluence the testator's mind against his son Frank."

This statement is not warranted by the facts. The incidents narrated show no mispresentations. The conduct of this son for the reasons stated was what alienated his father's affection. ***As previously stated he does not say that he ever attempted to reconcile himself with his father,*** particularly following the last breach in their relationship. If he had done so, the probabilities are that the father would have been inclined to forget and forgive. He had no right to assume that it was his father's duty to bring about a reconciliation.

> "This led eventually to the testator's requiring the transfer of the Allentown plant to him? Burchill having represented to him that Frank was really using that business as a competitor."

This is a mistake. Burchill made no such statement.

The Vice Ordinary repeats the allegation about the orders which have been set out above. He takes as a fact the unsupported statement of this interested son and does not analyze its weight nor its contradictions.

> "The testator was also led to believe that small peculations were being practiced by Frank and by Frank's son which diminished the returns of the business; and these statements turned out to be unfounded." P. XVII.

There were no peculations whatever. There were no unfounded statements whatever. If by this language is meant the gasoline incident, we have answered that ***supra.***

> "Burchill also assumed authority over and the right to direct the work of Frank's son contrary to his real position and this incident was misrepresented to the testator by Burchill."

With great respect we have to say that he assumed no such authority nor was there any misrepresentation. The incident concerns the Eversharp pencil. Melvin, Frank's son, returned late with the truck. The driver was waiting to deliver the orders of the night. The stenographer says it was near five o'clock. The young man wanted the truck to wait ten minutes until he wrapped up a lead pencil. Burchill wanted to ship his goods. This is all explained above.

> Burchill "pursued a course of secret underhanded dealings intended to poison the mind of the testator against his son Frank and prevail upon the testator to prefer Burchill to his son Frank in the disposition of his property." P. XVIII.

We respectfully ask the court to discover if it can, "a course of secret underhanded dealings intended to poison the mind of the testator." It is not necessary to repeat here what has been already said. There is nothing in the case to support this allegation.

"A few months before the death of the testator, Burchill took him to Michael Dunn an attorney at law of this State."

If by this language is meant that Burchill selected Michael Dunn as a lawyer this is unsupported. Mr. Dunn had done some business for some years previously. Mr. Burchill says on p. 60 that the testator asked him to take him to Mr. Dunn's.

"Burchill had performed professional service for Mr. Dunn."

It appears that once Mr. Burchill, was asked to serve among a number of citizens as watchers at an election for the Prosecutor of the Pleas to insure an honest election.

"The testator told him upon his way home that he had made another will and had left it with Mr. Dunn."

The testator did not say this nor did Burchill say that he did, p. 567. What was said, was that in going down stairs the last time the testator said to him, "Now I am satisfied, I can rest in peace. I have made my will," p. 567. He was asked, p. 567, "Did you know whether or not the grandfather had taken the will away with him or left it in Mr. Dunn's office? A. I did not. I didn't know what he had done with it."

"Whether or not I find that a fiduciary relationship existed between the testator and Burchill is however not important because Burchill unquestionably occupied a position of trust and confidence with reference to the testator." P. XX.

It is respectfully submitted that Mr. Burchill did not occupy a position of trust and confidence. He was an employee in testator's mill and his son-in-law. Neither is a position of trust and confidence. In the Feder will case the Vice-Ordinary said "There was no relation of trust and confidence between the parent and the favored child nor ascendancy nor dominance on her part, as to raise the presumption of undue influence within the principles laid down in the Sparks Case, 63 N. J. Eq., 242; In re Anastasia Davis, 73 N. J. Eq., 617; and In re Cooper's Will, 75 N. J. Eq., 177."

In re Feder, 93 N. J. Eq., 414.

"This (will of 1920) was made at a time too when all the circumstances adverse to Frank urged by proponents as the reason for his disinheritance already existed."

This is not in conformity to the facts. The chief differences between father and son arose ***after*** the execution of the 1920 will. He left his father several times after that. There were also among other things the assault on his father and entering into business as his competitor.

"Now why should Burchill be ignored and the son Frank and Rosina the testator's wife favored in the will drawn eight months before in the presence of Mrs. Weiss and the testator's wife? And why did he give to Burchill this large gift by sacrificing the gifts to his wife and his children given by the will made only eight months previously?" P. XXI.

We have shown ***supra*** that Mrs. Ulrich under the will of 1921 was to receive "from the income of my entire estate both real and personal" for life, "a sum not exceeding $10,000;" that under the will of 1920 she received a life estate; that from the quantum of the estate her life estate was not equal to $10,000.

We have also shown that there was no sacrifice of the share of any child whatever except that of this remarkable son.

The Vice Ordinary dwells at length in the following language in what he calls "this great change in the gift of the widow."

> "It is argued by the proponents that the alleged trouble between testator and his son was the cause of the later discrimination against Frank, and in favor of Burchill, but no reason whatever appears why the testator, if of mental capacity, and free from influence, should make this great change in the gift to his widow with whom he remained cordial, in two wills made only eight months apart."

Of course there was no great change whatever.

> "Not only did the new will change the gifts to the son and to the widow, but the widow was removed as an executrix and thus prevented from having any control of the management of the estate, which was put in the hands of Burchill, and the grandson, who might handle the same so that there might be little or no income from it."

It is true that Mrs. Ulrich, who was 85, was not named as executrix in the will of 1921. At her age she should not have been named in the will of 1920. The Vice Ordinary has overlooked the fact the two sons-in-law, Langley J. Burchill and Otto Handwerk were named as two of the executors in the will of 1920 and were continued as such executors in the will of 1921. If his son had failed him where was he to turn except to his daughters' husbands? What advantage was it to Mr. Burchill to omit the very old lady as executrix, who could reasonably do little about the management of the estate and from whom no embarrassment could be expected and insert not only the grandson but his brother-in-law, Otto Handwerk?

> "I am entirely satisfied that this will is the product of the undue influence exercised by Burchill over the testator, actively encouraged by his wife, who worked with him until she realized that by the later will she, too, was discriminated against, and that her husband had overreached her, and then she switched over to, and became one of the caveators."

There is not a single word of testimony to show that Burchill was "actively encouraged by his wife," nor a line to show that she "worked with him" to this end. How could she realize that she "was discriminated against" when she was one of the residuary legatees in both wills? She and her sister Catherine Handwerk were each left $5,000. in the

will of 1920. Isn't it entirely reasonable that when the testator gave her husband one half of the business and certain moneys that the $5,000. bequest to her, his wife, in the will of 1920, should not be continued? This is the only change. But how could she "actively encourage" her husband to exercise undue influence and then when he was successful turn against him? They cannot have it both ways.

> "At the time the purported last will and testament was read, she, (Mrs. Burchill) was so affected that she ran out of the house partly unclothed in a frenzy."

There is no basis whatever for this allegation. Presumably what the Vice Ordinary had in mind was the question asked by the counsel for the caveators which appears on p. 639, as follows:

> "Q. She ran out of the house in her stocking feet? A. I do not know about that. I wasn't there when she went out."

At the reading of the will there were present, the widow Mrs. Rosina Ulrich, Mr. and Mrs. Burchill, Mr. and Mrs. Handwerk, Frank Ulrich the son and his wife, and Melvin his son, Mrs. Albert Ulrich, widow of the son Albert, and Frank J. Ulrich, grandson and Mr. Michael Dunn, eleven persons.

Not one of these witnesses makes any such allegation or suggestion about such an affair whatever.

The estrangement between husband and wife did not arise over this case and it is unnecessary, therefore, to dwell upon it. It is due to other causes.

THE LAW.

The testator in this case was 83 years of age.

We have a number of cases in this State where persons of very advanced ages have been held to have had the mental faculties required for testamentary capacity.

In Collins v. Townley, 21 N. J. Eq., 353, the testator was 98 years of age at the time she made her will and she was held to possess testamentary capacity.

In re Humphrey's Will, 26 N. J. Eq., 513, the testator was 94 years of age at the time of executing the codicil and was held to have been possessed of testamentary capacity.

It is well known that the declarations of a testator are comprehended to show the condition of his mind, but not to prove undue influence by either person or spirits.

Middleditch v. Williams, 45 N. J. Eq. 726.
Reversed in 47 N. J. Eq. 585, but not on this point.
Boylan v. Meeker, 28 N. J. L. 274.
In re Anastasia Davis, 73 N. J. Eq. 617.

On an issue whether a will is the product of undue influence, the declarations of the testator respecting previous occurrences, which are alleged to have exerted the influence are not evidence to prove or disprove such occurrences.

Rusling v. Rusling, 36 N. J. Eq. 603.

In this last case the will was drawn by the favored legatee. This court said, while it called for a suspicious scrutiny of the circumstances it did not of itself invalidate the will.

This court in the Rusling case said that in their judgment the evidence established "nothing more than an occasional forgetfulness of the names and faces of the persons with whom he did not come into frequent contact. His power to recollect his nearer kindred and to appreciate their claims upon him, to comprehend the amount and character of his estate and to intelligently direct its distribution, does not appear to have been seriously impaired. Such capacity is sufficient for the making of a valid wil.

> "For the purpose of proving matters not related to his existing state the assertions of the testator, are only hearsay."

In the case in hand the will was drawn four months before death and at least three months before he left his daily attendance at the mill. Neither of the principal legatees had anything to do with the preparation.

In the Rusling case the testator lived in cordial relations with his own wife who was a contestant, as in the present case. The Rusling will was upheld.

In the preparation of the Rusling will the accused legatee took no part. The same is true of the present case.

In the Rusling case there appeared grounds on which the testator might conclude to discriminate against the third son, as he had. The same is also true here. The facts here stand out clearly con-

cerning this son's conduct and the declarations of the will to this effect are supported by the evidence.

The influence which the law denominates undue must be such as destroys the testator's free agency by amounting to moral or physical coercion.

Clifton v. Clifton, 47 N. J. Eq., 227.

The influence of affection and kind offices, unconnected with fraud and contrivance though it induces gratitude and testamentary recompense, is not undue.

Ibid.

The inference of undue influence will not be drawn alone from proof of opportunity to exert it, nor will influence be deemed undue which may reasonably be inferred to have been produced by kind attentions and services rendered by the beneficiary.

In re Anastasia Davis, 73 N. J. Eq., 617.

In the case of Clifton v. Clifton, ***supra*** the Ordinary defines the mental capacity requisite to make a will. It is this:

> "The memory of a testator may be imperfect and impaired by age or disease, so that he may not be able to recollect the names, the persons or the families of those with whom he has been intimately acquainted and he may, at times, do childish things, speak disjointedly, abruptly pass from one subject to another or ask idle questions and repeat those which have been before asked and

answered, and yet possess capacity to make a will."

Ibid.

Citing:—

Trumbull vs. Gibbons, 2 Zab., 117.

Humphrey's will, II C. E. Green, 513.

Jenkins vs. Moore, 12 C. E. Green, 567.

Eddy's case, 5 Stew. Eq., 701.

Collins vs. Osborn, 7 Stew. Eq., 511.

Wheeler vs. Whipple, 17 Stew. Eq., 141; 18 Stew Eq., 367.

Dumont vs. Dumont, 1 Dick., 223.

Lewe vs. Williams, 2 Eq., 82.

Craft's Estate, 85 Eq., 125.

Gleespin's will, 26 Eq., 523.

Clifton vs. Clifton, 47 Eq., 227.

"Every will is the produce of some influence. The influence which arises from legitimate family and social relations comes without suspicion or taint of illegality, and, there can be no presumption that it is unlawfully exercised merely from the fact that it appears that, when the will was made, the testator was surrounded by it and it operated upon his mind to induce the testamentary disposition. It is only when such influence is shown to have been unduly exerted over the subject of the will-making; so as to constrain the testator to do that which he would not have done if left to himself, that the law condemns it."

Arnault vs. Arnault, 52 Eq., 801.

"In considering the question of undue influence, the mental power of the testator must be taken into account."

In re Tutty's will, 102 At. 833.

"No court has power to refuse probate to a will merely because the disposition testator has made of her property by it appears to the court to be unnatural, unreasonable or unjust. It is as much the duty of the court to uphold the right of the owner of property to dispose of it by will as she pleases, as it is to see that she is not imposed upon in the exercise of that right."

In re Young's Estate, 106 At. 425.

It is said that the principal elements affecting undue influence are these:

1. The initiation of proceedings for the preparation of the instrument.

   There is no evidence whatever of this having occurred in this case.

2. Participation in such preparation.

   There is no evidence whatever of such participation.

3. Presence at the execution of the will.

   No legatee was present at the execution of the will. Mr. Burchill went with the testator to the office of the lawyer selected by himself. He was not present at its execution.

4. Efforts to exclude the natural objects of testator's bounty.

There is not a word to support this statement in this case.

5. Concealing the making of the will.

No question was ever asked whether there was a will and consequently there was no denial.

There was no occasion to proclaim that the will was made. It would have been a want of good faith to have done so after the testator had told him that he had made his will.

6. Taking possession of the will.

We have shown that Mr. Burchill never had the will in his possession.

This testimony although of considerable volume is but an infinitesimal fraction of the testator's life. It can not show the thousand things that affected his judgment, not here recorded, about the members of his family and their affection and regard, or the want of it, for him. He knew all that which we can never know. It is for this reason that the law in its wisdom safeguards the dominion of the testator over his property and will not suffer it to be disturbed save for the clearest and most convincing proof. Such proof is not found here.

The burden of proof has always remained with the caveators. It has never shifted. They have failed signally in their assault. Even if such a duty rested

on Mr. Burchill, the evidence shows that it has been duly and satisfactorily discharged.

The man who "had reached a point where he broke his father's heart" p. 61, should not now be permitted to share—against that father's will—the patrimony of the man whom he so grossly offended.

It is respectfully submitted that the decree of the Prerogative Court should be reversed.

JOHN POMFRET,
WILLIAM B. GOURLEY,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals

IN THE MATTER OF A CERTAIN PAPER WRITING PURPORTING TO BE THE LAST WILL AND TESTAMENT OF FRANZ ULRICH, DECEASED.

On appeal from Prerogative Court, Lewis, Vice-Ordinary.

Decree reversing decree of Passaic Orphans' Court, Delaney, Judge, which had admitted will of Franz Ulrich to probate.

Brief for Respondents on Appeal

(Italics, etc., except where otherwise noted, ours.)

STATEMENT OF THE PLEADINGS

The order in the Orphans' Court granting probate is found on page VIII. No opinion was delivered. The case was on caveats, statement page VII. The opinion in the Prerogative Court (Lewis, Vice-Ordinary), is found on page XIV, the decree, page XII, the petition of appeal to this court, page III, a statement of the petition of appeal to the Prerogative Court, page XI.

STATEMENT OF THE CASE

THE PARTIES

Testator, Franz Ulrich, died July 24th, 1921, at his home in Paterson. He was about 84 years of age (p. 78). His wife, with whom he resided at the time of his death, was about 85 years of age (p. 344). They had had four children, Frank Ulrich, one of the caveators, who, at the time of the hearing, was 41 years of age, married, living with his wife, with two children, a daughter,

Helen, and a son, Melvin, going on 19 years of age, (p. 84); Catherine Handwerk, a daughter, one of the caveators, upwards of 40 years of age, the wife of Otto Handwerk, manager of the Manhattan Laundry in Passaic, (p. 330), married in 1903 and lived for the past fourteen or fifteen years in a house next door to her father and mother, given to her by her father (p. 330); Albert Ulrich, a son, who died July 24th, 1921 (p. 79) leaving a daughter, Viola Kearns, about 27 or 28 years old, married, and a son, Frank J. Ulrich, 30 years of age (pp. 79, 526), and a widow, Margaret Ulrich, (p. 400) to which son testator had given the house in which his widow now resides valued by her at about $20,000.00 or $24,000.00 (p. 401), the son, Frank Ulrich, Jr., living opposite (p. 401); a daughter, Rosina Burchill, one of the caveators, who married Langley J. Burchill, proponent, in 1905.

The son-in-law, Langley J. Burchill, after the marriage immediately went with his wife to reside in testator's house, No. 213 Park Avenue, Paterson (p. 581). The family consisted of testator, his wife, Burchill and his wife, (p. 532). About one year after the marriage the home was changed into a two family house, and thereafter Burchill and his wife occupied the upper floor and testator and his wife the lower and this method of living continued until the day of the death of testator (p. 532-533). Burchill and his wife have one daughter, age 16, living at home, (p. 533).

Prior to testator's death, he had given the house in which he lived to the daughter, Rosina,

(p. 331, 81). He had also given them a house which had cost about $10,000.00 but which is worth at the present time about $19,000.00, (p. 123).

The caveator, Frank Ulrich, started to work in the business of the father about the age of 16 (p. 83). Albert also worked in the father's business (p. 83). Frank started in at $3.00 a week, was then increased to $5.00 and when he got married, his wage was increased to $12.00 and finally to $50.00 (p. 85). In 1917, with the consent of the father, Frank and Albert established a business in Allentown, Pennsylvania, (p. 85). The establishment of this business was necessary to relieve the pressure on the Paterson mill. Machinery was bought and the father furnished certain machinery and while the company was in business it traded with the father's company in Paterson, (p. 86). The business continued until the time of Albert's death in 1919 (pp. 87-88). During all of this time, Frank also stayed with his father attending to the business in Paterson.

On May 10th, 1919 Frank conveyed to his father the business at Allentown (p. 655), the understanding being, as it had been for years in the family that, upon the death of the testator, Frank should hove the Paterson business.

Frank continued with testator in Paterson, (p. 94) and his son, Melvin, then just past 16, became employed with testator in January, 1919, acting as shipping clerk and driving the grandfather around when he wanted to go out in the machine.

In October, 1920 Frank was out of the business for six or seven weeks and then returned about January, 1921 (p. 103). He stayed about three weeks (p. 106) and then was discharged (pp. 110, 111).

