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**PETITION OF APPEAL TO ORPHANS'
COURT.**

Filed October 26, 1927.

**MONMOUTH COUNTY SURROGATE'S
COURT.**

10

In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Appeal
from Probate
of Will by
Surrogate.*

*Petition
of Appeal.*

To the Surrogate of the County of Monmouth:

The petition of Michael J. Tansey respectfully
shows that he is one of the next of kin and
heirs at law of John Dolan, late of the Township
of Holmdel, County of Monmouth aforesaid, de-
ceased, who died on the 12th day of July, 1927,
leaving him surviving as his next of kin a large
number of nephews and nieces, among whom are
your petitioner and Mary C. Wiggins, Sarah
Ellen Maloney, Margaret Harrington and Michael
Francis Maloney and leaving him surviving no
widow or children or the children of deceased
children and leaving no sisters or brothers; he
being a bachelor and his nephews and nieces
being his only next of kin and heirs at law.

Your petitioner further shows that on the 27th
day of July, 1927, one Sarah Ellen Maloney pro-
duced before the Surrogate of the County of
Monmouth for probate a paper writing purport-
ing to be the Last Will and Testament of said
John Dolan, deceased wherein the said Sarah
Ellen Maloney was named as the sole executrix
thereof; and your petitioner shows that the said

Petition of Appeal to Orphans' Court.

Surrogate thereupon on the day last mentioned made and entered an order admitting said instrument to probate as and for the Last Will and Testament of the said John Dolan, deceased and further ordered that letters testamentary thereon be issued to the said Sarah Ellen Maloney; and
 10 your petitioner shows that letters testamentary were on the last mentioned day, duly issued to the said Sarah Ellen Maloney.

Your petitioner further shows that at the time of the making and of the supposed execution of said paper writing, and for a long time prior thereto the said John Dolan was aged, sick and weakened in body and mind and as such incapable of disposing of his estate by Will.

Your petitioner further shows that the said
 20 Sarah Ellen Maloney and Mary C. Wiggins, Margaret Harrington and Michael Francis Maloney did jointly and severally, singly and together unduly, illegally and fraudulently influence the said John Dolan in respect to the making and the supposed execution of the said paper writing.

Your petitioner further shows that the supposed execution of the said paper writing was illegal and insufficient under the laws of the State to constitute the same the Last Will and Testament of the said John Dolan, deceased, for
 30 that the said John Dolan did not at the time of the supposed execution thereof publish and declare the said paper writing as and for his Last Will and Testament in the manner and form as required by law.

Your petitioner further complains and alleges for the above and divers other reasons that the whole and every part of the said order of the said Surrogate admitting the said Will to probate and issuing Letters Testamentary thereon
 40 to the said Sarah Ellen Maloney as aforesaid is

Petition of Appeal to Orphans' Court.

erroneous, improper and contrary to law and that your petitioner is aggrieved thereby.

Your petitioner further shows that the persons who claim to be interested in the said proceedings before the Surrogate are as follows: Charles E. Fitzgerald, St. Paul, Minnesota; Alice McMillan, Minneapolis, Minnesota; Julia Fitzgerald, marriage name unknown, Chicago, Illinois; Mary O'Hara, Jamesville, Wisconsin; Margaret Tansey, Keyport, New Jersey; Delia Tansey, Keyport, New Jersey; Anna A. Tansey, Newark, New Jersey; Sarah E. Tansey, Newark, New Jersey; William A. Tansey, Newark, New Jersey; Ella Tansey, Newark, New Jersey; James H. Griffin, New York City; Bernard Griffin, New York City; Margaret Griffin, Newark, New Jersey; William B. Dolan, Newark, New Jersey; Henry R. Dolan, Newark, New Jersey; Michael F. Dolan, Matawan, New Jersey; Charles E. Dolan, Matawan, New Jersey; Anna Wenzel, Freneau, New Jersey; Mary C. Wiggins, Morganville, New Jersey; Sarah E. Maloney, Everett, New Jersey; Margaret Harrington, Morganville, New Jersey; Michael Francis Maloney, Bradevelt, New Jersey; all being nephews and nieces of the said John Dolan, deceased.

Your petitioner, therefore, prays that the above named persons interested in the said proceedings before the said Surrogate as aforesaid and each of them may be cited to appear in this Court according to the rules and practice thereof and that a day and place may be appointed for the hearing of the parties hereto for your petitioner's said appeal.