The son-in-law, Langley J. Burchill, as before stated, from the time of his marriage to the daughter in 1905, lived in the same house as his father-in-law (pp. 531, 532). In March, 1919 for the first time he became employed by testator (p. 94, 536). In response to the question as to what his position was down there, he said "I was down there as a salesman ***but after I was there a short time I was everything.***"

THE LAST WILL AND THAT OF JULY 26, 1920.

On July 26th, 1920 testator executed a last will and testament, under the terms of which he gave to his wife the income of all his estate, real and personal for the time of her natural life; upon the death of his wife, all his interest in the real estate known as the Mill Property in Paterson to his son, Frank, charging the devise with a payment of $5,000.00 to each of the daughters; to the son, Frank, all money and accounts due and owing in the business of Ulrich and Company in Paterson and Allentown at the time of his wife's death with all machinery, etc., all money to the credit of the testator on deposit in Allentown and Paterson at the time of his decease; to the daughters, Rosina and Catherine, the sum of $5,000.00 each and also the rest, residue and remainder of his estate. He appointed his wife, Rosina, his

son, Frank, and his sons-in-law, Burchill and Handwerk, as executors. This will was drawn by Edward R. Weiss, an attorney-at-law who had known the testator for twenty-five years and had been his counsel and who had theretofore prepared a number of wills (p. 283, 285). Weiss is also the president of the United States Trust Company. The other wills prepared by Weiss also gave the business and the interest in the mill property to Frank and the provisions of this will were in strict accord with the understanding had by the family for years and upon which understanding Frank conveyed the Allentown business to the father in May 1920 without other consideration. The will was taken by testator (p. 286, 287). At the time of the making of this will, the wife of the testator was present (p. 347) and she knew all about it. She knew its terms and conditions and that the business, etc., was left to Frank.

On the 24th day of March, 1921 testator executed a will that under consideration by which he gave to his wife "for and during the term of her natural life a sum ***not exceeding $10,000.00";*** any income in excess of that sum to the son-in-law, Langley J. Burchill, and the grandson, Frank Ulrich, son of Albert Ulrich, who is the Frank J. Ulrich who testified (p. 519), thirty years old and employed in his grandfather's business for 11 or 12 years as an ordinary workman and who was receiving at the time of the death of the grandfather $20.00 a week (p. 521); upon the death of his wife, his interest in the property known as the Mill Proper-

ty in Paterson to the son-in-law, Langley J. Burchill; the moneys and accounts owing to testator in the business in Paterson and Allentown at the time of the wife's decease, with all machinery and fixtures, etc, the grandson, Frank J. Ulrich and the son-in-law, Langley J. Burchill; all moneys on deposit in Allentown to the grandson, Frank Ulrich, and the son-in-law, Burchill, as also moneys deposited in the United States Trust Company of Paterson, after first deducting the sum of $5,000.00 which testator gave to his daughter, Catherine Handwerk; the residue of his estate (practically nil) to his daughters Rosina Burchill and Catherine Handwerk. He made his grandson, Frank J. Ulrich, and his sons-in-law, Langley J. Burchill and Otto Handwerk, executors.

The effect of this later will was not only to substitute the grandson, Frank J. Ulrich, and the son-in-law, Langley J. Burchill, for the son, Frank Ulrich, but also to cut the interest of his wife in the income from the estate. Under the former will the wife was given the ***total*** income. Under the latter will, his widow gets "a sum ***not exceeding*** $10,000.00 per annum." Counsel argue on page 24 of the brief that, in reality, this is not a cutting down of the wife's income. If testator did not mean to cut the wife's income then why did he change the language? If the paragraphs are, in substance, the same, ***which they are not,*** it was not intended by whoever drafted this will that they should be. The purpose of whoever drafted the will was to impose a limitation upon the income which the widow should receive and

what do the words "a sum ***not exceeding*** $10,000.00 per year" mean? Whatever may be the effect of these words in law, it was the intent of whoever drafted this will to put it within the power of the executors of the estate to limit the wife's income ***to less than*** $10,000.00 a year.

This will was drafted and executed in the presence of Michael Dunn, a lawyer of Paterson, who testified (p. 20). Mr. Dunn saw testator four times, February 7th, February 17th, March 21st and March 24th, when the will was executed, (p. 21). The testator was brought to Mr. Dunn's office by the son-in-law, Burchill, (p. 21) on each occasion. On the day of the execution of the will, the son-in-law, Burchill, brought the testator and also took him away (p. 35). The will was put by Mr. Dunn in a sealed envelope and kept in his safe. After the death of the testator, the son-in-law, Burchill, came to Mr. Dunn and informed him that the testator was dead, (Mr. Dunn already knew from the newspapers, p. 39) whereupon Mr. Dunn went to the safe and got the envelope, tore it open and took out the will. Mr. Dunn thinks that this was in the presence of Burchill, (p. 39). Burchill contradicts this. ***His*** story cannot be reconciled with that of Mr. Dunn (567, 629, 630, 633, 634). Mr. Dunn read the will to the family.

While Mr. Dunn had known testator for many years, as everyone in Paterson knew him, (p. 64) he had not before that time represented him. Burchill on the contrary had worked for Mr. Dunn when he was Prosecutor of the Pleas, (p.

608). And yet Burchill would have us believe (p. 608) that, notwithstanding the fact that testator had a lawyer, Mr. Weiss, who was presidinet of the United States Trust Company, and who had drawn several wills for him and who had represented him in other matters and that he had never been represented by Mr. Dunn, it was ***testator*** who suggested that he wanted to go to see the Prosecutor, Mr. Dunn, and not Burchill who suggested Mr. Dunn's name, (pp. 608-609).

And Mr. Dunn, ***in this proceeding,*** represented the proponent of the will, (p. 76) i.e., Burchill. And he showed the most bitter feeling toward the caveator, Frank Ulrich. On page 45 he testified:

> "Q. What gives you the impression that I may have it or a copy of it? A. The smile of your client, Frank. Q. I don't see why you should make that inference? A. It is in keeping with what his father said to me about him. Q. You seem to have a little feeling? A. Not at all, but his father said he was all the time deceiving him."

And there are other incidents which will be referred to in the argument.

THE LAST WILL WAS CONCEALED.

No one knew about the execution of the will now offered for probate except Burchill and ***he*** says that he did not even tell his wife, the daughter of testator, although he was perfectly friendly with her (pp. 626, 627, 628). It is significant that, although he is ***certain*** that he never told

his wife or Mrs. or Mr. Handwerk he is ***not*** so certain that he did not tell Mrs. Albert Ulrich, the mother of Frank J. Ulrich, the grandson of testator, who is a beneficiary with him under the will. Up to the death of testator, all of his family, except the son-in-law, Langley, and including the wife of testator, to whom he had been married for so many years and with whom he was in close communion, believed that the will drawn by Mr. Weiss which expressed the understanding of the family was in force and effect (p. 348). After the death of the testator, Frank Ulrich, the son, and the widow attempted to find the will and could not. Burchill was asked whether there was a will and he said "no." He put his hand up and said "So help me God I do not know whether there is such a will" (p. 232), although at ***that*** time he knew that the will drawn by Mr. Dunn was in Mr. Dunn's safe and he went down and got it. (He ***says*** he did not.) Burchill participated in a search for the will at the home (p. 232) and nothing was said at the time that this will was in Mr. Dunn's safe.

ALTHOUGH MR. DUNN TESTIFIED THAT THE WILL DRAWN BY MR. WEISS WAS DESTROYED IN HIS OFFICE, IT WAS NOT SO DESTROYED

One of the highly significant matters in this case is the testimony of Mr. Dunn positively to the effect that, at the time of the execution of the new will, the will drawn by Mr. Weiss was destroyed in his, Mr. Dunn's presence, and he goes into details of the destruction (pp. 27, 28). Mr.

Dunn does not remember (p. 28) any of the contents of the old will. This was at a time when the caveators did not have possession of the old will and when Mr. Dunn, proponent, and his counsel thought they never would get possession of it. The fact is that the will was ***not*** destroyed either in Mr. Dunn's presence or elsewhere. By some means it came to the possession of Burchill. He ***says*** he found it about two months after testator's death, in testator's safe or as Burchill puts it "in ***our*** safe," (pp. 634, 635) i.e., the safe in the place of business of testator. He says: he did not tell anyone that he had found this will, although he ***might*** have told his wife; he put it in his pocket. "I thought when I got a chance I would look it over thoroughly but I never got a chance to go over it"; he kept it in his pocket for a month or more and never got a chance to read it over thoroughly. In view of the length of the will, this testimony of Burchill (p. 636, 637) is absurd. His wife, Mrs. Burchill, the daughter of testator, took the will out of his pocket without his knowledge (p. 637) and he never knew she took it, (p. 638). It is apparent that he did not know that his wife had taken the will until it was produced by the caveators in court having been handed to them by Mrs. Burchill. He thought, and Mr. Dunn thought, that it could not be produced by caveators. He had gone through the safe before the occasion upon which he found this will. He found the will but not until two months after testator's death (p. 640). This testimony is unbelievable.

There was not only, therefore, a concealment of the existence of the new will by the favored

beneficiary and a denial of its existence after the death of testator but there was a retention by testator of the old will, apparently to him a valuable paper, and there was a concealment of the existence of this old will by the favored beneficiary after he had found it after the death of testator and, believing that the old will was safe, there was a refusal on the part of Mr. Dunn, who drew the new will, to remember ***any*** of the items of the old will and there was the testimony of Mr. Dunn that the old will had been destroyed in his presence, which was refuted by the production of the old will which had been purloined by the daughter of testator from the pocket of her husband, the proponent, and turned over to the caveators. If the old will had in fact been destroyed by testator, it would be potent evidence that testator intended to make a new will and so when we find that the old will was ***not*** destroyed by testator but carefully preserved there is ample support for the conclusion of the Vice-Chancellor expressed in his opinion (p. XIX):

> "After a minute examination of the testimony, I am forced to the conclusion that it was most extraordinary that the testator, in his weakened mental and physical condition, could have refrained from in some way disclosing to his wife, or to some other member of his family, that he had made this new will, if he retained any recollection whatever of it. It seems very probable to me, that the old man never remembered making the last will, and forgot it as soon as it was made."

BURCHELL STOOD IN CONFIDENTIAL RELATIONSHIP TO THE TESTATOR.

The Vice-Ordinary finds (p. XX) that Burchill unquestionably occupied a position of trust and confidence with reference to testator. Counsel commenting upon that statement states:

> "It is respectfully submitted that Mr. Burchill did not occupy a position of trust and confidence. He was an employee in testator's mill and his son-in-law."

He was much more than that. Upon his first having married he went to live with his wife with testator and his wife. This was in 1905 or sixteen years before the death of testator. About a year later the home was changed into a two family house and Burchill and his wife occupied the second floor. And Burchill testified with respect to their relations, as follows, (p. 533):

> "A. Well, I came home in the evening and whatever there was to be done in the house, I did it, no matter what was to be done in the place, I did it. For instance, his tubs would be leaking or his furnace, there was something the matter with his furnace, and I would fix it, and even himself. And even to Mrs. Ulrich, many times when she was not feeling well I would go down to her house. * * * * any time of the night, it didn't make any difference it was the same way. And when Mr. Franz Ulrich, the same. If I thought he didn't feel good I would go down to the drug store or doctor's office, anywhere they wanted me to,

> and then my daughter was always there to go to the stores for them or any little things they wanted done. Q. Before your daughter came? A. I did it myself. If there was anywhere they wanted me to go or anything they wanted me to do I did it for them, and if he had anything to be fixed in the yard or the garden, which he was very fond of, I would help him and I would go in and talk to him on Saturday. I would do the work but he was very active himself and the same with the furnace, he was very active with that. He would go to the furnace at night and look it over, go down and look at it with me and all that. Q. How long did Mr. Ulrich continue to look after the furnace? A. Up to a month before he died. He would always go down himself to look things over but I took the ashes out and tended to the furnace."

He says that he became connected with Ulrich and Company in 1919 at the insistence of testator; that testator kept asking him all the time. Although he was getting $60.00 a week at the time testator asked him to become connected with the business he agreed to go with testator at the salary of $40.00. His wife desired him to do this, (p. 537). And speaking about his position in the business, he said, (p. 537):

> "Q. What was your position down there? A. I was down there as a salesman but after I was there a short time ***I was everything.***"

It is not necessary to go outside of the testimony of Burchill himself to find evidence to support the Vice-Ordinary's conclusion that a situation of trust and confidence existed between testator and Burchill. It was he who intervened, according to his own story, on behalf of testator, to get the daughter-in-law, Mrs. Albert Ulrich, to give a bill of sale of the interest Albert had in the Allentown mill, (p. 583).

And the testimony of the widow, Rosina Ulrich, shows the confidential relationship existing between testator and Burchill. In the language of Mrs. Ulrich, testator and Burchill were "together all the time." They spoke in secret, (p. 347). Burchill was kind, always kind, and willing to do things for testator and his wife (p. 351). He played cards in the evening with testator. Other incidents will be given in the argument. The testimony reeks with proof not only that there was a relationship of trust and confidence between testator and Burchill but that ***that relationship was designedly created by Burchill.*** Although he says that testator induced him to enter the business and that he was getting $60.00 a week and only was to get $40.00 a week from testator, he never told testator that he had been getting $60.00 a week (p. 572, 573). He was ***so*** anxious to get further in testator's confidence that he was afraid to suggest that he should at least be paid the amount that he was then receiving. And see his testimony (pp. 576-577).

He states (p. 576) that he entered the business partly on account of his wife's interest.

If he did not occupy a position of trust and confidence towards testator, how could he protect his wife's interests by being connected with testator's business?

According to Burchill's testimony, testator was perfectly competent of transacting his own business to the time of his death. What reason was there, therefore, for Burchill to go into the business to protect his wife's interests? If he means by the "protection of his wife's interests," the advancement of her interests, there was only one way by which he could do that and that would be at the expense of Frank for he knew, as all knew, that testator had said, time over and again, that the business was to be Frank's and testator had carried that intent out in the will drawn by Mr. Weiss. It was only by changing that intent of testator's that Burchill could advance the interests of his wife and it ***was*** for that purpose, as he himself says, to protect his wife's interests, that he went into the business. He went in with that intent, believing that he could accomplish the destruction of Frank, because of his knowledge of the high temper of both Frank and his father and his ability to play upon that high temper by reason of his position of trust and confidence with his father-in-law, to whom he had ingratiated himself by every means within his power, and he was so certain that he could accomplish that purpose that he was willing to sacrifice, without telling the old gentleman, $20.00 a week and he accomplished his purpose as the proofs show and as the court below has found.

And Crutchlow testifies (p. 263) to testator expressing to him the dependance of testator on Burchill and his reliance on him (pp. 251-252).

And Egg, witness for proponent, says that testator told him (pp. 373, 375) that he needed Burchill. "I am old. I am feeble. I have got to have somebody now that I am all alone."

And Rosalie Gabriel says that testator had told her that Burchill had been brought to the business to protect testator's interest after Albert died (p. 473). And see Mr. Dunn's testimony to the same effect (p. 74). Testator needed someone whom he could ***depend*** upon (p. 74).

Burchill shows his confidential relationship when he says (pp. 558) in speaking of the gasoline incident and his bringing to the attention of testator the fact that gasoline was being paid for not used for the business ***"I was brought down there to look after the old man's interest and I didn't think it was right."***

HOW WELL DID BURCHELL CARRY OUT HIS EXPRESS INTENT TO PROTECT HIS WIFE'S INTERESTS?

He went into the business on account of his "wife's" interests. He comes out, after the death of testator, with a will which gives him, ***not his wife,*** a one-half interest in the business and a one-half interest in the bank accounts, the entire remainder interest in the real estate, 158-168 Ward St., one-half of the excess of the income of the

estate of a sum "not exceeding $10,000", which goes to the widow for life, and an executorship of the estate. And his wife gets a one-half interest in the residue of the estate which, as we understand it, from the schedule printed on page 26 of the brief of counsel for appellant, consists of less than $6,000.00, already eaten up by lawyer's fees.

He ***well*** protected the interests of his wife. His wife's feelings may be imagined from her conduct in taking the old will, the continued existence of which he had concealed, from his pocket surreptitiously and turning it over to the caveators, (pp. 637-638, 639) and, (p. 639):

> "Q. Your wife was present when the will was read? A. She was. Q. She was very angry when she learned the terms of it? A. She was, yes."

ARGUMENT

THE CAVEATORS MAINTAINED BELOW AND MAINTAIN HERE THAT THE WILL WAS THE PRODUCT OF UNDUE INFLUENCE.

THE LAW

Vice-Chancellor Van Fleet in Haydock v. Haydock, 33 N. J. Eq. 494, said with respect to undue influence:

> "No definition of what the law denominates undue influence can be given which will furnish a safe and reliable test for every case. Each case must be decided on its own special facts. All that can be said, in the way of formulating a general rule on this subject, is, that whatever de-

stroys free agency, and constrains the person whose act is brought in judgment, to do what is against his will, and what he would not have done is left to himself, is undue influence, whether the control be exercised by physical force, threats, importunity or any other species of mental or physical coercion. ***The extent or degree of the influence is quite immaterial,*** for the test always is, was the influence ***whether slight or powerful,*** sufficient to destroy free agency, so that the act put in judgment was the result of the domination of the mind of another rather than the expression of the will and mind of the actor."

Turner v. Cheesman, 2 McCart. 243, 265; executors of Moore v. Blauvelt, 2 McCart. 367; Lynch v. Clements, 9 C. E. Gr. 431."

UNDUE INFLUENCE MAY BE ESTABLISHED EITHER BY DIRECT EVIDENCE OR IT MAY BE INFERRED FROM A VARIETY OF CIRCUMSTANCES.