And your petitioner further prays that the aforesaid Surrogate's proceedings thereunder may be reversed and set aside by this Court and that the letters testamentary to the said

Petition of Appeal to Orphans' Court.

Sarah Ellen Maloney as aforesaid may be revoked and that letters of administration may be granted to some suitable person appointed by the Court; and that your petitioner may have such other and further relief as the case may require.

10 Dated Newark, New Jersey, October 25, 1927.

MICHAEL J. TANSEY,
Petitioner.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }^{ss.}

20 MICHAEL J. TANSEY, the above named petitioner, being duly sworn according to law, on his oath deposes and says that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters that are therein stated to be on his information or belief, and as to those matters he believes it to be true.

MICHAEL J. TANSEY.

30 Sworn to and subscribed before
me at Newark, N. J., this 25th
day of October, 1927.

PHILIP A. DONNELLY,
Notary Public of New Jersey.

Will of John Dolan.

Last Will and Testament of John Dolan.

Dated December 21, ¹⁹²⁰1929.

Probate in Monmouth County Surrogate's Office, July 27, 1927.

In the name of God, Amen:

10

I, John Dolan of Everett, in the township of Holmdel, County of Monmouth and State of New Jersey, being of sound mind, memory and understanding, hereby make, publish and declare this to be my last Will and Testament as follows:

ITEM: I direct that all of my just debts and funeral and testamentary expenses be paid in due course as soon as conveniently can be after my decease.

ITEM: I give, devise and bequeath to my niece Sarah Ellen Maloney who lives with me, all of my farm whereon I now reside located at Everett, in the Township of Holmdel, County of Monmouth and State of New Jersey, containing about ninety-seven acres be the same more or less, to the said Sarah Ellen Maloney her heirs and assigns forever. 20

ITEM: All of my other real estate and all of my personal property and chattels of every kind and nature and wheresoever situate, I give devise and bequeath to my niece Sarah Ellen Maloney, Mary C. Maloney Wiggins, and Margaret Maloney Harrington, and to my nephew Michael Francis Maloney, to each of the said four persons equally share and share alike and to their respective heirs and assigns forever. 30

ITEM: I hereby revoke all former and other Wills made by me and I hereby declare this Will and this only to be my last Will and Testament. 40

Will of John Dolan.

I hereby nominate and appoint my niece Sarah Ellen Maloney Executrix of this my last Will and Testament, and I direct she shall not be required to give any bond or security in order to act as Executrix and to perform all the duties as Executrix of this my Will; and I hereby au-
 10 thorize and empower my said Executrix to sell and convey any or all of my real estate and to make, execute and deliver deeds of conveyance of my real estate, and all other Instruments in writing in relation to my real estate and personal property in connection with the management and settlement of my estate.

In Witness whereof I hereunto set my hand and seal this twenty-first day of December in the year of our Lord One thousand nine hundred
 20 and twenty.

JOHN DOLAN [L. s.]

Signed, sealed, published and declared by the said John Dolan the Testator in the foregoing will, to be his last Will and Testament in our presence, and we at his request and in his presence, and in the presence of each other, all being present at the same time, hereunto subscribe our names as witnesses.

30 Frederick W. Hope, Red Bank, N. J.
 Blanche L. Tilton, Red Bank, N. J.

ORDER EXTENDING TIME.

Filed November 10, 1927.

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|---|---|--|----|
| On the Matter of Probate of the Will of JOHN DOLAN, deceased. | } | <i>On Appeal.</i> | 10 |
| | | <i>Order Extending Time.</i> | |

This matter being opened to the Court by Michael J. Tansey, Proctor, and it being shown to the Court that the Petition of Appeal in the above matter was filed on October 27th, 1927. And it further appearing that citation in the above matter has not yet been issued and served. And good cause being shown therefore and the Court being satisfied thereof, 20

It is thereupon on this tenth day of November, 1927, on motion of Michael J. Tansey, Proctor, ordered and adjudged that time for issuing and serving the citation in the above matter be extended to 25th day of November, ~~1928~~ 1927

JACOB STEINBACH, JR.,
 Judge. 30

ORDER SETTING TIME FOR HEARING.

Filed December 8, 1927.

MONMOUTH COUNTY ORPHANS' COURT.

10

In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Appeal
from
Probate.*

*Order Setting
Time for
Hearing.*

20

This matter being opened to the Court by Michael J. Tansey, Proctor for the appellants in the above entitled matter, and it appearing that a date should be set for the hearing of said cause;

It is thereupon, on this eighth day of December, 1927, Ordered, that the nineteenth day of January, 1928, be and the same is hereby set down as the day for the hearing of the said appeal in the above entitled cause.

JACOB STEINBACH, JR.,
Judge.

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**AMENDED PETITION OF APPEAL TO
ORPHANS' COURT.**

Filed December 22, 1927.

MONMOUTH COUNTY SURROGATE'S
COURT.

10

In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Appeal
from Probate
of Will by
Surrogate.*

*Petition
of Appeal.*

To the Surrogate of the County of Monmouth.

The amended petition of Michael J. Tansey respectfully shows that he is one of the next of kin and heirs at law of John Dolan, late of the Township of Holmdel, County of Monmouth, aforesaid, deceased, who died on the 12th day of July, 1927, leaving him surviving as his next of kin a large number of nephews and nieces, among whom are your petitioner and Mary C. Wiggins, Sarah Ellen Maloney, Margaret Harrington and Michael Francis Maloney and leaving him surviving no widow or children or the children of deceased children and leaving no sisters or brothers he being a bachelor and his nephews and nieces being his only next of kin and heirs at law.

Your petitioner further shows that on the 27th day of July, 1927, one Sarah Ellen Maloney produced before the Surrogate of the County of Monmouth for probate a paper writing purporting to be the Last Will and Testament of said John Dolan, deceased wherein the said Sarah Ellen Maloney was named as the sole executrix there-

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Amended Petition of Appeal to Orphans' Court.

of; and your petitioner shows that the said Surrogate thereupon on the day last mentioned made and entered an order admitting said instrument to probate as and for the Last Will and Testament of the said John Dolan, deceased and further ordered that letters testamentary there-
10 on be issued to the said Sarah Ellen Maloney; and your petitioner shows that letters testamentary were on the last mentioned day, duly issued to the said Sarah Ellen Maloney.

Your petitioner further shows that at the time of the making and of the supposed execution of said paper writing, and for a long time prior thereto the said John Dolan was aged, sick and weakened in body and mind and as such incapable of disposing of his estate by Will.

20 Your petitioner further shows that the said Sarah Ellen Maloney and Mary C. Wiggins, Margaret Harrington and Michael Francis Maloney did jointly and severally, singly and together unduly, illegally and fraudulently influence the said John Dolan in respect to the making and the supposed execution of the said paper writing.

30 Your petitioner further shows that the supposed execution of the said paper writing was illegal and insufficient under the laws of the State to constitute the same the Last Will and Testament of the said John Dolan, deceased, for that the said John Dolan did not at the time of the supposed execution thereof publish and declare the said paper writing as and for his Last Will and Testament in the manner and form as required by law.

40 Your petitioner further complains and alleges for the above and divers other reasons that the whole and every part of the said order of the

Amended Petition of Appeal to Orphans' Court.

said Surrogate admitting the said Will to probate and issuing letters testamentary thereon to the said Sarah Ellen Maloney as aforesaid is erroneous, improper and contrary to law and that your petitioner is aggrieved thereby.

Your petitioner further shows that the persons who claim to be interested in the said proceedings before the Surrogate are as follows: 10
 Charles E. Fitzgerald, St. Paul, Minnesota; Alice McMillan, Minneapolis, Minnesota; Julia Gibbons, formerly Julia Fitzgerald, Chicago, Illinois; Bernard Fitzgerald, Fort Worth, Texas; Mary O'Hara, Jamesville, Wisconsin; Margaret Tansey, Keyport, New Jersey; Delia Tansey, Keyport, New Jersey; Anna A. Tansey, Newark, New Jersey; Sarah E. Tansey, Newark, New Jersey; William A. Tansey, Newark, New Jersey; 20
 Ella Tansey, Newark, New Jersey; James H. Griffin, New York City; Bernard Griffin, New York City; Margaret Griffin, Newark, New Jersey; William B. Dolan, Newark, New Jersey; Henry R. Dolan, Newark, New Jersey; Michael F. Dolan, Matawan, New Jersey; Charles E. Dolan, Matawan, New Jersey; Anna Wenzel, Freneau, New Jersey; Mary C. Wiggins, Morganville, New Jersey; Sarah E. Maloney, Everett, New Jersey; Margaret Harrington, Morganville, 30
 New Jersey; Michael Francis Maloney, Bradevelt, New Jersey; Catherine J. Tansey, Newark, New Jersey; all being nephews and nieces of the said John Dolan, deceased, and Francis J. Tansey, Newark, New Jersey, Mary E. Tansey, Newark, New Jersey, Dorothea K. Tansey, Newark, New Jersey; and Maria F. Hennessey, Newark, New Jersey, grandnephews and grandnieces of the said John Dolan, deceased.