The statement in 40 Cyc. 1155 is amply supported by the authorities. The author states:

> "Where the grounds of objection to the validity of the will are fraud and undue influence the evidence is permitted to take a wide range and it is declared that every fact and circumstance, no matter how little its probative value which throws light on these issues is admissible. The range of inquiry may cover not only the provisions of the will itself and the circumstances

> surrounding its execution, but also the mental condition of the testator, ***the motive and opportunity of others to unduly influence him, his relations with persons benefited by or excluded from the will and the acts and declaration of such persons.*** Although none of these matters standing alone, may be sufficient to establish the issues, yet taken together they may have that effect."

In Fritz. v. Turner, 46 N. J. Eq. 515, the Ordinary at page 518 of his opinion says:

> "Such influence need not be proved directly, it may be established by inference from circumstances attending the preparation and execution of the will."

In Sickes case, 63 N. J. Eq. 233, Reed, Vice-Ordinary, says:

> "It is true that there is no direct testimony that any such threats of removal (which were held to be undue influence) were made at the time the will was established, but undue influence can seldom be proved by direct testimony, for such influences are usually covert and can be proved only by circumstances."

IN THE APPLICATION OF THE LEGAL CONCEPTION OF UNDUE INFLUENCE AS HEREINBEFORE DEFINED TO THE PARTICULAR EVIDENCE SHOWING SUCH INFLUENCE, THE LAW HAS LAID DOWN AN ALL IMPORTANT PRELIMINARY CONSIDERATION, VIZ: THE MENTAL CONDITION OF THE TESTATOR AS

SHOWING SUSCEPTIBILITY TO SUCH INFLUENCE, EVEN IF HE HAD CAPACITY TO MAKE A WILL IF HE WERE NOT UNDULY INFLUENCED.

Barkman v. Richards, 63 N. J. Eq. 211, 213.
Sparks Case, 63 N. J. Eq. 242.

In considering the testimony with respect to testator's physical and mental condition, counsel for appellant have assumed that the purpose was to prove lack of testamentary capacity. In such a case, of course, the important point of time is that of the execution of the will. But where the testimony is offered for the purpose of showing a weakness which makes the testator susceptible to undue influence, it need by no means be confined to the ***exact*** time of the execution of the will.

Testator was attended during his last illness, and over the period of time during which the will was executed, by Dr. Andrew F. McBride, who qualified not only as a general physician but as an expert in mental cases with a large experience (p. 290, 291).

Dr. McBride had known testator for 25 years before his death, and saw him at intervals from the beginning of the year 1921, until his death. He testified that: until the beginning of the year 1921, testator was a remarkably robust man with the exception of trouble with the prostate gland and bladder and, ***up to that*** time, the witness thinks he had a great deal of will power and very good judgment, (p. 292); after the beginning of 1921 testator showed the effects of senility, his

mental faculties were not as good as they had been, in other words, there was a gradual decay, he didn't talk about the things he formerly had, he didn't exhibit to witness the same interest in business he had formerly, and when witness went to the house he would find him dozing off in a chair which he did not do before that time; he did not appear to be the same man and he did not present the same forcibleness as before, in other words he was more apathetic, he didn't talk as much about things and didn't seem to exhibit the same interest as he had before; he had a chronic trouble with the bladder called ***cystitis*** in the beginning of the year 1921 and that condition grew worse until it was the cause of his death; in that disease the urine breaks down the walls and causes poisoning of the bladder; in the beginning, and for a long time, nature will be able to control it but there comes a time when the matter will become so thick that the body itself becomes affected with it and becomes poisoned and septic; this poison is taken by the blood sometimes and goes through the blood system and in fact the blood sometimes becomes overcharged with it and we get other symptoms; a person becomes less active mentally, less vigorous muscularly and there is a gradual breaking down of the system; if this poisoning gets into the circulation it goes through the blood to the brain and poisons the cells of the brain, deteriorates and affects and poisons the functions of the brain and affects memory and judgment, and it only is a question of how far it goes to make a total loss of memory and judgment; poisoning causes a great deal of mental disease; experi-

mentation in the profession has established, and it is well recognized, that a great deal of mental trouble is caused by septic poisoning and death follows as mentioned; in such senility as mentioned the vital forces are broken down, the brain cells deteriorate, the mind is affected by it and is weaker, recollection is not so good, judgment is bad; testator had such senility without regard to the trouble with the prostate gland; testator had both senility and the trouble with the prostate gland. From the beginning of the year 1921, until testator's death the witness saw testator a number of times and conversed with him in his home and treated him for his last illness. The opinion of Dr. McBride as to the testator's mental condition during the time when the will was made is as follows: (p. 296 to 299):

"Q. You have spoken of a change that occurred in the physical and mental condition between the time of the beginning of nineteen hundred and twenty-one down to his death from what it had been previous. I wish you would state to the court just how that change was manifest to you and state as particularly as you can? A. To me, Mr. Ulrich was always a very vigorous, aggressive, robust man, both his physical make up and his mental make up. I noticed about that time that he appeared to be very much less vigorous than he was before. He did not converse with the vigorousness that he formerly had and was rather apathetic and drowsy which, of course, could be accounted for by the conditions I have described before. He didn't seem to take the same interest in business,

he was always very concerned about it but he didn't seem to be near as concerned as he formerly was. He appeared to me as though he was suffering from the effects of senile and septic effects going through his system.

Q. Was that manifested in ordinary talk on current events that you might talk to him of? A. Yes, sir.

Q. It was clearly manifest? A. Yes, sir, to me.

Q. As you would converse about different topics would he understand them as he did before? A. I would not say he didn't understand them but he didn't take the same interest he had before.

Q. How about his excitability? A. He was formerly excitable. Laterly, he didn't seem to get so easily aroused in conversation. Laterly he didn't seem to be so disturbed, he didn't seem to take any interest at all.

Q. How does this senility and this condition of septic poisoning combined together affect the will power of the subject? A. Why it would be weaker than before.

Q. Are they not susceptible to influence more so than they were before? A. A person suffering in that way would be more susceptible than one not.

Q. ***Is it not a well known fact that a person suffering in that way in your experience are apt to take advice easily?*** A. Yes, sir.

Q. State what your experience is generally? A. ***They don't have the same judg-***

ment, they are not able to discriminate as they formerly were, as a person in robust health is. They don't feel the same, they have to have some mental support.

Q. Trifles cause them to be excited where before they would not? A. Yes, sir, they don't have the same mental condition.

Q. ***Are they not on trivial grounds apt to turn against those they think most of?*** A. Yes, sir, often times.

Q. Is that not a marked characteristic? A. Yes, sir. * * * * *

Q. In your judgment, doctor, was Franz Ulrich during this time you have testified to in a mental condition capable of properly carrying on a business transaction?

Mr. McCran—What time?

Mr. Harding—From January to June.

A. There might have been time. ***But I personally think a person suffering the way I found him to be would be practically incapable of doing important work.*** I don't say there might not have been times he would not have been perfectly clear. In my opinion I think he would not have been able to perform any important business.

Q. Most of the time he would not be able to perform any important business? A. That would be my judgment of the case.

Q. Assuming that the capability of making a will means that a man must have a fair understanding of the nature of his property, the different kinds of property, and understand who those are who naturally would be

expected to be the object of his gift and bounty, would you think, he, most of the time during this period was capable of making a will or not having the capacity you have mentioned? A. I would not say so.

Q. You don't want to say that there might not have been times when he might have? A. I wouldn't want to be positive all the time. His condition was such that most of the time he would not have been able to do anything of the kind."

It is perhaps needless to say that the courts, in cases similar to this, have held that the opinion of the physician attending testator is of paramount importance, and controlling over that of ordinary witnesses.

Moore's Exs. v. Blauvelt, 15 N. J. Eq. 367, at p. 371.

Counsel on page 19 of their brief brush aside the testimony of Dr. McBride because they say that Dr. McBride does not testify that testator was ***insane*** on March 24th, 1921 and they cite In re Craft's Estate, 85 N. J. Eq. 125. That was a case where the charge was lack of testamentary capacity and it is of ***this*** charge that the Vice-Ordinary is speaking on page 130 of the report. Here the question is not as to testamentary capacity but as to testator's susceptibility to undue influence. In the Craft case, all three physicians attending Craft were united in their opinion that the testator had mental capacity. In this case ***no physician testifies that testator had mental capaci-***

ty. On the contrary, the attending physician, the only one called, testifies that he does not believe that testator had testamentary capacity, although he will not say that at some time during that period of time he might not have had but he ***does*** say that ***during all that period of time testator was in such a condition as to be peculiarly susceptible to influence of any kind.***

Testimony showing testator's mental condition other than that of Doctor Mc Bride, was given by witnesses as follows:

JOHN COOGAN, a witness who was in the employ of testator from March 1st, 1920, until the death of testator and who remained in the employ of the executors, proponents, until the day of trial, bookkeeper and office manager, (p. 490), was called by proponents and his testimony is in part referred to by counsel for appellant on page 8 on the brief. His direct examination shows that his sympathy was with proponents as well as his interest due to the fact that he remained in their employ. This witness with such sympathies, when under cross-examination as to matters supposed to be favorable to the caveators, said: "I have studiously avoided dates in this case, and occurrences, I have tried to forget." (p. 502.)

Notwithstanding his studious endeavor to forget, when pressed on cross-examination, he testified as follows, (pp. 499 to 503):

"Q. What was the old gentleman's personal habits of dress? A. At first I

thought they were very good for an old man, I thought it was alright, then, but after a while his appearance got a little careless.

Q. In what respect? A. He exposed his person.

Q. In front of you? A. Yes, sir.

Q. Did he go into the stenographer's room in that condition? A. Yes, sir.

Q. Did he do that frequently? A. There are two occasions I recall, it might have happened more.

Q. Did you tell Frank about it? A. No.

Q. You never mentioned it to him. A. No.

Q. Do you remember the occasion when the old man fell down? A. When he was on the floor I seen him.

Q. Not that incident you related but another occasion? A. What do you mean, when?

Q. When he fell down in the office of the mill? A. I remember the occasion he almost fell down, if that is the time you mean.

Q. When was that? A. I can't place the date, but I know he came out of the mill and I saw him.

Q. What happened? A. Well, he stood there and went back like that and his eyes became peculiar like and I thought he was going to fall, and the man he was talking to put his hand out and I went around there to catch him and he grabbed hold of something and steadied himself.

Q. Was there an occasion on which you

thought he became unconscious and you dropped a book to wake him up? A. He sat at his desk and was dozing like he very often did and his color became rather frightening to me and I went over to him and I thought for a minute he probably was dead so I had a book in my hand and I dropped the book and he opened his eyes.

Q. Did you tell Frank about that? A. Yes, sir. * * * *"

The witness then proceeds to say that he, the witness, opened the door for testator because he was afraid that, if he did not, testator would fall into the machinery, he was physically weak. The witness spoke to testator about leaving his trousers open and testator ***did not seem to realize that this was the situation,*** it happened frequently in the presence of the girl stenographers. The conduct of testator with respect thereto was discussed in the office and with Burchill. And again to indicate the position occupied by Burchill in the office, see this witness' testimony that:

"Q. You don't recollect what Mr. Burchill said to you when you told him about this thing? A. No, I don't recollect now, ***Mr. Burchill could handle him better than I could."***

And with respect to what Burchill thought of the condition of the testator, see the testimony of Coogan:

"Q. Did Mr. Burchill say to you not to mind it as the old man was crazy? A. He ***could have said it, I don't doubt it*** but I am not sure."

He then recollects that he told Burchill about

testator going around the mill in the condition described and it is clear, from his testimony, that Burchill said not to mind it because the old man was crazy. The witness studiously refrains from recollecting that this is what was said but the effect of his testimony is clear. The witness also says that testator had a very violent temper.

And he testifies, (p. 507) that during the last three or four months of his life testator talked of going to the poor house, although there was no possible reason for it, and on pages 513 to 515 he says that he remembers an occasion when Frank Ulrich, the son, went to Burchill and said that it was hard for him, Frank, to stand the remarks about his father going to the poor house and that Burchill said:

"'Don't mind him.' I don't know whether he said, he is ***crazy or nutty*** but if he did we didn't take it literally then."

It was a custom of testator to be explosive and to swear at the help and to call people robbers and swindlers.

WILLIAM CRUTCHLOW, an old acquaintance and friend, testified that in November, 1920, and the early part of the year 1921, he noticed a great change in testator mentally; witness could not make him understand an order about a shuttle after trying to explain it to him; testator did not understand about the tension; it was peculiar that he did not understand it because he had always understood it before.

Counsel make much on page 14 of their brief of the fact that this witness, as counsel say,

thought that the occurrence was in November, 1921, at a time after the death of testator. Reference to the testimony on pages 261 and 262 will indicate that the witness was uncertain with respect to date but that he was ***not*** uncertain as to the occasion and that it was shortly before Frank went back the last time (p. 262). And counsel for the appellant in the examination indicated that he accepted the date of January or February, 1921. When the witness said November, he did not mean November, 1921 but November, 1920 (p. 262).

The witness testifies in detail to this occasion, cross-examination on p. 262, and reiterates that testator did not seem to understand what the witness was saying, although he should have understood and the witness on page 263 also testifies to a matter which indicates the position of Burchill in the business. He says, (p. 263):

> "Q. What did you do about it? A. I took it outside. Q. To whom? A. To Mr. Burchill. He said, 'Lang understands all about the business'."

He also testifies (pp. 243, 245) to an occasion when testator was about to go into the office where the girl stenographers were with his clothes disarranged.

Again, to show the influence of Burchill, the testimony of this witness on pages 251, 252 is important. Frank at that time was away from the business and the witness desired to intercede for Frank and get him back. He spoke to Burchill about it and

also to Frank and then went to talk with testator and:

> "Q. What did you say to him? A. I asked him why Frank wasn't there and he said the reason why Frank wasn't there was that Frank had refused to do business. I said, 'Why has he refused to do business?' And he said he had refused to take orders and he also said he has been taking gas and then started to holler and I said, 'Mr. Ulrich, don't get excited. Sit down and let's talk the thing over.' He said he knew these things were the truth ***because Mr. Burchill had told him so and I said that Mr. Burchill was satisfied to have Frank come back and he said, 'Alright, let Frank come back'.***"

MAURICE LAUCHER, (p. 356), testified as follows:

> "Q. You remember going to the mill shortly before he died? A. I was there every two months, sometimes more.
>
> Q. Do you remember seeing him at the mill three or four months before he died? A. I have seen him every three or four months.
>
> Q. Did you notice anything peculiar about him? A. I have found that he was not in a sound state of mind for the last months.
>
> Q. How long before he died? A. I will say the last year."

The witness goes on to explain that testator, at most of the times when he came in, was sitting or sleeping; he saw him with his clothing disarranged;

this was in the presence of Frank and Burchill and, the last time he was there, the testator went down in a faint and he, the witness, helped him in a chair, and:

> "It took quite a while before he knew me and we were old friends, and then he started to talk to me but I couldn't understand. Q. Why not? A. I couldn't understand, it was no language at all."

Burchill came and explained what testator was trying to say. Counsel dispose of this testimony on page 18 of their brief by saying that no time was fixed. A time ***is*** fixed for the witness says that he thought testator was not of a sound state of mind for a year before his death (p. 356). Counsel also criticize this witness because they say that the witness said that Frank and Burchill were both present on the last occasion when Burchill interpreted what testator was trying to say. Reference to the testimony on page 357 will indicate that the witness did ***not*** testify that Frank was present upon this occasion. The witness further testified, (p. 358):

> "Q. Did you ever speak to Mr. Burchill about him being there, about Mr. Ulrich being in the shop? A. We spoke together often.
>
> Q. Did you ever speak to Mr. Burchill in Ulrich't presence about him being in the shop. A. Yes, sir, I often said 'a man like this don't belong here'. I said that in the presence of Mr. Ulrich and he started to cry, I said to Burchill, 'That man should not be here, that man is dead; look at his eyes' and then ***Mr. Ulrich started to cry*** and then we walked out into the outer office."

And also, (p. 358):

> "Q. What was his condition two months before that? A. I always found every time I came again that he gets lower and lower.
>
> Q. Could you talk business to him? A. The last year you couldn't talk business to him, you would talk business but you could never get a clear answer."

Frank Ulrich, the son, caveator, testifies to the change in his father's condition, (p. 107) and says that during the last three weeks that he was at the business in January, 1921, he noticed a complete change and describing that change, he says:

> "A. Well, in that three weeks I made out some checks and handed them to father to sign, I am not positive as to just what amount it was but it was around twenty or twenty-five dollars and he picks up the check and starts to go around the office and says, 'You are robbing me, you are robbing me, you are putting me ***in the poorhouse***' and carried on something awful, after I said, that about this check it is only a small check and he asked me what it was for, he didn't seem to know, he thought the check was considerably larger than it really was.
>
> Q. He didn't seem to have any conception of the matter? A. No, he did not.
>
> Mr. McCran—I object to the conclusion of the witness.
>
> The Court—State what you know.
>
> Q. Did you point the check and ask him to read it and see what it was? A. Yes, but

he didn't seem to know. I told him the check was a small amount and there wasn't anyone who was going to the poorhouse. And afterwards father went home and walking out in the other office, Mr. Coogan and Mr. Burchill was there and he was going on continuously all day ***about going to the poorhouse*** and I said to Mr. Burchill, 'Lang, I can't stand this much longer the way father is going on, he is going on something awful,' and he said, 'what would you think of any man that had the money your father has got and the money he is making and talking that way and carrying on that way,' and I said, 'I would think he was crazy,' and he said, 'So would everybody else think so.'

Q. What had been your father's ability a year or so before that with reference to orders in his business, and with relation to the business in general? A. Father was grown up in that business, he had been a weaver all his life, and a well learned man on reeds and harness, a very well learned man.

Q. Up to this time when you went back had you ever seen on the part of your father anything to indicate his lack of comprehension you have spoken of? A. Yes, during the last when I was there he would urinate on the floor.