Your petitioner, therefore prays that the above named persons interested in the said proceedings 40

Amended Petition of Appeal to Orphans' Court.

before the said Surrogate as aforesaid and each of them may be cited to appear in this Court according to the rules and practice thereof and that a day and place may be appointed for the hearing of the parties hereto for your petitioner's said appeal.

10 And your petitioner further prays that the aforesaid Surrogate's proceedings thereunder may be reversed and set aside by this Court and that the letters testamentary to the said Sarah Ellen Maloney as aforesaid may be revoked and that letters of administration may be granted to some suitable person appointed by the Court; and that your petitioner may have such other and further relief as the case may require.

Dated, Newark, New Jersey, December 22, 1927.

20 MICHAEL J. TANSEY,
Petitioner.

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

30 MICHAEL J. TANSEY, the above named petitioner being duly sworn according to law, on his oath deposes and says that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters that are therein stated to be on his information or belief, and as to those matters he believes it to be true.

MICHAEL J. TANSEY.

Sworn to and subscribed before me
at Newark, N. J., this 22nd day of
December, 1927.

40 FRANCIS J. TANSEY,
Attorney at Law of New Jersey.

CITATION ON APPEAL.

MONMOUTH COUNTY ORPHANS' COURT.

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

The State of New Jersey to Sarah 10
 Ellen Maloney, executrix of the last
 (L. s.) will and testament of John Dolan, de-
 ceased; Charles E. Fitzgerald, Alice
 McMillan, Julia Gibbons (formerly
 Julia Fitzgerald) Bernard Fitzgerald, Mary
 O'Hara, Margaret Tansey, Delia Tansey, Anna
 A. Tansey, Sarah E. Tansey, William A. Tansey,
 Ella Tansey, James H. Griffin, Bernard Griffin,
 Margaret Griffin, William B. Dolan, Henry R.
 Dolan, Michael F. Dolan, Charles E. Dolan, Anna 20
 Wenzel, Mary C. Wiggins, Sarah E. Maloney,
 Margaret Harrington, Michael Francis Maloney,
 Catherine J. Tansey, nephew and nieces of said
 John Dolan; and Francis J. Tansey, Mary E.
 Tansey, Dorothea K. Tansey and Maria F. Hen-
 nessey, grandnephews and grandnieces of the
 said John Dolan, GREETING:

We cite and command you that you personally
 be and appear before the Orphans' Court, to be
 holden at the Court House, in the Borough of 30
 Freehold, in and for the County of Monmouth,
 on the nineteenth day of January, 1928, at ten
 o'clock in the forenoon, in the matter of the ap-
 peal of Michael J. Tansey from an order of the
 Surrogate of the County of Monmouth made on
 the twenty-seventh day of July, 1927, admitting
 to probate a paper writing purporting to be the
 last will and testament of John Dolan, deceased,
 and to abide the judgment of the said court in
 the premises.

Citation on Appeal.

WITNESS, JACOB STEINBACH, JR., Judge of our said Orphans' Court at Freehold, aforesaid, this Sixth day of January, one thousand nine hundred and twenty-eight.

JOSEPH L. DONAHAY,
Surrogate and Clerk.

10

Service acknowledged for Margaret Tansey, Delia Tansey, Anna A. Tansey, William A. Tansey by

MICHAEL J. TANSEY,
Proctor.

20 In the Matter of the
APPEAL FROM PROBATE OF
WILL
OF
JOHN DOLAN, deceased.

30

I, WILLIAM B. DOLAN, one of the respondents in the above-entitled cause hereby appoint Michael J. Tansey as my Proctor, and authorize him to enter appearance for me at the hearing of the Appeal from the Probate of the Will of the late John Dolan, and to prosecute same in my behalf.

Dated January 19, 1928.

WM. B. DOLAN.

40

Citation on Appeal.

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

WILLIAM B. DOLAN, being duly sworn according to law, on my oath depose and say that I am one of the respondents in the Matter of the Appeal from Probate of the Will of the late John Dolan; and that I signed the above as my voluntary act and deed. 10

WM. B. DOLAN.

Sworn to and subscribed before me
 at Monmouth, on this 19th day
 of January, 1928.

H. R. DOLAN,
 Attorney at Law of N. J.

Similar authorizations and affidavits filed on
 behalf of all appellants. 20

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Acknowledgment of Service.