Q. My question was if you had ever seen these things before the last three weeks? A. Very rarely.

Q. During the last three weeks what would he do? A. He would have himself

exposed, his trousers open and he would stand right up in his place and urinate so it would run right out of his clothes.

Q. Was he careless or not about his appearance, would he have his clothes not buttoned up? A. Yes, sir.

Q. Was a lady stenographer there at that time? A. Yes, sir.

Q. Was that the subject of remark between you and Mr. Burchill what he did? A. Mr. Burchill knew it, yes.

Q. Was anything said between you and Burchill? A. No, sir, I don't think so.

Q. During the last time when you came back there have you ever heard any customers speak to your father about buying some materials or shuttles or whatever you call them? A. Yes, sir, Mr. Crutchlow and Mr. Flannigan.

Q. During the last three weeks? A. Yes, sir.

Q. Did you notice any change in your father's apparent mental condition with reference to the sale of these shuttles to customers? A. Father, Mr. Harding, was not in condition, he didn't know any more really the difference between a shuttle and a quill or between a reed or a harness, he didn't know after I went back, he didn't know the difference."

HENRY C. CHRISTMAN and ROBERT FORDYCE, (p. 277 and p. 283) both testify as to the incident when testator, sometime in the year 1921, wanted to make a deposit in a name dif-

ferent from his own and their difficulty in explaining to him and making him understand why he could not do it.

EDWARD M. WEISS (p. 287) and HENRY SMITH (p. 360) who had been his legal advisers, both testify to testator's feeble condition of mind and body during a considerable time before his death.

This testimony is sufficiently strong to indicate that testator was not possessed of testamentary capacity at the time of the making of the will and the will should have been denied probate upon this ground, but it is so clear that the will is the product of undue influence, with respect to which this testimony is important, as that no further argument will be made upon the ground of lack of testamentary capacity.

One difficulty with the testimony produced by proponent to offset all this is that it goes too far.

Frank Quinn, who is now employed by the Ulrich Company, of which Burchill is the head, (p. 367) says that the testator was in as good condition just before his death as he ever was. We know that this is not so and the witness gives himself away when he says, (p. 365), referring to testator's criticisms of the way in which the business was conducted, "* * * of course he was old and I overlooked a lot of things."

Giger is another witness, 72 years old, employed by the Ulrich Company, of which Burchill is the

head, and he destroys the entire effect of his testimony by saying that, up to one week and one-half before he left the business, testator was no different than he had ever been. Even Burchill will not contend this.

These witnesses are referred to on page 4 of appellant's brief as is the testimony of the witness, Oscar Egg, who is considerably relied upon by counsel. But this witness testifies, (p. 372) that in April and May when testator was talking with the witness on his back stoop "he kind of collapsed and we took him into his bedroom and laid him on the bed and afterwards he revived again and was very much excited and I left him there he was in bed yet". This collapse of testator was around the time of the execution of the will which was March 24th, 1921. It fits in with the testimony of Dr. Mc Bride as to the condition of testator during all of this period of time.

The extent of the influence of Burchill and the extent to which testator, at that time, depended upon him, clearly showing the confidential relations, is indicated by the witness, Egg, when he testified that testator said (p. 373):

> "A. And he said ***he needed*** Mr. Burchill. * * * * He said, 'I am old, I am feeble, I have ***got to have somebody now*** that I am all alone'."

And this witness also said, (p. 375):

> "A. He said that Burchill helped him in the shop and in the house."

Again referring to the episode when testator collapsed the witness testified:

> "Q. Were you there when he regained consciousness? A. Yes, he got excited then he thought he was going to die.
>
> Q. What did he say? A. He said I give two thousand dollars to this and two thousand dollars to that, and so on.
>
> Q. That was not sensible talk? A. It was not.
>
> Q. It didn't seem to be sensible? A. He was afraid he was going to die, that was my impression. * * * * As far as I remember, he said 'I give two thousand dollars to Rose, I give two thousand dollars to Mr. Burchill and I gave him some liberty bonds.' That is as far as I can recall it."

And yet, notwithstanding all this, the witness says that up to the time of his death, testator was as sound in mind as he ever had been (p. 392). He tells of playing cards with testator and his wife about or after New Years, 1921. This is denied by Mrs. Ulrich, the widow, (p. 352), who says that they stopped playing cards two years before his death. The interest of this witness, and the manner in which his testimony has been prepared, is indicated by what he said on page 392 to the effect that testator had signed checks two days before his death and that Burchill had told him so and, (p. 393):

> "Q. How did Burchill come to tell you that? A. ***He wanted to tell me that he was all right.***
>
> Q. Mr. Burchill wanted to show you that he was all right, hey, I suppose in his right mind? A. Yes, sir.
>
> Q. Did he say that to you? A. No.
>
> Q. What did he say to you? A. That he signed the checks this morning."

Burchill at that time was preparing evidence in his own behalf. He was the one who took the witness in to see testator lying in his bed very sick (p. 393). The witness (p. 374) indicates that Burchill had succeeded in making it a question between the son, Frank, and himself, Burchill. The testimony of this witness clearly shows the relationship of trust and confidence between Burchill and testator and it also shows that, notwithstanding the assertion of the witness that testator was as well shortly before his death as he had ever been, testator was in a feeble condition for a long time prior to his death, both mentally and physically. What was testator talking about when he recovered from his collapse in April or May, 1921 and said "I give two thousand dollars to Rose, I give two thousand dollars to Mr. Burchill and I give him some liberty bonds".

Jacob P. Brown, whose testimony is referred to by counsel for appellant on page 6 of their brief, overdoes the matter when he says (p. 400) that at the end he was as sane as he had always been except "a little more cranky".

Mrs. Margaret Ulrich, the mother of the beneficiary, Frank Ulrich, an interested witness, also goes too far when she testifies, as quoted by counsel in their brief, (p. 7) that up to within three weeks he

was the same man mentally as he was before (p. 412). She immediately qualifies this, however, when she testifies, (p. 412):

"Q. Was he a man down to that time capable of understanding his business? A. Yes, and he could talk on things that had happened for the last forty years.

Q. Up to how long before his death? A. About six or seven months before he died he could talk on anything.

Q. Would you say from your observation of him that until three weeks before he died when he last played cards with you? ***A. He had very little to say then.***"

Mrs. Caroline Barnes was employed by the Ulrich Company, commencing in June 1919, which was after Burchill became connected with the Company, and she remained until October 1920 (p. 420). Counsel rely on her testimony on p. 8 of their brief with respect to a period at least five months before the execution of the will. Her antagonistic attitude toward the caveator, Frank Ulrich, is indicated on p. 432, at which place she says that he showed disrespect toward her. She says that: testator and his son were ***perfectly friendly*** during the time that she was there; both were rather quick-tempered but they got over it quickly; it was like a man and a wife having an argument and then making up (p. 436). She then describes Burchill as a man who was always very pleasant, not explosive, never lost his temper—

"Q. He was always a gentleman? A. Yes, sir.

Q. And very particular about how he treated you? A. Yes, sir.

Q. He was rather a suave gentle sort of man? A. Toward a young lady, yes.

Q. He is very careful how he treats a young lady? A. Yes, sir.

Q. He has got your respect? A. Yes, sir.

Q. Much more than Frank has? A. Yes, sir.

Q. A good deal could be said to Mr. Burchill and he wouldn't take offense. A. No, but he saw he was the least bit excited he wouldn't bother him until he came down.

Q. He was a little careful? A. Yes, sir.

Q. You never saw any exhibition of temper on the part of Burchill while you were there? A. No, sir."

This description of Burchill indicates that he is just the type of man, having the explosive temperaments of the father and son to deal with, the father being in a state approaching senility, who could drive a wedge between the father and the son and he drove it.

Again, on p. 448:

"Q. You say the gentlemanly conduct of Mr. Burchill impressed you so much that that is why you remember it so well? A. Yes, sir.

Q. His conduct in general was quite different from Frank? A. Yes, sir.

Q. Frank was not a gentleman? A. At times he was."

From her testimony, on pp. 451, 452 and 453 it is clear that when she left there was difficulty between herself and Frank on the question of her taking a vacation. Frank protested but she appealed to Burchill. She says she simply told Burchill that she was going for a vacation of two weeks. The clear inference from the testimony is that she did more than this.

The methods of Burchill are also indicated by the testimony of this witness on p. 455:

> "Q. Have you ever seen him on the street? A. Once.
>
> Q. Where? A. In front of the company's office.
>
> Q. Did you talk to him? A. Yes, sir.
>
> Q. What did you talk about? A. ***He asked me how I was getting along and he asked me about my husband and my baby.***"

It is no wonder that Burchill secured this witness and that she was quite willing to give Mr. Pomfret, counsel for Burchill, a statement a month before the trial (p. 455).

This witness was impressed by the suave, fascinating manner of Burchill and it can readily be perceived how he succeeded in turning the father against the son by ***solicitiously,*** from time to time, making remarks with respect to the conduct of the son, which he "did not think was quite right," etc., at the same time protesting that the father and son should be friendly, knowing, when he made the remarks, that the effect

would be as it was for he knew the characteristics of the parties.

The witness Rosalie Gabriel is a young lady, eighteen years old, employed by the Ulrich Company since October 1920, and still employed by that company, at the head of which is Burchill. She testifies that the relations between testator and his son were all right except when they quarreled (p. 465). Her testimony on pp. 468, 469, shows the intervention of Burchill in the disagreements between testator and the son, and also shows disagreements between Burchill and the son of Frank Ulrich, caveator. This witness also indicates the confidential relations existing between testator and Burchill, for she says (p. 472):

> "Q. Did the father ever speak to you about Mr. Burchill? A. Yes, sir; he told me that Mr. Burchill had always been very good to him for the past seventeen or eighteen years in his home. Mr. Burchill had been very kind to him ***and had been brought down into the business by him to protect his interest after the son Albert had died.***"

With respect to the condition of testator up to the time of his death this witness likewise goes too far. She says there was no differnce between his mental condition between the time she first knew him until the time of his death (p. 473). She says (p. 474):

> "Q. About his dress, was he careful about his adress? A. Careful enough.
>
> Q. Did he ever have his clothing disarranged? A. No."

The fact that testator *did* have his clothing disarranged in the presence of the women stenographers can almost be said to be a conceded fact in the case. The witnesses not only for the caveator but for the proponent speak about it, and it was the subject of discussion in the office and Burchill himself admits it, although trying to minimize it (pp. 551, 552). The testimony of Burchill on p. 552 is ridiculous. His feeling toward Frank is also indicated for he injects that Frank, the son, did the same thing and that he, Burchill, had to call his attention to it. That portion of the answer was stricken out but it is indicative of the state of mind of Burchill and he would have us believe that everybody does the same thing.

Frank J. Ulrich, the son of Albert, the beneficiary under the will, is an interested witness, thirty years old. He is personally unfriendly because Frank, the caveator, objected to his drinking (p. 528). Testator knew nothing of the grandson's drinking (p. 529). He testifies to the disagreements between Burchill and Frank (p. 529):

> "Q. You say you didn't know anything about this will? A. It wasn't strange because I heard of the fight he and Burchill had.
>
> Q. You were sticking to Burchill? A. I wasn't sticking to anybody.
>
> Q. You did stick to Burchill? A. I was there and I stuck there because my place was there."

EVIDENCE OF UNDUE INFLUENCE.

Under the circumstances of this case, the burden is upon Burchill to show the absence of undue influence.

Burchill was in a position of trust and confidence. For a period of fifteen years he had ingratiated himself with testator. Testator depended upon him. Testator was enfeebled both mentally and physically. Burchill took testator to Mr. Dunn, who drew the will. Burchill had been employed by Mr. Dunn. Testator had his own lawyer who had always represented him and who had drawn a will only a few months before, but he went to Mr. Dunn who had never represented him to draw the one under attack. No one, not even the widow of testator, his companion for many years, knew of the execution of the will. All supposed that the will drawn by Mr. Weiss was still in force. The existence of the will was denied by Burchill after the death. The old will was found by Burchill's wife in Burchill's pocket several months after the death and by her taken and delivered to the caveators.

We have only here referred to the outstanding facts.

The case comes squarely within Dale v. Dale, 38 N. J. E. 274 in this court, the headnote of which is:

> "Where a mother, mentally enfeebled by reason of disease, and in a position where one of her two sons could exercise an improper influence over her, made a will leav-

ing nearly all her property to this son, the burden is upon him to show that such instrument was executed without the exercise of undue influence by him."

The principle of this case was approved by this court as recently as in re Tutty's Will, 87 N. J. E. 647, and one of the circumstances considered in that case was the fact that as soon as a will had been executed in favor of the proponent there he obtained authority from the testator to get the old wills and at once burned them. However Burchill got possession of the old will in the case at bar, it is a fact that he got possession of it, and, notwithstanding his possession of it and his knowledge that it had not been destroyed, Mr. Dunn, who swears that he is of counsel for the proponent, testified, as the first witness in the case, that the old will had been destroyed in his, Mr. Dunn's, office. The very time that Mr. Dunn was testifying Burchill knew, if his story is to be believed, that he had found the old will in testator's safe two months after the death and that it had ***not*** been destroyed.

In Tutty's case, the testator was eighty-four years old. He left three children. He left the property to one son who was in a position to influence him, and the burden was held to be the son's to show the lack of undue influence.

And the principle of Dale v. Dale was followed by Vice Ordinary Reed in Sickle's case, 63 N. J. E. 233. In that case it was also held that the fact that the testator, while surrounded by the same influences,

expressed his attitude toward the beneficiaries and satisfaction with the will he made are not sufficient to prove the absence of undue influence.

Sickle's case was affirmed in this court in 64 N. J. E. 791 upon the opinion below.

In Claffey v. Ledwith, 56 N. J. E. 333 the Ordinary, McGill, held that the circumstances were sufficiently strong to throw the burden upon the proponent to show that no undue influence was used, and among the circumstances was: "The authority which their daily presence and ministrations to the comfort of the old man gave them over him; the mental enfeeblement of the old man, which made him susceptible to every influence his daughters, who had his confidence, might exert;* * *". And the Ordinary further said:

> "Their force is not negatived by the opinion of the subscribing witnesses, nor by the absence of clandestinity at the execution of the will. Nor is the burden borne by the showing that, at some time during the months covered in the process of will-making, the old father echoed the argument of his daughters, that the respondent's family were extravagent, and would squander his money. It may be that, in his enfeebled state, this argument had been so constantly kept before him as to take possession of him and become irresistible and drive out all other considerations."

When we take into consideration the attitude of Burchill towards Frank, his belief that Frank was

not treating his father right, his belief that he should not leave the business and that it was his duty to remain in the business, etc., the language quoted from Claffey v. Ledwith is apt.

In Caroll v. Hause, 48 N. J. E. 269, the Vice Ordinary, Van Fleet, said:

> "Against a beneficiary thus having a testator under his control, with power to make his will the will of the testator, especially in a case where the testator has made an unnatural and unjust disposition of his property, the law presumes undue influence, and puts upon the beneficiary the burden of showing, affirmatively, that when the testator made his will he did not exercise his power over the testator to his own advantage and to the disadvantage of others having an equal or superior claim upon the bounty of the testator."

In White v. Starr, 47 N. J. E. 244, at p. 261, the Ordinary, McGill, said:

> "It is only in exceptional cases that direct proof of undue influence can be had. The proof of it is, generally, by presumptions raised by circumstances, or, in case fraud is an element of the undue influence, by inference from circumstances, which produces satisfactory conviction."

In Re Tutty's Will, 87 N. J. E. 647 Stevens, Vice Ordinary, said, and his opinion was adopted as that of this court, quoting from Lynch v. Clements, 24 N. J. E. 431.

> "In regard to undue influence the cases are almost infinite in number and variety. Where the party to be benefitted by the will has a controlling agency in procuring its formal execution, it is universally regarded as a very suspicious circumstance and one requiring the fullest explanation. So, where a will is unreasonable in its provisions and inconsistent with the duties of the testator with reference to his property and family, this will of itself imposes upon those claiming under the instrument the necessity of giving some reasonable explanation of the unnatural character of the will. While undue influence embraces fraud, fraud by no means embraces every species of undue influence, since it is quite supposable that one may really exercise a degree of influence over the testator in producing the testamentary act, which upon every just ground is fairly entitled to be considered extreme and unreasonable either in character or degree without its being fraudulent."

Counsel brush aside the allegations of undue influence on p. 30 of their brief by saying that the allegations are "of such an unsubstantial character that it is within the compass of moderate speech to pronounce them ridiculous". Ridiculous as they may be, they resulted in the judgment of the Prerogative Court holding that the will was the product of undue influence and that judgment was reached by Vice Ordinary Lewis, after a careful examination of the testimony, and that judgment, upon the ques-

tion of fact, is entitled to some consideration in this court. Counsel apparently contend that proof of undue influence must be direct. As the courts have so often said it is direct only in very exceptional cases. Usually undue influence is proved by inferences from circumstances and those circumstances which may appear, standing alone, to be ridiculous when taken in conjunction with other circumstances which may, in themselves, likewise be ridiculous standing alone, and with the relations existing between the parties, may convince a trier of fact that undue influence has been exerted and we submit, in this case, that even if the rule of Dale v. Dale does not apply and that the burden is on the caveator to show the exertion of undue influence, the circumstances in this case clearly show it.

A great deal of this evidence has already been adverted to. Further testimony will now be considered. It consists of evidence of conceded facts and circumstances from which undue influence may be inferred and evidence directly showing such influence.

THE INFLUENCE OF BURCHILL IS NATURALLY INFERABLE FROM SEVERAL CONCEDED FACTS AS FOLLOWS:

(a) One conceded fact is that, prior to the advent of Burchill into the employment of testator, there was never any serious difference between testator and his son Frank. Whatever differences there were from time to time were made up and Frank was a substantial beneficiary under the will of July 26th, 1920 drawn by testator's own lawyer.

The undisputed evidence on this subject is as follows:

FRANK ULRICH, testifies that he went into the employment of testator when he was 16 years of age and remained continuously with his father until he first left in November 1920 (p. 83). Frank was 41 years old when his testimony was taken May 22nd, 1922 (p. 78). Frank's relations with his father had been of the best character and there were no serious differences until about the early part of the year 1920, when the trouble arose about the Meisch order (p. 95, etc.).

WILLIAM CRUTCHLOW says that he had always observed the friendly relationship between Frank and his father until the time when Crutchlow found that Frank had left the first time (p. 254).

CATHERINE HANDWERK, a daughter of testator, testified that her father, before Burchill went into the mill, always thought a lot of Frank and Al. (p. 334.)

ROSINA ULRICH, widow of testator, testified that Frank got on well with his father up to the time when Frank went away from the business; (p. 345). Frank was a good boy and wanted to stay in the mill (p. 345); before Frank left, he and his father got along nicely, but Frank didn't want to be obedient to her daughter's husband and after Mr. Burchill went to work in the business testator and Frank would fight and fight (p. 346).

LANGLEY J. BURCHILL himself testifies that he never knew or heard of any trouble between Frank and his father until this trouble arose, after Burchill went into testator's employment, about the Allentown business being in the name of Frank and Albert, "even if you could call that a trouble" (p. 583).

(b) Immediately after Burchill became connected with the testator's business, his influence appears. Although the two sons, Frank and Albert, had started the business at Allentown in 1917 for themselves, and had been assisted by their father with his full approval, ***as soon as Burchill went into testator's business,*** the testator requested Frank to give over the business to testator (p. 585). What possible reason appears why the testator who, for two years, had thus approved of this action of his two sons, ***immediately*** upon Burchill's connection with his business, should ask Frank to transfer the Allentown business to testator? Burchill testifies that he, Burchill, took an active part in bringing about this transfer of the Allentown property to testator (p. 592) thus indicating that he advised with testator and influenced him on his action.

(c) The influence of Burchill appears from the facts connected with the making of the will and in the provisions of the will itself.

1st: In making the will, testator abandoned his former legal advisors, Henry Smith, who had done business for him, and Edward M. Weiss, who had drawn his former wills and chose Mr.

Dunn, who never before had done any legal work whatever for him. The relations between his former counsel remained friendly and no reason appears why he should have abandoned his former counsel unless he was influenced to do so. The connecting link for the relationship between Mr. Dunn and testator apparently was Burchill. The relationship between Mr. Dunn and Burchill is shown by Mr. Dunn.

Mr. Dunn at first testified as follows—(p. 85):

> "Q. Have you ever had any relations with Mr. Burchill ***at all of any kind?*** A. ***Nothing*** more than a friendly acquaintance.
>
> Q. Have you ever done any business for him? A. I don't recall.
>
> Q. Did you ever counsel him in any way? A. I don't recall."

Afterwards, Mr. Dunn says that Burchill had done professional work for him while he was Prosecutor (p. 9). And Burchill admits his connection with Mr. Dunn during the time Mr. Dunn was prosecutor (p. 642).

The fact that a will was prepared by a lawyer chosen by a favored legatee is an important consideration on the question of undue influence.

2nd: The four visits of testator with Burchill at Mr. Dunn's office in the preparation and execution of the will, and the secrecy with which the thing was done, are significant as bearing on the question of Burchill's influence.

When testator made his former wills they were openly discussed by testator and known by all the members the family. The will prepared by Mr. Weiss on July 26th, 1920, was prepared in the presence of testator's wife (p. 286).

The will now offered for probate was not only prepared with remarkable secrecy but so remained until after testator's death.

We have the fact that a testator who formerly had, with entire openness, prepared and made his former wills with the knowlede of his wife and members of his family, makes this will of March 24, 1921, without disclosing a word about it to any one of them.

With all this concealment from other members of testator's family, Burchill alone secretly takes testator in his car to Mr. Dunn's office ***and remains there on four*** different occasions for about one and one-half hours each time. There appears no reason why, on each of these occasions, there was any necessity that Burchill should be the one to take testator to Mr. Dunn's office or why he should always remain there for these long intervals of time.

Although Mr. Dunn and Burchill testify that neither Mr. Dunn nor Burchill had any knowledge that testator intended to make his will prior to his first visit on February 7th, 1921, yet Burchill says, that, after Mr. Dunn and testator talked several minutes about Greenwood Lake and fishing, Mr. Dunn requested ***Burchill to leave the***

room, not a word then having been said between them as to the business to be done. It is difficult to believe that Mr. Dunn would have made this request, unless he previously had known that testator's purpose on that visit was to make a will. This request of Mr. Dunn that Burchill leave the room on the ***first*** visit, clearly refutes the testimony of Burchill that he then had no notion that a will was to be made, ***and his denial of such knowledge is one OF THE MANY circumstances appearing which reflect his guilty influence in the making of the will.***

Another significant circumstance is that it took four visits of an hour or more each, before the will was finally prepared and consummated. No satisfactory reason is given. The will is simple in its character. The questions of ***fact*** which Mr. Dunn states caused the delay merely related to matters which could have been speedily determined. Yet it took ***four*** visits of an hour or more each, to prepare and execute this simple will.

The first visit was February 7th, 1921, immediately after Frank had finally left testator's business, and the will was not executed until March 24th, 1921. The number of visits and length of time consumed in making this simple will, indicates to us that the testator, during those seven weeks, was doubtful about changing his will of July 26th, 1920, and that it took those four visits and that length of time before Burchill could finally induce him to execute the last will.

Several circumstances point to that conclusion, viz: (1) It appears that Mr. Dunn at the ***first*** visit knew that the testator was to make the bequest to Burchill which ***was*** made and the fact that this gift to Burchill was not in the will of 1920 would suggest to Mr. Dunn and Burchill the advisability of Burchill's absence at the time of the preparation of the will. The fact that Burchill was present at these other times without any other apparent reason for it, indicates his belief that his presence was necessary to hold the testator to the making of the will. (b) The fact that the testator ***left*** the will of March 24, 1921, with Mr. Dunn and ***took away*** the will of July 26th, 1920, indicates not only that such time was necessary before Burchill's influence finally accomplished the execution of the will, but also that testator, even after the last will was executed, did not, in his then state of mind, ***clearly realize the effect of his last will or did not intend that it should stand as his last will.***

As the Vice-Ordinary says:

> "It seems very probable to me, that the old man never remembered making the last will, and forgot it as soon as it was made." P. XIX.

Although testator took away with him the will of July 26th, 1920, which Mr. Weiss drew, contrary to that custom he left the last will drawn by Mr. Dunn with Mr. Dunn and took away the will of July 26th, 1920.

Mr. Dunn in his testimony at first, and before the will of July 26th, 1920 was finally produced,

said that after the will of March 24, 1921 had been executed the will of July 26, 1920, which had been submitted to him, ***was destroyed by testator in the presence of Mr. Dunn after his name was torn off.*** (P. 27.)

BUT THE TESTATOR DID NOT DESTROY THE WILL OF JULY 26, 1920.

If testator had capacity to understand the nature and effect of the last will that he had just executed, ***why did he not then and there in Mr. Dunn's presence, destroy the will of July 26, 1920?***

That was the natural thing for a sane man to do. That was what Mr. Dunn said at first had been done. That was the thing that any prudent legal adviser would have advised to be done. Mr. Dunn says that testator left the last will in his possession not permanently until his death, but as Mr. Ulrich told him "to take care of it ***until*** he might call for it." (P. 15, &c.)

It was apparent to Burchill that if the last will were left in Mr. Dunn's office where it would be perfectly secret, testator's wife and daughters would not know of its existence, and so no attempt would be made upon the testator by them to cause him to change it.

That the favored beneficiary retains the will is always an important circumstance. It has an influence in preventing the testator from changing the will and even from remembering that he executed it.

While it is true in this case, that Burchill did not physically have possession of the will, it was left with Mr. Dunn, who now says he is counsel for the proponent, who is Burchill, (p. 76) and with whom Burchill, not the testator, had been connected prior to the time of the making of the will. For the purposes of this case, the possession of Mr. Dunn was the possession of Burchill.

Why did the testator, contrary to his habit, retain this prior will and take it home with him and ***carefully deposit it in his safe*** with his other papers, and leave the last will in the possession of Mr. Dunn to take care of "until he might call for it?" There occurs to us but one answer and that is that this elderly man, stricken physically and mentally, when this last will was made, did not clearly understand the nature or effect of the last will, and that he probably was induced, after considerable time, to reluctantly execute it, but that, while he had been prevailed upon to execute it, he still retained possession of the prior will, believing, with his impaired mind, that it still had some force, or that he preserved the prior will without Burchill's knowledge, and considered the possibility of revoking the last will without Burchill's knowledge.

3rd. Observe the secrecy with which this will was concealed from everybody interested. Burchill himself says that he never told anyone that the will had been made, ***not even to his own wife although he was friendly with her,*** nor to the testator's widow nor Mr. or Mrs. Handwerk, al-

though he was present when the hunt was made for the will in the deposit box in the Trust Company and in the safe at the office (pp. 626, 635).

Burchill was asked by different members of the family after testator's death whether there was a will and he put up his hands and says "So help me God I don't know if there is a will or if there was a will" (p. 232).

Counsel refer on p. 55 of their brief to the fact that Burchill "was not sure that the testator was making a will while at Mr. Dunn's office."

In view of the fact that Burchill went with testator each time to Mr. Dunn's office and the testimony of Mr. Dunn as to how the will was executed his testimony that he asked Burchill to leave the room, and comparing Burchill's testimony on p. 566, with what he said on pp. 612, 613, 619, 623, this pretense, on the part of Burchill, is wholly disingenuous. And Burchill says that he did not know the contents of the will and that he did not know that it was left with Mr. Dunn. And counsel repeat this assertions on p. 56 of their brief.

Burchill does not pretend that testator ever told him not to disclose the fact that the will had been made. Why should Burchill, if he did not know the contents of the will, keep the existence of this will a secret not only from the widow and the Handwerks but particularly from his own wife when their relations were perfectly cordial?

Is not the inference irresistible that he knew the contents of the will and feared lest the influence which he had exerted to procure the will would be removed if the other members of the family should learn of the will and talk to testator about it and cause testator to change it? Such concealment is always regarded as strongly indicative of undue influence.

What happened when the other members of the family, including his own wife, discovered the terms of this will, indicates that his fear as to what would happen if they discovered it before the death of testator was well founded for his own wife, the daughter of the testator, was extremely angry (p. 639) and, indeed, so angry that she purloined the old will from Burchill's pocket and delivered it to the caveators (p. 637). Is there any question but that if the family had known of the execution of this will, the matter would have been talked over with testator and the will would never have stood? Burchill was wise in concealing the existence of the will from the family.

4th: It has been suggested by appellant that the fact that testator had the four visits at Mr. Dunn's office, implies that he had independent advice.

We respectfully submit that the question whether he had such independent advice is immaterial and inconsequential in view of the evidence of undue influence of Burchill and Burchill's wife, who at first aided Burchill believing undoubtedly that she, and not her husband, was to be the favored beneficiary.

This answers the question of counsel for appellant on pp. 65, 66 of their brief, in criticizing the opinion of the Vice Ordinary when they say: "But how could she 'actively encourage' her husband to exercise undue influence and then when he was successful turn against him? They cannot have it both ways." She turned against him ***when*** she found that ***he,*** and not she, was to be favored by the undue influence. Upon this subject, the Vice Chancellor may have been mistaken when he says that the evidence showed that Mrs. Burchill was so affected at the time the will was read that she ran out of the house, partly unclothed, in a frenzy. The answer of Burchill to that question was—"A. I do not know about that. I wasn't there when she went out." He does not tell where he was or why she went out. He had just said a minute before that she was very angry and we ***know*** that she purloined the old will from her husband and gave it to caveators.

The statement of counsel on p. 66—"The estrangement between husband and wife did not arise over this case and it is unnecessary, therefore, to dwell upon it. It is due to other causes" is gratuitous. Burchill himself indicates that there ***was*** an estrangement over this case and there is not a scintilla of evidence in the case to show any estrangement for any other cause.

If Burchill unduly induced testator to make the last will, such influence was not changed or affected by the fact that testator had the opportunity to have Mr. Dunn's advice, whatever the nature of Mr. Dunn's advice may have been.

It is not at all necessary for us to show that Mr. Dunn unduly influenced testator in Burchill's favor. If Burchill did so influence him it is of no consequence that Mr. Dunn did not participate with Burchill in unduly influencing him.

But whether Mr. Dunn intentionally influenced the testator or not, in his testimony he shows an animosity toward Frank on the one hand, and on the other a keen interest and bias in favor of Burchill and, at the time he testified, he was acting as counsel for the proponents with the expectation of being paid for his services for his assistance in the trial of the case before the Orphans Court (pp. 76, 77). His animosity toward Frank, his prior relations with Burchill and his interest as counsel makes his testimony that of an interested witness and not that of a disinterested and unprejudiced witness as counsel for appellant choose to treat him.

We call attention to the following in connection with his testimony: His animosity and anger toward Frank when questioned about the will of July 26th, 1920, which appeared after he had ***sworn*** that it was destroyed (p. 46); his remarkable testimony that, although the will of July 26th, 1920 was submitted to him by testator for the purpose of drafting the last will, he cannot recall any of the provisions of that will.

It will be noted that when Mr. Dunn was being examined on this topic the caveators did not have possession of the will of July 26th, 1920, and counsel was endeavoring to learn from him its

provisions as it had been made only eight months before the last will and those provisions were highly material and important to the issue in this case. This inability to remember ***any*** fact about that will appears in his testimony just before Mrs. Burchill handed the will to counsel for the caveators (pp. 27, 28).

Again, the positive testimony of Mr. Dunn to the effect that the prior will had been torn up by testator and the production of that will in Court by Mrs. Burchill when he gave that testimony seriously affects all of his testimony. His testimony that testator was perfectly sound in mind on each of the four visits is in such serious conflict with the testimony of other disinterested witnesses, that ***his*** testimony cannot be reasonably taken in preference to theirs.

The testimony of Dr. McBride, testator's only attending physician, covering the period of time within which the will was drawn, is that testator was not of capacity to make a will most of the time and that there was only a possibility that he might have been able to do so at certain intervals. Likewise, the testimony of Crutchlow and Laucher, who are disinterested witnesses, to say nothing of that of Frank Ulrich and of Coogan, the latter of whom was deeply interested in favor of the proponents, who testified that testator during the time when the last will was made, was exposing his person in the presence of the female stenographer and so acting generally as that he was commonly called "crazy" by Burchill and others, is absolutely inconsistent with the sound

mental condition of testator as testified to by Mr. Dunn. We can conceive of the possibility of testator making ***one*** short visit to Mr. Dunn and manifesting a condition so entirely different from that which Dr. McBride and the other witnesses always found, but we cannot conceive that the mental condition of testator on four different occasions over an hour each, should have been so entirely different from his condition as described by Dr. McBride and these other witnesses.

The provisions of the will itself compared with the former will of July 26th, 1920, clearly indicates Burchill's influence.

This former will, which was made ***in the presence of testator's wife and prepared by Mr. Weiss*** gave to Burchill ***nothing.***

This will was made 18 months after Burchill went into testator's employ. The alleged kind treatment by Burchill to testator and his help in the business thus existing for 18 months was just as much a ***natural*** cause for making a gift to Burchill in the will of July 26th, 1920, as it was for making such a gift in the will of March 24th, 1921. ***Moreover, the will of 1920 was made long after THE ALLEGED trouble between Frank and testator about the Allentown mill.***

Notwithstanding Burchill's alleged kind offices, the fact is that thestator, when he made the will of 1920 ***in the presence of Mr. Weiss and his wife,*** did not give Burchill a cent.

Eight months after, with no more apparent reasons than he had before, so far as the kind treatment of Burchill is concerned, testator makes Burchill ***his most favored legatee*** by a will drawn by Mr. Dunn, prepared during four visits, with Burchill in an adjoining room part of the time and in the presence of testator and Mr. Dunn part of the time, with the whole transactions concealed from every other interested party. The question arises, why should Burchill be thus favored in this last will prepared by Mr. Dunn, with Burchill in an adjoining room, but be ignored in the will drawn eight months before in the presence of Mr. Weiss and testator's wife? Was it because testator's feeling toward Frank had changed during the eight months? Suppose it had changed, nevertheless the question remains, why, if testator had changed so far as Frank was concerned, ***did he give to Burchill*** this large gift at the sacrifice of testator's wife and his children.

In the former will "the use and income of the ***entire*** estate, real and personal" are given to testator's wife during her life.

In the latter will the only gift to testator's wife is the income of a sum "not exceeding ten thousand dollars."

Counsel for appellant on p. 24 etc. of the brief compare the wills and come to the conclusion that no one was sacrificed except Frank. We have already considered this. They treat the gift to the widow as if it were of an income of $10,000

a year. No such definite income is given. The language is "a sum not exceeding $10,000."

From this language there may be a question whether it is not within the power of the executors to give the widow such sum as they see fit not to exceed $10,000 but at any rate what reason appears why this testator, if of mental capacity and free from influence, should make this great change in the gift to his widow with whom he remained cordial, in two wills made only eight months apart?

Counsel argue that the two gifts are, in substance, the same because they say that the entire income of the estate would not exceed $10,000. per year. If that was in the mind of the testator, why did he not continue the gift of the income of the entire estate? No possible reason can be supposed for the changing of this language except that it was the intent to put it within the power of the executors to give the widow what they pleased not exceeding $10,000.

Not only did the new will change the gift to the widow but she was removed as an executrix and thus prevented from having any control of the management of the estate, which was put in the hands of Burchill and the grandson, who might handle the same so that there would be very little or no income.