MONMOUTH COUNTY ORPHANS' COURT.

| | | |
|--|---|---|
| <p style="text-align: center;">In the Matter of the Estate of 10 JOHN DOLAN, deceased.</p> | } | <p><i>On Appeal of Probate of Will by Surrogate.</i></p> <p><i>Acknowledgment of Service.</i></p> |
|--|---|---|

This is to acknowledge service of true copies of a citation on behalf of Sarah Ellen Maloney, individual and as Executrix of the Last Will and Testament of John Dolan, Michael Francis Maloney, Marie C. Wiggins and Margaret Harrington, as if within due time.

20 Dated January 17, 1928.

FREDERICK W. HOPE,
Proctor and Attorney for the five parties
above named.

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**PETITION TO TAKE DEPOSITION DE BENE
ESSE.**

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|--|---|---|----|
| <p>In the Matter of the Probate of the Last Will of JOHN DOLAN, deceased, and of the Appeal from the Surrogate's order admitting said will to probate.</p> | } | <p><i>Petition to Master in Chancery to take dep- osition de bene esse.</i></p> | 10 |
|--|---|---|----|

To Benjamin J. Downer, one of the Masters in Chancery of New Jersey.

The petition of Sarah Ellen Mahoney, of the Township of Holmdel, Monmouth County, New Jersey, shows: 20

That she is the sole executrix of the last will and testament of John Dolan deceased, and was appointed as such by said will which was duly admitted to probate by the Surrogate of the County of Monmouth on July 27th, 1927; and that petitioner is also one of the legatees and devisees under said will.

That Michael J. Tansey, a nephew of said decedent, is the appellant and is proctor for himself and for all of the parties named in said petition of appeal from said order of said Surrogate. 30

That Charles A. Palmer, a physician residing on Palmer avenue, in Keansburg, Monmouth County, New Jersey, is a material witness for petitioner and said other legatees and devisees under said will. That said Charles A. Palmer is about to go out of this state to go to Braden 40

Petition to take Deposition de bene esse.

Castle, Florida; that he intends to leave this state on Tuesday, January 10th, 1928, and to be absent from the State of New Jersey for a month or more.

10 Your petitioner therefore requests that you appoint a time and place where the deposition of said Charles A. Palmer may be taken *de bene esse* before you, and that you cause notice thereof to be given to said Michael J. Tansey, appellant and proctor immediately or at such short day as this case may require, to attend and be present at the taking thereof, and to put such questions and cross examine as he shall see fit.

FRED W. HOPE,
Attorney and Proctor for Petitioner.

20

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

SARAH ELLEN MALONEY, being duly sworn according to law, says that she is the above named petitioner, and that the foregoing petition is true to her knowledge.

SARAH ELLEN MALONEY.

30 Sworn to and subscribed this 2nd
day of January, 1928, before me.

40

**NOTICE OF TAKING DEPOSITION DE BENE
ESSE.**

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|--|---|--|----|
| <p>In the Matter of the Probate of the Last Will of JOHN DOLAN, deceased, and of the Appeal from the Surrogate's order admitting said will to probate.</p> | } | <p><i>On Petition to Master in Chancery to take deposition de bene esse. Notice.</i></p> | 10 |
|--|---|--|----|

To Michael J. Tansey, Esquire, Appellant and
Proctor for himself and all other parties
named in the petition of appeal.

TAKE NOTICE, that the deposition of Charles 20
A. Palmer, a physician residing on Palmer ave-
nue, Keansburg, Monmouth County, New Jersey,
who is a material witness for the proponents
appellees in the above entitled matter, and who
is about to leave this state on January 10th,
1928, to go to Braden Castle, Florida, and to be
absent from this state for a month or more,
will be taken *de bene esse*, before me, Benjamin
J. Downer, a Master in Chancery of New Jersey,
at my law office No. 4 Broad street, Red Bank, 30
Monmouth County, New Jersey, on Monday, Jan-
uary 9th, 1928, at three o'clock in the afternoon
of that day; and you are hereby notified to be
present at the taking thereof, and to put ques-
tions and cross-examine, if you shall see fit, as
appellant and proctor for yourself and all the

Notice of taking Deposition de bene esse.

other parties named in the petition of appeal in the above entitled matter.

Dated, Red Bank, N. J., January 2nd, 1928.

BENJAMIN J. DOWNER,
Master in Chancery of New Jersey.

10

Due and legal service of a true copy of the within Notice is hereby acknowledged this 4th day of January, 1928.