Counsel suggest that, in any event, Mrs. Ulrich should not be an executrix because of her age. Perhaps that is so, but it would seem as if this

elderly man who had lived with this elderly lady for so many years and who had made her his executrix of a will which was drawn in her presence, would, before removing her as executrix, say something to her, his companion of years, about it.

With respect to the large gift in the last will to his grandson, that will stands in sharp contrast to the will of 1920 where the grandson is not even named.

There is no apparent reason why testator should make these great changes within this period of eight months with reference to those legatees with whom he had undergone ***no change in feelings*** and the conditions of whom, as the natural object of his bounty, had not changed. ***A careful reading of the will, will show how the interests of the son-in-law are made paramount to the testator's own wife and children.***

After cutting down the gifts to his wife and children from those in the former will, the last will provides:

> All the interest in the real estate of the mill property is given to Burchill ***exclusively.*** All income exceeding $10,000 to Burchill and his grandson.

If it was testator's idea that the income on his estate would not exceed $10,000., as counsel claim here, why did he divide the "excess" income between the grandson and the son-in-law?

Then he gives jointly to his grandson and Burchill, all money and accounts due to testator in the business of Ulrich Co. both in Paterson and in Allentown, together with all machinery, stock and fixtures appertaining thereto and stock and material belonging thereto on the premises No. 821, 823 Madison Avenue, also the automobile truck. Then he gives to his grandson and Burchill all the money on deposit in the Allentown bank. Then he provides that this money shall be a ***distinct and separate gift to them and not to be included as a part of the entire estate on which his wife is to receive her income.***

Here the wife's income is again cut down for the benefit of Burchill. This provision evidently, as appears from its position in the will, was an afterthought, because, in the previous provisions, the gift to testator's wife occurs unqualified by this latter provision.

Then again he gives to his grandson and Burchill the money on deposit in the United States Trust Co. Burchill's paramount interest runs through the will from beginning to end. The making of the grandson a legatee was camouflage to conceal Burchill's influence.

We now come to a remarkable provision, when considered in connection with the testimony of Mr. Dunn and the proponent's theory that Frank was disinherited on account of his harsh treatment of his father.

The provision is as follows:

> "Owing to gifts and donations heretofore made by me to my son, Frank Ulrich, and owing to the fact that he has recently engaged in business in the same line as mine and is now one of my competitors, I have made no additional provision for him in this will."

Can this reasonably be deemed to be the ***natural*** expression of testator under the cirumstances?

The proponent offered testimony indicating that Frank Ulrich had treated his father with great disrespect and that his father claimed that Frank had struck him and that Frank and his father had ended their relationship in violent anger. And yet there is a provision purporting to give the testator's reason for disinheriting his son Frank in which he says nothing about any such difference between them. Moreover, the reasons given are not natural reasons under the evidence in the case. The fact that he had made advancements to Frank is not a sensible reason for disinheriting him because the evidence is undisputed that he had made such advancements to Albert during his life and all the rest of the children, and the fact that he had made such advancements existed when the will of 1920 was drawn, eight months before, wherein he left the entire business to Frank. The further statement that Frank had gone into business for himself and was a competitor was not a good reason because it did not represent the fact (p. 120).

Counsel lay great stress (p. 28) of their brief upon the gifts made to Frank, going to the extent of including in said gifts bonuses, which were given to Frank for his work in the business in 1917-1918, of $2,000. each and a $5,000. item, which was not a bonus at all, but for rent of the Allentown mill (p. 138), but it appears, as above stated, that these gifts were made to all the children, and a complete answer to any contention that they had anything to do with the change is the fact that they all had been made when the will of July 26th, 1920 was executed. And yet this is one of the reasons given in the last will for the change.

The fact that this last will contains a reason, which is not a reason, is of high importance. It discredits the ***present theory of appellant*** that the reason for the change was a quarrel between the father and son. If ***that*** were the reason, and if testator were in such a condition of mind as to be free so that he might express his reason, the will would naturally have contained the ***real*** reason. Testator would have said that it was because of Frank's ill treatment of him that he made no bequest to him instead of referring to gifts and bonuses which had been made before the will of July, 1920, and therefore could afford no reason for making a change and to that which was not a fact, i.e., that Frank had engaged in business in the same line, and was then one of his competitors. This was Burchill's, not testator's, excuse.

In this connection the testimony of Mr. Dunn (pp. 23 to 27) relating to testator's delay in exe-

cuting the will, is significant. According to that testimony testator waited from February 7th, 1921, for a considerable time in order to determine before he executed the will, ***whether Frank might be induced to resume his relations with testator.*** The clear inference from Mr. Dunn's testimony is that testator desired to have Frank return and held off the execution of his will until Frank's return became hopeless, presumably with the intention of letting the old will stand or making similar provisions for Frank in the new will if Frank could be induced to return.

Mr. Dunn says that again, on March 24th, when the last will was executed, testator could do nothing with Frank, meaning that he could not get Frank to return (p. 37).

This testimony of Mr. Dunn and the provision in the will for disinheriting Frank clearly indicate several important facts, viz: first, that testator when he made this will cherished no ill will toward Frank due to the former difference between them; second, that he expected to induce Frank to return and would probably have become reconciled with Frank if he had been left free from Burchill's influences.

And yet counsel for appellant now argue that the reason for the change was the quarrel between father and son, and counsel say (p. 46 of their brief)—"We come now to the most astonishing act on the part of this faithless son." The father apparently thought so little of this son's act upon which counsel puts so much stress that, according to the testimony of Mr. Dunn, ***he wanted him to come back to the business.***

Mr. Dunn testified that testator told him that testator had persuaded Burchill to come to him in the business because he needed him, and that he had to have somebody with him whom he could depend upon (p. 74). If testator made that statement to Mr. Dunn it merely shows the weakness of testator's mind and memory, because the evidence is uncontradicted that the relations between testator and Frank were friendly and that the testator relied upon the business judgment of Frank until after Burchill went there, and Burchill himself testifies that he never knew of any trouble until after he went there (p. 58).

In connection with the indicia of undue influence inferable from the matters hereinbefore stated, we now call attention to the direct evidence of such influence.

This elderly man, afflicted with senility and a chronic disease which poisoned the cells of his brain, and made him peculiarly susceptible to influence, with naturally irascible and irritable temperament aggravated by his afflictions, afforded an easy instrument for his son-in-law to play upon.

Before he was attacked by the last stages of senility combined with poisoned brain cells that dethroned his judgment, he appreciated Frank's business energy and judgment and the real affection that existed between him and Frank, but there came a time when, the ministrations of bathing his body, cutting his toe-nails, etc. counted in his disordered mind for more than anything else and made him an easy victim to the minister of such personal wants and to the suave, flatterer Burchill.

Burchill and Burchill's wife and the other members of testator's family had known, during the life of Albert Ulrich, that it was the fixed purpose of testator to leave his business property to his sons Frank and Albert, and thereby give them a greater portion of the value of his estate than his other children, which was probably not agreeable to Burchill and his wife.

When Albert died, Burchill and his wife undoubtedly thought that they saw their chance to get Burchill connected with the business in place of Albert, so as to promote the interests of the Burchills.

Mrs. Burchill evidently acted with her husband for that purpose, but Burchill eventually succeeded in getting something that Mrs. Burchill did not anticipate; that is to say, he got for ***himself*** so large a gift that it is not at all satisfactory to Mrs. Burchill compared with what she and the others got, hence the present attitude of Mrs. Burchill in the case. Consider Burchill's testimony on that topic:

> "Q. Why did you give up your position at the American Thread Co., where you were getting sixty dollars a week to work for less with Mr. Ulrich? A. Mr. Ulrich thought forty dollars a week was enough.
>
> Q. Did your wife speak to you about it? A. She did and at last she said I had to do it. She said, 'you better give up your job and do it' because the old gentleman was kicking about me not doing it and I said, 'I will go over and consult Frank Ulrich', and I told the old gentleman that, he says, 'all right, you go

over and see him', so I went to see him and he sat there and listened to what I said. I told him his father wanted me to come down to work and I said before I went down I wanted to make sure it was agreeable to him. He said it was alright and I went down there and started in to work for him. I never went back to New York. My wife said I better stop right now, and in the evening I had to send a telegram to New York saying I couldn't be there."

Again on cross examination he testifies as follows:

"Q. Did you leave that position against your will? A. Kind of, yes, I did.

Q. You say kind of? A. Yes, sir.

Q. What induced you to leave that position? A. Franz Ulrich asked me to come down and work for him.

Q. Did anything else or any other person induce you to leave that position and come to work for him? A. My wife also."

And then follows his testimony to the effect that he took $40 a week instead of $60, which he had been getting, without telling testator that he had been getting $60 and that he went in the business:

"Q. You just kept still because of thinking what he might do? A. At the same time I always had in mind my wife's interests.

Q. What was your wife's interests? A. What was her interest?

Q. Yes, that you kept in mind? A. ***What she would receive some day from her father.***

Q. Why do you say that you had that in mind when the proposition was made to you by your father-in-law to go to work for him? You wouldn't let that interest of your wife influence you toward going to him or toward making a bargain with him? A. I didn't make any bargain.

"Q. I want you to tell us what you mean by that, how were her interests involved in the subject? A. Well, for instance, if I said no I will not come with you, I am going to stay where I am in New York, he might have said to me well then get out of here and find rooms for yourself.

Q. How would that affect your wife's interests? A. She would also have left with me, left his home and left him and the old lady alone there ***and I put myself in his position if I had a daughter and son-in-law who should leave me like that I would do something else at the time of my death."***

"Q. And you kept back that fact that you didn't want to go for the reasons you have now spoken of? A. Yes, sir.

Q. That was on account of your wife's interests? A. It was partly that, yes, sir.

Q. Partly on account of your wife's interests? A. Yes, sir.

Q. She had importuned you to go? A. Yes, sir.

(From testimony pp. 536 to 576).

Evidently Burchill's motive to make this sacrifice was strong. The only apparent motive was that he would gain a future advantage greater than this present sacrifice, and the only advantage that he would so gain apparent to him was by gift under testator's will.

With this motive in view, many of Burchill's secret operations upon the testator's mind to accomplish his purpose, must be presumed, but the course of his operations are clear from the testimony.

(a) The very first thing in the nature of a difference between Frank and testator disclosed by the proponents' witnesses was about the Allentown mill being in the name of Frank and Albert.

Burchill himself says that is the first thing that you could call in the nature of a difference that arose (p. 583).

Burchill very shortly after he entered the business in April 1919 (p. 94) was closely connected with this difference for he acted as agent for the testator in negotiating for the transfer of Albert's interest (p. 583).

Frank testifies that there was no difference between himself and testator on this question, but that he immediately acquiesced in his father's request (p. 89). Testator apparently had no serious feeling about that matter because this matter arose in 1919 (p. 89) and the will, giving the business to Frank, was made July 26th, 1920.

It is remarkable that, although the Allentown business had been conducted in the name of Frank and Albert for several years with perfect harmony between testator and his sons before Burchill went into the business, whatever difference or change there was, arose very shortly after Burchill's coming.

This incident is ignored by counsel for appellant on p. 30, etc., of their brief where they purport to consider the allegations of undue influence which they call "ridiculous".

(b) The next touch of Burchill revealed by direct testimony, relates to the order of the Miesch Manufacturing Company, and occurred in the early part of the year 1920.

In order to appreciate the insidious character of Burchill's action and how it was calculated to influence testator against Frank, the following facts should be considered: the Bethlehem Ribbon Company was then an old and valued customer of testator; the Miesch Manufacturing Company was not a desirable customer because it had had trouble with testator about a bill.

At the time testator's business was overcrowded with work and it became a question whether work ordered by the Bethlehem Ribbon Co. should be refused and that of the Miesch Co. accepted. Frank, under the cicrumstances, refused to take the order of the Miesch Co.

Frank's testimony on this topic is as follows:

"A. One night I went over to see my mother and my father was sitting there, they were both sitting in the kitchen and I sat down and started to talk to my mother and father. Mother excused herself to go to the bathroom and father was talking and all of a sudden he got very violent and accused me of not taking all the orders from his customers. He said, 'there is the ***Bethlehem Ribbon Co.*** who have been customers for years and you told them you won't take any business from them.' I said, 'Father, who told you that, it is not so.' I says, 'Father who told you that, and he said ***'Lang.'*** I said 'I never did that, it wasn't them that asked for it, it was the Miesch Manufacturing Company,' and we were so very busy at the time and short of help and the harness foreman had left us and we only had what you might call a substitute and these were very small harness and quite complicated and I figured for the best of the business not to take them.

Q. Did you explain that fact to your father? A. Yes, sir, I explained it to him." (P. 95 to 97.)

"Q. After your father had told you as stated about refusing the order of the Bethlehem Ribbon Company but not the Miesch, did you speak to Burchill about that? A. I did.

Q. What did you say? A. I told him I thought it was entirely wrong for him to tell father such lies about the thing when he knows it wasn't so. When I said that to him he turned around and walked away and never said anything back to me.

Q. Did you tell him your father had told you what he, Burchill, had told your father about this matter? A. Yes, sir, I told him he told father I refused an order from the Bethlehem Ribbon Company and it was not so, ***but Mr. Burchill had told father it was the Bethlehem Ribbon Company."***

William Crutchlow testified that: after he learned that Frank was away, he talked with Burchill about it and Burchill told the witness that testator was mad because Frank had refused to take an order from the ***Bethlehem Ribbon Company;*** Burchill had told the testator about it; Burchill also told the witness that he, Burchill, thought Frank was wrong about not taking the ***Bethlehem Ribbon Company*** order (p. 274).

If this testimony is true, Burchill deliberately told testator a falsehood by making use of the fact that the Meisch order had not been accepted and telling testator that it was the Bethlehem Co. order. The prejudicial effect of such a falsehood upon testator's mind is apparent.

In Zelozaskie v. Mason, 64 N. J. E. 327, Chancellor Magee as Ordinary, at page 330 says: "Undoubtedly a knowingly false representation of facts to one who proposes to make a testamentary disposi-

tion of property, intending to influence and actually influencing his testamentary act, made by one who seeks to obtain an advantage therefrom, may be admitted to be an exertion of an influence that is undue, the will of the deceased being deemed to be dominated, not by excessive persuasion or threats or force, but by fraud."

Counsel make little of this incident (p. 31 of their brief). They consider it apparently of no importance because after the explanation was made by Frank, the father became himself. It is, to a great extent, unimportant whether that particular incident had an effect upon the testator's mind or not. If it be the fact, as testified to by Frank and by the witness Crutchlow, that Burchill told the father that the order refused was that of the Bethlehem Ribbon Company, a valued customer, when, in fact, it was the order of Meisch Manufacturing Company, the motive of Burchill could only be to arouse testator against Frank, and it shows that Burchill was at that time attempting to influence testator against Frank. Counsel indicate that Burchill says that he did not tell testator that it was the Bethlehem Ribbon Co. order which was refused. If he did not, how did testator get in his mind that it was the order of the Bethlehem Ribbon Company? When testator was made to understand that it was the order of the Meisch Manufacturing Company which was refused, and not that of the Bethlehem Ribbon Company, he was content. If he, therefore, had assumed in the beginning that it was the order of the Meisch Manufacturing Company he would have said nothing about it. The fact is that Burchill told testator

hoping to injure Frank and not believing that testator would repeat it to Frank.

There is a difference between the direct testimony of Burchill and his cross examination on this subject. On direct he said that he told testator that Frank had refused to take the Miesch order but that it was done on account of business conditions and lack of help. Then Burchill says that "he (Frank) mentioned it and asked me if I had told his father about turning down the order and I said what order? he said the Meisch order and I said, certainly we couldn't do it" (p. 555).

Burchill is then asked by counsel for proponents whether there was any trouble about the Meisch order and he answered "not that I know of, I never heard of them having any words about it" (p. 556).

Aside from the improbability of Burchill's statement that Frank should ask him whether Burchill had told testator about refusing this order and that Burchill should have remembered the circumstance if it was of no importance, Burchill's statement is unreasonable in view of the fact that testator was, in fact, greatly enraged because, as testator said to both Frank and Crutchlow, ***Burchill*** had told testator that Frank had refused to take the Bethlehem Ribbon Co. order. How can this conceded anger of testator be accounted for, if this testimony of Burchill is true that no trouble was connected with this incident either between testator, Frank or Burchill?

This direct testimony of Burchill was given on the hearing in October, 1922.

Burchill was then, several months later, cross examined. On his cross examination he contradicts his testimony given on his direct that the Meisch order was not the cause of any trouble. When asked to state the principal causes of trouble between testator and Frank he gives the Meisch order as one of the principal causes of trouble. Asked as to this he says, "There might have been minor things and then there was the incident there one time when Frank mentioned to him the Meisch order."

> "Q. The Allentown and Meisch things were ***the important things*** and everything else was minor so far as trouble between them was concerned? A. Then of course when he left.
>
> Q. Up to the time he left? A. That is the best of my recollection (p. 601)."

(c) The next important activity of Burchill affecting the relations between Frank and the testator was about the gasoline. It should be observed that there is no proof that Frank or his son Melvin in fact improperly used any gasoline and both Frank and Melvin deny any impropriety with respect to it. (p. 97, p. 307). The statement or suggestion therefore of such fact by Burchill was false and calculated to prejudice testator against his son and grandson.

Frank testified that after the trouble concerning the Meisch order, which occurred in the early part

of 1920, things went smoothly until about September, 1920 (p. 97).

Frank says that his father complained about the gasoline bills being too large and that when he asked his father what the trouble was the father said: "Your boy has got the car out every night using the gasoline". Frank said that his boy did not take the car out; he had only had it out twice and that was with testator's permission and he asked his father who had told him so, and his father said that Burchill had told him, and Frank says that he could not seem to satisfy his father on the subject of the gasoline, and his father changed from the Triangle Service Station to what was called the Oil Store, Lendrim's (pp. 97, 98).

Then, in October 1920, Melvin told Frank that testator had had a conversation with him about the gasoline and as a result of that Frank saw testator at his home (p. 47) and told his father that Melvin was not a bad boy and should not be accused of taking the car and the gasoline, and Frank again asked his father who it was who told him about it, and his father said it was Burchill and "Yes, Lang has a right to tell me, he is in the family". (pp. 99, 100).

The testimony of Crutchlow as to the gasoline is to the effect that Burchill, in the conversation with Crutchlow about Frank's being away, stated that testator was mad about gasoline being taken from the station either by Frank or the boy and that the firm was paying for it, and ***that Burchill*** told witness that ***he, Burchill, had told testator about it*** and that ***Burchill told the witness that he, Burchill, thought that Frank was to blame about the gasoline.***

Frank Ulrich testifies that after he had heard about the gasoline he spoke to Burchill about it and asked Burchill what was the trouble about gasoline and told him that if there was any trouble there he ought to come to ***him*** about it, and that Burchill replied "If you know what I know about the gasoline you would make a holler too." He told Burchill that he, Burchill, told the father about it and the only reply was that if "Frank knew what he, Burchill, knew about the gasoline." Burchill did not deny that he had told the father (pp. 234, 235).

Melvin Ulrich testified that his grandfather and himself and his father got along very well together until after Burchill came.

With respect to the gasoline incident he says that October, 1920, his grandfather accused him of taking the machine and using too much gasoline and he told the grandfather that he was not using the machine and he asked the grandfather who had told him that he had, and the grandfather said that Burchill had told him. Melvin denies that he ever used the machine without permission, and he says, that he never used any gas except by permission. At the time when the grandfather ordered the purchase of gasoline to be changed from one place to the other, Burchill was in the outer office. The doors were open and the grandfather could hear what was said and what Burchill said to Melvin, after Melvin had left the grandfather, that there was too much gasoline being used and that he, Melvin, knew that he was using the car. "I denied this" and Burchill replied "Well, if you are not satisfied with the job you can quit."

Melvin went to the grandfather's house that night and tried to convince him that he had not been using the gasoline and while he was so doing Burchill came downstairs to the grandfather's apartments, and when Melvin said that he had not been using the gasoline Burchill injected "You are the one and you know it." After Burchill came in the grandfather would not listen to Melvin and finally said: "You can quit and get out." He departed leaving Burchill and the grandfather together (p. 307).

Burchill on his cross examination shows that his conduct about the gasoline was reprehensible and for the purpose of influencing the testator against his son and grandson.

He says that up to the time of the gasoline incident in September, 1920, his relations with Frank were cordial. Frank's long service with his father before Burchill went there caused Burchill to confer with either Frank or testator before Burchill took any independent action. Burchill himself says that if there was anything wrong with reference to the business, Burchill, when first employed, would speak about it first to Frank or the testator (p. 595.) Nevertheless, this man pretending to have such friendly feelings to his wife's brother and his son, discovers on a gasoline bill some initials that appear to him to have some irregularity, and, instead of speaking to Frank or Melvin about it, and making an investigation, he secretly takes the matter to testator, and takes the attitude to testator that Frank and Melvin are responsible for an improper charge, when the evidence is that Burchill himself

ws guilty of secretly using the gasoline and having testator paying for it. Notice that Burchill does not deny Melvin's testimony that Burchill himself took the gasoline.

On this matter about gasoline Burchill condemns himself by his own testimony as follows: On his direct testimony, he says:

"Q. Did you speak to the father further, in reference to these bills? A. I believe I did.

Q. What did you tell the father? A. I told him that these were bills coming in, delivery slips with other people's initials on them and I didn't think it was right for us to pay for gasoline when someone else was using it and the outcome of that was that they changed the gasoline station over to the Oil Store.

Q. Did you mention Melvin to the father? A. I did.

Q. In addition to these slips coming in have you seen the boy using the car? A. I had on many occasions. He always drove his father's car.

Q. The fact is he was using the car? A. There was no question about him driving the car. The question was did we use the gasoline but if someone else was using the gasoline for which these bills were sent in I didn't think it was right. ***I was brought down there to look after the old man's interest and I didn't think it was right***" (pp. 557, 558).

Burchill continues to say that he discovered that there was gasoline bills which he thought had been contracted by or through Melvin and

"Q. You thought that wasn't right? A. Yes, sir.

Q. And you told him about it? A. I don't know. I believe I did.

Q. You told him about it, didn't you? A. Yes, sir.

Q. You thought it was your duty to tell him about it? A. Yes, sir.

Q. As soon as you found it out you thought it was your duty to tell him about it? A. Yes, sir."

He then says that he did not talk to anyone else about it, although his relations with Frank were friendly:

"Q. Your relations were friendly with your brother in law at that time when you discovered something that indicated to you that something wasn't right with the son Melvin. Why didn't you go to the father and take the matter up with the father about the conduct of his son instead of taking that in to your father-in-law? Tell me why you didn't do that? A. ***I didn't always go to Frank Ulrich. It was either one of them.***

Q. You didn't want to do anything to incite the anger of the grandfather against this son? A. No.

Q. Or any trouble between father and son? A. No, sir.

Q. Why didn't you go directly to the father? He was a friend to you and find out about this son, find out about this matter instead of taking it up with the testator? A. ***I suppose at the time he was the first one I came in contact with and I told him.***

Q. That is the only reason you can give, is it? A. I guess so, yes."

He then testifies that he did not consider the gasoline incident as serious although, as the result of it, Frank left the business and Melvin was discharged. (pp. 596, 600.)

In the face of this testimony from Burchill how can it be said, as counsel for appellant intimate on p. 36 of the brief, that the father opened all the mail or knew all about it without being told? Counsel quoted in full ***some*** of the testimony of Burchill (p. 341) not all of it.

The widow, Rosina Ulrich, testifies that she heard Burchill talking to her husband about Frank. She was in bed and she heard Burchill tell her husband that Frank used too much gasoline and that the boy used too much gasoline. She tried to intervene and told them to stop talking (p. 346).

(c) About the time of the gasoline dispute Frank heard that testator had been talking about him to other people. Frank spoke to testator about this in the presence of Burchill. Burchill's interest and attitude in the matter is shown by Frank's testimony to the effect that when he spoke to his father in the presence of Burchill about his father having

made remarks about him in Sell's saloon, Burchill immediately left and after a while came back and said that he had been up to see the person whom Frank had told his father had given him the information and that that person had said that Frank had lied (p. 101).

(d) The final action of Burchill which caused the final severance of the relations between Frank and his father related to the mailing of the pencil.

Here again Burchill seized upon a trivial matter to make trouble.

Burchill had no authority over Melvin's work but started the trouble in the following way as testified to by Melvin:

"Q. What happened then? A. I had the orders one night and as I was wrapping stuff to go to the Post Office as shipping clerk, my father ordered me to send a little Eversharp pencil, to send it to the Eversharp people to be fixed, and father gave me orders that it was to be shipped with the other stuff that night, and Mr. Burchill came in and he said, take them parcels, that parcel post and letter to the driver and have him take them to the Post Office, and I said: 'My father said he wanted me to send his here', I told him my father has given me orders to send it with the letters and I thought it ought to go that way. He wouldn't stand for it and finally he got mad and walked out and he knew at the same time that the driver was delivering par-

cels to Kauffman Brothers and he walked out and walked home. He wouldn't even ride home as he usually did, but he walked up.

Q. Your father was sending off a pencil to some one and he asked you to wait and take this pencil with you? A. Yes, sir.

Q. How long did this require you to wait? A. Not more than ten minutes.

Q. Was there any need to rush the stuff up to be mailed as you saw it? A. No, sir.

Q. Then Mr. Burchill came in and said this to you and you said your father wanted you to wait until you put the pencil in? A. Yes, sir.

Q. Then what happened after that? A. I walked up to my father and told him the situation, and he said: 'You go tell it to your grandfather and he will fix it alright,' so I walked over.

Q. Where was it you walked over to see your grandfather? A. Over to his house. I explained the situation and he said Mr. Burchill told him when he came in all about it, and said that is a lot of lies.

Q. Are you telling what your grandfather said to you? A. I told him the situation about the pencil and what Mr. Burchill had said and what I said. He said, 'That is a lot of lies. Mr. Burchill was up here before he went up stairs'.

Q. What did he say? A. Well, he didn't exactly say—

Q. Didn't he say it was a lie? A. He said that I lied.

Q. Then what took place? A. Mr. Burchill came running down and he said you are telling a lot of lies, and I said, there is the driver and the bookkeeper and my cousin Frank Ulrich there to prove it, and he said: 'You are telling a lot of lies' and I said to my grandfather, 'Who do I have to take orders from'.

Q. And what did your grandfather say? A. He stood up and patted himself on the chest and said, 'I am the boss,' and I said, 'I came down here with the understanding that you was the boss'.

Q. Then he patted himself on the chest and said, I am the boss? A. Yes, sir, and then Mr. Burchill looked at him and said, 'Who did you say was the boss' and my grandfather looked at him and sat down and said, 'Mr. Burchill was the boss'.

Q. What did Burchill then say to you? A. Mr. Burchill said I was telling a bunch of lies and that I wasn't telling the truth.

Q. Then what happened? A. I said I wouldn't work down there with Mr. Burchill as the boss, and he said you can get out then if you won't work with him as boss, and I took my hat and went home.

Q. Did you tell your father of this instance? A. Yes, sir.

Q. Mr. Burchill, when you first in was upstairs and he didn't come in until your grandfather struck his hand on his chest and said, 'I am the boss'.

Mr. McCran—He didn't say that at all.

Q. Where did you say Mr. Burchill came from? Where did you say he came from so far as you know? A. Upstairs.

Q. Could you hear him? A. I could hear him running through from the kitchen.

Q. He came in anyway? A. Yes, sir." (Pp. 313, 315.)

(e) A sidelight is thrown upon the influence that was brought to bear upon testator by the testimony of testator's daughter, Mrs. Handwerk, which shows that Mrs. Burchill evidently gave aid to her husband's operations until she found, after the will was read, that he had succeeded for himself and to her disadvantage far beyond her expectations and desires.

Mrs. Handwerk's testimony is as follows:

"Q. Did you hear a conversation between your father and Mrs. Burchill? A. Yes, sir.

Q. When was it? A. A couple of months before he died.

Q. How long? A. A couple of months.

Q. Where was that conversation you heard? A. In my mother's kitchen.

Q. Will you state what that conversation was? A. Father came in and she says to father, 'Father, the went to mother and Kate wants to throw us out', and he says he would fix it so he could throw them all out.

Q. Was anything said about Mr. Burchill? A. About Mr. Burchill?

Q. Yes? A. She meant that they wanted to throw Burchill out.

Mr. McCran—I object to what she meant, and ask that it be stricken out.

The Court—Strike it out.

Q. What did she say? A. That is what she said, she said that they wanted to throw them out.

Q. Who did you mean by them? A. My father said he would fix it so Mr. Burchill could throw us all out.

Q. You heard that, did you? A. Yes, sir.

Q. Where were you when you heard it? A. In my bedroom window when I heard the loud talking.

Q. Did you say anything? A. I said, 'Don't say anything about mother, Rose'.

Q. Why did you say that? A. When she said that to father.

Q. The question is why did you bring your mother's name in, was anything said before that in which she had reference to her mother? A. No, she mentioned no names, but she said that 'all of us were' and I said, do not say anything about mother.

Q. Was your mother's name mentioned by Rose to the father? A. We all were." (Pp. 337, 338.)

In the face of this testimony it can hardly be said, as counsel contend on p. 65 of the brief that the statement of the Vice Ordinary that Burchill was actually encouraged by his wife, has not "a single word of testimony" to support it.

(f) Burchill's testimony that he went with testator four different times to Mr. Dunn's office sitting there about one and one half hours on each occasion when the will was prepared and made, and was called in once to give information as to the middle name of testator's grandson and once to give some other information and his claim that he did not even suspect that testator was drawing his will until after it was drawn when testator was walking down the stairs, is an unreasonable and transparently false story. Even Mr. Dunn says that he and testator, while the will was being drafted, may have asked Burchill for information in some matters in respect to which testator was uncertain, and that he did that by calling Burchill in the room and after getting through asking the question and getting the information telling him to go out (p. 69).

Can it be believed that if this was done that Burchill would not suspect that a will was in course of preparation?

With all the confidence which Burchill claims existed in business and other matters between them, why should testator have thus sedulously kept from Burchill that he was making this will during the four occasions covering a period from February 7th to March 24th, until just the very minute when they were walking down stairs after the execution?

It is utterly unreasonable and absurd under the conceded facts, we submit, to suppose that Burchill, who knew that testator had had his will drawn by Mr. Weiss, did not know, or at least suspect, that the will was the subject transacted at Mr. Dunn's office.

We ask the Court to read the testimony of Burchill pp. 608 to 630 with respect to the incident of the execution of the will, the trips to Mr. Dunn's office, the knowledge of Burchill, etc., and we submit that it is wholly unreasonable.

Indeed, to find proof of undue influence, it is only necessary to consider the testimony of Burchill himself.

(g) Burchill's finding of the will of 1920 after testator's death, his keeping it concealed, and his wife's finding it in his pocket and delivery of it to counsel for the caveators throws another side light on the case. See his cross examination on that topic (pp. 635, 637).

FURTHER COMMENTS UPON THE TESTIMONY OF BURCHILL AND THE WEIGHT TO BE PUT UPON IT.

While Burchill flatly contradicts Frank Ulrich and Melvin Ulrich in many particulars he also contradicts the testimony of Mr. Rosina Ulrich, the widow of testator (p. 570). He contradicts her with respect to her hearing Burchill and testator talking against Frank and also her testimony about testator and Burchill going into the yard and talking secretly together (p. 605). It is hard to say that this elderly lady prejured herself. He contradicts the testimony of Crutchlow, a disinterested witness, to the effect that Burchill told him that Frank had left because he had refused to take the order of the Bethlehem Ribbon Company (p. 570). He contradicts too

much. He does not deny that portion of the testimony of Crutchlow to the effect that he had told Crutchlow that he had informed testator about Frank refusing to take the order and that Frank was to blame both about refusing to take the order and about the gasoline, although he now says that, with respect to the refusal to take the order, the conduct of Frank was correct.

He is shown to be incorrect in his testimony in the matter of the bill of sale from the estate of Albert Ulrich for the Allentown property by the instrument itself. It was testified by Frank that the Allentown business was owned by himself and his brother and that after his brother's death he purchased his half interest from his brother's widow, Margaret Ulrich, but Margaret Ulrich, the widow, and the mother of Frank J. Ulrich, the grandson, who shares with Burchill in the estate and Burchill testifies that it was the father who purchased this one half interest from Margaret Ulrich. But the bill of sale shows that it was drawn to Frank. They now say that it should have been "Franz".

A reading of the bill of sale (Ex. C-7) shows that it was intended as a conveyance of a one-half interest to ***Frank*** and ***not*** to the father. It recites that it is in consideration of $2600.00 paid by ***Frank Ulrich*** and that it conveys a one-half interest that Albert W. Ulrich had and owned in the Allentown business, which had been conducted by said Albert W. Ulrich and the said Frank Ulrich. This could not mean anything else than that grantee in the bill of sale was the person who had been theretofore a half owner of the

business. It is also recited that the Frank and Albert W. referred to were brothers and that they conducted the business at Allentown. The money was paid by a check drawn on the Allentown account by Frank Ulrich. The proponents are in possession of all checks signed by Franz Ulrich and also the original checks drawn on the Allentown bank signed by Frank.

Burchill testifies concerning the bill of sale that the testator told him to go over and see Mrs. Albert Ulrich and get a bill of sale from her or at least advise her or tell her that there was $2600.00 in the Allentown bank and he wanted her to sign her part over to the testator and that in return he would give her the $2600.00 and that he went over to see Mrs. Albert Ulrich and told her this and that the bill of sale was executed in pursuance of those instructions, (p. 553-554).

This testimony is false. It was given when Burchill was unfamiliar with the actual contents of the bill of sale in question.

This testimony was with respect to an important phase of the case, the incident of the Allentown business being relied upon by counsel, (p. 39 of their brief).

Not only is the testimony of Burchill and Margaret Ulrich with respect to the matter of the turning over of the one-half interest of Albert Ulrich discredited by the written document but the fact that not only Burchill but

Margaret Ulrich would invent testimony of this kind, when they thought it was safe to do so, indicates how far they will go to sustain their own interests. The testimony of Burchill and Margaret Ulrich is discredited and it is demonstrated that the story of Frank Ulrich (pp. 88, 89) accurately represents what took place.

Notwithstanding the fact that the documents refute the claim of Burchill and Margaret Ulrich, counsel still insist that they are correct, (p. 41). They refer to a check sent in November, 1920 by the father to Frank for the bill of sale which he signed (Ex. 1, p. 655). The fact is that this check was never cashed. It was returned to the father and the signature torn off, (p. 657). And although the bill of sale was in May, 1920, the check was not sent until November, 1920. Why? Undoubtedly at the suggestion of Burchill so as to make it appear that the father had paid Frank for his one-half interest in this business whereas Frank had conveyed it without compensation at the suggestion of his father and upon the understanding that, upon the father's death, Frank would get the entire business. And how does the offer of the father to pay for Frank's interest in November fit in with the present claim that the business ***always*** was that of the father?

BURCHILL MANUFACTURED EVIDENCE TO MAKE IT APPEAR THAT HE DID NOT WANT FRANK TO LEAVE AND THAT HE WAS THE FRIEND OF FRANK.

He pretended to Crutchlow that he wanted Frank to come back to the business but he did not do this until after Crutchlow had charged him with being the cause of the trouble (p. 274). He was careful two days before testator died, to direct the attention of Egg to the fact that testator had signed checks and Egg testified, (p. 393):

> "Q. How did Burchill come to tell you that? A. He ***wanted to tell me that he was all right.***"

This conduct on the part of Burchill is consistent with his scheme and purpose of securing the property of this elderly gentleman by undue influence. He was looking to the future and to the contesting of the will, which he anticipated, for he was afraid to tell his own wife of its contents.

THE CONDUCT OF FRANK ULRICH.

Counsel on page 39 of their brief, lay great stress upon the fact that the affections of the testator were alienated from Frank by his own conduct, which they summarize and that this was the reason for the disinheriting of Frank and not the undue influence of Burchill. The complete answer to this is that most of this conduct occurred prior to the will of July, 1920 and that testator's affections had not then been alienated. It is further answered by the fact that, after ***all*** of this conduct had occurred, Mr. Dunn says that testator ***wanted Frank to come back to the business*** and that the reason why there was the long

delay between the first conference about the last will and its execution was that the father ***still hoped that Frank would come back to the business.*** A further answer is that this is not the reason given in the last will and testament and it is inconceivable that, if the affections of the father had been alienated by the acts that counsel indicate, the father would not have given the real reason. The fact is, as has been heretofore stated, that both father and son were of explosive temperaments. They fell out and they became reconciled. Their temperaments were such as that they were easy subjects for the scheme of Burchill, who had just the temperament to work upon them, suave, respectful, even deferential.

We will consider one incident, the alleged striking or pushing of the father at the time when Frank finally left.

(a) There is no evidence of the fact that Frank did this thing. The only persons present were Frank, the testator and Rosalie Gabriel. Frank denies that he ever struck his father or caused him to fall but says that his father grabbed him by the throat, that he, Frank, did nothing but as he went to get up his father's heel hit the back of the chair and he fall. Remember that a short time afterwards the father collapsed when Egg was present (p. 389) and it is not difficult to believe that, in the excitement, the father collapsed as Frank says he did. Frank says that in the excitement his father grabbed him around the throat and Burchill testified (p.

538) that it was a common habit of the father when talking to grab onto the listener. He said, (p. 538):

> "A. He was a very strong man, and at times he would meet me and would be explaining something to me and he would start tapping me and he would near knock me over in explaining.
>
> Q. You mean he was vigorous in talking? A. Yes, sir, and he always had to grab onto you when he was going to tell you something.
>
> Q. That was a mannerism of his? A. Yes, sir.
>
> Q. How long did he continue that mannerism? A. As long as I can remember.
>
> Q. To the time he left the shop? A. Yes, sir."

We have Burchill testifying to a mannerism of the father which accords with Frank's, the son's, statement that the father in talking to him got excited and grabbed him by the throat.

The witness, Rosalie Gabriel who shows her ill-feeling to Frank and who is still in the employ of the concern and under Burchill's direct management in no respect denies this testimony of Frank but corroborates him, as follows:

> "Q. What did the father do? A. The father came into the office and said something in German then Frank said 'I didn't come down to quarrel, I merely came down to get my personal paper,' and then Mr. Franz Ulrich walked over to Frank but

before he got to Frank he said to him, 'Frank is a robber and a swindler.'

Q. Then what did he do? A. When Mr. Franz Ulrich was speaking to anyone he was in the habit of placing his hands on your shoulder and he was just about to say something and he just said, 'You—' and he was standing between me and the son, Frank, and I heard Frank tell his father to keep his hands off him and at that moment Mr. Franz Ulrich fell to the floor very violent and I heard Mr. Ulrich say to him in a very rough manner to keep his hands off him.

Q. Where did the father fall and how did he fall that you saw? A. They were standing on the left hand side of me and he fell in back of me and fell over to the right hand side of me. He fell very violently. He had his hat on at the time and he was lying flat on his back on the floor.

Q. How near was Mr. Ulrich's head to the other wall beyond your desk? A. Of course, the show case is there.

Q. About how near was it? A. About eighteen inches.

Q. Right close to it? A. Yes, sir."
(P. 470.)

Evidently if Frank had struck or pushed his father, this witness who pretends to have seen the occurrence would have seen such striking or pushing, and would testify to it.

(b) If testator told Egg or Mr. Dunn that Frank had struck him or pushed him when in fact Frank had not done so such statement made at the time of the preparing and making of the will merely indicates the weak condition of testator's mind and that he had this delusion when the will was prepared and made and shows the effect of Burchill's influence upon testator's mind and will.

ANY ANGER OF THE TESTATOR AGAINST FRANK INCITED OR CONTINUED BY REASON OF THE FALSE STATEMENTS OR INFLUENCE OF BURCHILL CANNOT HELP PROPONENT.

We have shown that there was no such animosity of the father towards the son as counsel contends. But if there was, it is clear from the testimony already referred to that it was the result of Burchill's false statements and influence. Such animosity is merely the effect of the undue influence and, notwithstanding the existence of the animosity, the will will be refused probate.

The anger of course may be the direct cause of testator's disinheritance of the person disinherited, but, since such anger was caused by the undue influence, the will is refused probate because it was produced by the undue influence. From a legal standpoint, therefore, no matter what dissensions and differences arose between the testator and Frank, if they were caused by such falsehood and undue influence, such dissensions and differences serve merely to show that the fraud and undue influence had the effect of

causing a will to be made which is invalid in the law, because it is the product of the undue influence.

Even, therefore, if it were true, that Burchill by falsehood, fraud and undue influence had caused the disturbance between testator and Frank and even if it were true that Frank struck testator and used words which the stenographer testified to, nevertheless, the whole matter would be of no consequence.

But we submit that the testimony of the witnesses produced by the proponents relating to unbecoming words or conduct of Frank toward his father is untrue. The witnesses who so testify are hostile to Frank and were in the service under Burchill. Frank had had serious differences with Caroline Barnes, the first stenographer and the unfriendliness of Rosalie Gabriel toward him was apparent.

The brusque manner of Frank with these female stenographers had its effect and Frank evidently suffered in their estimation when compared with the suave manners of Burchill. One of them so states (p. 436). When estimating the value of the testimony of Rosalie Gabriel as to the disturbance in the office and the unbecoming words which she alleges Frank then used to his father, it should be observed that this witness testifies that she never observed ***anything*** done by the testator indicating his feeble condition of mind.

The testimony of Dr. McBride, Crutchlow, Laucher and others, shows that his mental condition was such that this stenographer, who was with him constantly in the office, ***must*** have observed it. Even Coogan, eager witness as he was for Burchill, states that testator frequently exposed his person and went with his clothes unbuttoned in the presence of this very girl, and that the testator on one occasion was unconscious in the office where she worked so that Coogan was frightened, and Coogan says that it was a matter of common talk about testator's going in the office with his person exposed and trousers open, and that it was commonly talked about as to his being crazy and that he talked frequently about his having to go to the poor house. And yet this girl who was there present during all of this, testifies that the testator was of sound mind and refrains from telling the truth about any of these acts. We submit that her testimony apparently false as to his mental condition, is not to be relied on as to the words used by Frank and should be discredited as against Frank's testimony to the contrary.

EVEN IF THE CAUSE OF THE DISINHERITANCE OF FRANK WAS HIS BITTER FEELING TOWARD FRANK, IF BURCHILL SECURED THE MAKING OF THE WILL BY UNDUE INFLUENCE SO AS TO AFFECT THE INTEREST OF OTHERS OF TESTATOR'S FAMILY, THE WHOLE WILL MUST FALL.

If Burchill, by statements which were directed against Frank and Melvin only, caused testator to make the will now offered and change the interest of testator's widow and his other children so that they are less valuable in the last will than they were in the will of 1920 or than they would be if they took as heirs at law and next of kin, this undue influence operating against the widow or other children vitiates the whole will, even if it should be thought that Frank's trouble with the testator is the cause of Frank's disinheritance without regard to the undue influence.

In re Cooper's Will, 75 N. J. Eq., 177-188 the question arose as to whether a will could be set aside in part on account of fraud. It was held that it could not, the Court saying at p. 188:

> "It would be impossible to determine to what extent the specific legacies, and in particular the devise to Henry H. Pruden had been tainted and improperly reduced. * * * * If Mrs. Cooper's will had been tainted by fraud or undue influence, all of it would have to be set aside."

By similar reasoning it is obvious that such undue influence directed against Frank and Melvin would operate against the whole will even if it did not affirmatively appear that the interests of the widow and others were affected by the later will, but in this case, it does appear that the interests of the testator's widow and daughters given under the will of 1920 and even their interests as heirs at law and next of kin were adversely affected by this will of 1921.

We repeat the language of V. C. Van Fleet in Haydock v. Haydock, 33 N. J. Eq., 494:

> "The extent or degree of the influence is quite immaterial for the test always is was the influence, whether slight or powerful, sufficient to destroy the free agency?"

THE GIFTS OF THE TESTATOR TO MEMBERS OF HIS FAMILY BEFORE HIS DEATH.

These gifts are referred to by counsel for appellant on page 28 of their brief. The apparent purpose is to indicate an intent upon the part of testator to distribute his estate before death.

But most of these gifts were made before the making of the will of July, 1920.

We will only here refer to the alleged gifts to Frank.

These payments were made consistently up to the time that Burchill came to work for the father and they show the high regard and feeling which the father had for his son. They were not of the nature of a partial distribution of testator's estate. They were all made before the will of 1920 and had no effect on testator in making ***that*** will. Frank Ulrich commenced to work for his father at the age of sixteen and received $3.00 per week and later $8.00 per week. The last two or three years of his employment he received only $50 per week. Frank altogether worked for his father for a period of about twenty-four years, from the age of sixteen until the age of forty.

When he was twenty-one his brother deeded to him a one-third interest in the mill plot and at the same time, deeded a one-third interest to the father. It does not appear that the gift of this land was from the father, but a mill was erected, and it was undoubtedly with funds made in the business. Counsel figure this gift of the value of $16,666.67. Perhaps the mill is worth around $50,000.00 at the present time but this is somewhat in question. Some twenty years ago, when this gift became effective, the mill was probably worth about one-half of that amount, so that the father's contribution on this score would be from six to seven thousand dollars and not sixteen thousand dollars. Later, the father gave to Frank a house which counsel figure at a value of $23,500.00. This house cost the father $10,000.00. Later, the father made a gift of eight shares of Franklin stock at $165.00 a share of $1320.00. He also made a gift of some U. S. Trust Company stock which counsel figure would be worth about $4,000.00 at the time of testator's death. There is no testimony as to the value of this stock at the time of its purchase, but most likely it was worth about one-half. Another gift was the money used in the Allentown mill, but since this was returned later to the father, it cannot be considered as a gift. It is also claimed that the father gave $9000 in bonuses. $7,000.00 of this amount was in bonus and $2,000.00 for the payment of rent upon the mill. It will thus be seen that the gifts to Frank at the time they were made consisted of a $10,000.00 house, six or seven thousand dollars in the mill property and about thirty-five hundred dollars in bank stock, or in

the neighborhood of $20,000.00. The $7,000.00 bonus cannot be other than the payment of salary, but if we add the $7,000.00 bonus to the $20,500.00 it amounts to less than $30,000.00 in gifts made over a period of twenty years or less than $1500.00 a year. In addition to the above gifts, the father paid expenses of Frank, such as coal bills, lodge dues and things of that kind, but, taking into consideration the fact that Frank was receiving a very small salary from his father, he did not really receive as much as his services were worth.

The father was undoubtedly carrying on a business which was profitable. Twenty-four years ago, when Frank started as a boy, his father was about sixty years of age. Much of the service that Frank rendered was rendered at a time when the father was old and undoubtedly unable to do the very active work of the business, such as the going out, securing of orders, the supervision of men, etc. The services that Frank rendered were really of the value of double what he was receiving at the conclusion of this service, as salary. We speak of these gifts merely to show the extent of them accurately.

This leads to a consideration of the clause in the will disinheriting Frank, because of numerous gifts and donations which had been made to him. Such a clause more likely was inspired by Burchill than the father. This is not a consistent statement of the reason which the testator, in full possession of his faculties, would have made. ***The same reason would have suggested his dis-***

inheriting his grandson, Frank, inasmuch as this grandson's father had received exactly the same gifts as his son Frank, and Burchill's wife had also received somewhat similar gifts, although, in her case, they were not earned as were Frank's. A testator whose mind had not been affected by the influence of Burchill would not have suggested such a clause and it seems quite clear that this suggestion of a reason for disinheriting Frank was suggested entirely by Burchill and not by the testator himself.

CONCLUSION

While we do not concede that the elements which counsel point out on page 71 of their brief are the ***only*** elements affecting undue influence or are the principal ones we do concede that they ***are*** important and we submit that each one of these elements referred to by counsel is present in the case at bar.

1. THE INITIATION OF PROCEEDINGS FOR THE PREPARATION OF THE INSTRUMENT.

True, counsel are correct when they say that there is no evidence of this having occurred in this case, if by evidence they mean ***direct evidence.*** Burchill says that he did not initiate the making of the will and he is the only one, unfortunately, who could know for he is the only one who knew after the death of the testator that the will had been made as he took the testator to Mr. Dunn who happened not to be the regular counsel of the testator and who happened to be a person who

had employed Burchill and with whom Burchill was well acquainted. While there is no direct evidence that Burchill initiated the proceedings, the whole case reeks of it as does the unreasonable and improbable testimony of Burchill as to ***how*** the proceedings ***were*** initiated.

2. PARTICIPATION IN SUCH PREPARATION.

Counsel is mistaken when they say that there is no evidence whatever of such participation, even if they mean ***direct*** evidence, for Mr. Dunn says that upon some occasions during the conferences, Burchill was called in and asked questions and information obtained and he was then sent out. So far as the testimony goes as to what took place in the actual preparation of the will, there is no evidence except that of Burchill and Mr. Dunn. It is a conceded fact that during all of the period of time during the four visits Burchill, ***and Burchill only,*** was in the outer office and it is a conceded fact that when the testator executed the will of July, 1920 it was prepared by his own lawyer in the presence of his own wife and all the family had knowledge of it.

3. PRESENCE AT THE EXECUTION OF THE WILL.

What we have said under the last head applies here.

4. EFFORTS TO EXCLUDE THE NATURAL OBJECTS OF TESTATOR'S BOUNTY.

The fact is that the natural objects of testator's bounty ***were*** excluded and that there was substituted the son-in-law, Burchill. If the testimony heretofore referred to is to be believed, there ***was*** potent evidence of efforts on the part of Burchill to exclude the natural objects of testator's bounty. The will even provided that the testator's elderly widow should only receive a sum ***not exceeding*** $10,000.00 and it carefully provided, with respect to the gift to the grandson and to Burchill of the money on deposit in any bank in Allentown, that that should be a separate gift and not to be included as a part of the entire estate on which the wife was to receive income. And the income of the estate in excess of a sum "not exceeding $10,000.00" is to be divided equally between the grandson and the son-in-law, Burchill.

5. CONCEALING THE MAKING OF THE WILL.

Counsel say that no question was ever asked whether there was a will and consequently there was no denial and there was no occasion to proclaim that a will had been made and that it would have been a want of faith to do so after the testator had told him that he had made his will. The explanation, we submit, is absurd. The natural thing for Burchill to have done was to have, at least, told his wife. He was under no obligation at all. Everybody knew of the other will. He did not tell his wife because he was afraid that if his wife knew the contents of the will she would not be satisfied

with it and it would not stand. That his fear was justified is indicated by the attitude of the wife after she knew the contents of the will after the testator's death. The explanation of Burchill as to why this will was not mentioned is unreasonable and counsel overlooks the testimony that after the death Burchill denied that he knew that there was a will.

6. TAKING POSSESSION OF THE WILL.

True, Burchill did not have possession of the will, ***but Mr. Dunn, to whom he had taken the testator, who was not testator's lawyer, had possession of the will,*** and this, contrary to the custom of testator with respect to previous wills. The testator left the last will with Mr. Dunn but he carefully took away with him, undestroyed and unmutilated, the will of July, 1920 and carefully preserved it in his safe among his important papers. Why? Because he did not know that he had executed a will and left it with Mr. Dunn or as the Vice-Chancellor puts it:

> "It seems very probable to me, that the old man never remembered making the last will, and forgot it as soon as it was made."

And this will of July, 1920, after the death, according to Burchill's story, was found by Burchill. It is a short will. And yet Burchill says he carried it around in his pocket for several months because he did not have an opportunity to read it over carefully. How absurd. From his pocket his wife took it and handed it to the caveators. Knowing that this will was in existence and had been in ex-

istence after the testator's death, Burchill let his counsel, Mr. Dunn, go on the stand and swear that that will had been destroyed in the presence of counsel. And his counsel testified that he did not remember any of the provisions of this will. And Burchill sat there and never suggested to examining counsel that ***that*** situation should be cleared and that the incorrect testimony of Mr. Dunn should not be permitted to stand.

Counsel say, (p. 72) that the burden of proof has always remained with the caveators and that it has never shifted. We submit that under the cases the duty is upon Burchill to explain because of his confidential relationship which his own testimony discloses. But if the burden has always been upon the caveators, they carried that burden.

In conclusion we quote the language of the Ordinary in Moore's Executors v. Blauvelt, 15 N. J. Eq. 367:

> "It behooves a tribunal of Justice, while maintaining upon the one hand, the right of the testator to that unlimited dominion which the law gives him over his property, to resist, upon the other, ***with watchful jealousy all attempts to interfere with the free and untrammelled exercise of that dominion and to see that, in the testator's hour of weakness and infirmity, the will of another is not substituted for his own.***"

It is respectfully submitted that the opinion of the Vice-Ordinary indicates that he gave careful consideration to this case and that his conclusions

upon the facts are well founded and that the decree of the Prerogative Court should be affirmed.

Respectfully submitted,
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