MICHAEL J. TANSEY,
Proctor for Appellants.

20

30

40

Deposition of Charles A. Palmer, direct.

DEPOSITION OF CHARLES A. PALMER.

Filed March 23, 1928.

MONMOUTH COUNTY ORPHANS' COURT.

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|--|---|---|----|
| <p>In the Matter of the Probate of the Last Will of JOHN DOLAN, deceased, and of the Appeal from the Surrogate's order admitting said will to probate.</p> | } | <p><i>On Notice of the taking of deposition de bene esse before Master in Chancery.</i></p> | 10 |
|--|---|---|----|

The deposition of Charles A. Palmer, a material witness on the part of the proponents in the above entitled matter, taken before Benjamin J. Downer, a Master in Chancery of New Jersey, in the presence of Frederick W. Hope, Esquire, proctor for proponents, and John W. Slocum, Esquire of counsel, and of Michael J. Tansey, Esquire, appellant and proctor for appellants, on January 9th, 1928, at 3 o'clock P. M. at the office of said Master, No. 4 Broad street, Red Bank, New Jersey.

| | | | |
|---|---|------------|----|
| <p>STATE OF NEW JERSEY, COUNTY OF MONMOUTH.</p> | } | <p>ss.</p> | 30 |
|---|---|------------|----|

CHARLES A. PALMER, of full age, being duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Slocum.

Q Where do you live? A Keansburg.

Q What is your profession? A Practicing medicine.

Deposition of Charles A. Palmer, direct.

Q How long have you been a practicing physician? A Since 1897.

Q From what college did you graduate? A University of Louisville, Kentucky.

10 Q And where have you practiced since you received your license? A In Farmingdale for seven years, in Holmdel for seven years or more, in Red Bank one winter, and then I went to Keansburg.

Q In what year did you go to Keansburg? A I went back to Keansburg, but I have been right around this section of the country all of the time practically. I came here in Red Bank in the winter of 1920 and 1921.

20 Q What year did you leave Red Bank? A That winter I had an office in Red Bank, and then about June, 1921, I went back to Keansburg.

Q Were you acquainted with John Dolan in his lifetime? A Yes.

Q Did you attend him as his physician? A Yes.

Q When did you attend him? A I was considered his family physician from 1908 to 1921.

Q Where was he living at that time? A In Everett, Monmouth County.

30 Q Did he live at any other place since you have known him? A No; he moved out to the farm, but I had not seen him since he moved away; all the time I knew him he lived on the farm.

Q Did you attend him in his last illness? A No.

Q Do you remember how late before his death you attended him? A The last time I attended him was in the spring of 1921.

40 Q At any time during your attendance on him as his physician was he suffering from any

Deposition of Charles A. Palmer, direct.

disease, and if so, what? A Yes, he had an attack of gall bladder trouble.

Q When did this first appear? A In 1908 or 1909, I think about 1909.

Q Did he suffer from those attacks constantly when he was your patient? A No, he had periodical attacks, from one to three a year. 10

Q Did he suffer from any other disease? A He had an attack of grippe one winter.

Q What winter was that? A I can't say what winter that was, except that it was while I was living at Holmdel; I lived there in 1916; it was previous to that.

Q Did he have any other trouble? A No, I don't know of any other trouble except those conditions.

Q What was his condition of health during the year 1920? A I must make a little correction there; his last sickness when I saw him here in Red Bank he had sciatica trouble, lumbago; he came down to my Red Bank office and I treated him for a pain in the back and down his legs, lumbago. That was in the spring of 1921. I previously made the statement that there were only two conditions I treated him for; then I remembered that he had this sciatica trouble. I first stated that I had only treated him for the gall bladder trouble and the grippe and then I made the correction that this sciatica trouble of his appeared later. 20 30

Q But the sickness that you have just spoken of does not refer to the last sickness of Mr. Dolan? A No.

Q It refers to the last time that you treated him, is that correct? A Yes.

Q What was the condition of John Dolan's health physically in December, 1920? A I 40

Deposition of Charles A. Palmer, direct.

don't remember whether I saw him in December, 1920.

Q What was his condition the last time you saw him prior to December 21, 1920? I am speaking now of his mental condition? A Very good.

10 Q What do you mean by very good? A By holding a perfectly normal conversation.

Q How many times did you see and talk with Mr. John Dolan during the year 1920? A At least twice, it may have been three times.

Q Can you tell how near the month of December, 1920, those visits of yours to him were?

A It was in the early part of the summer, the last one.

Q And the others? A Earlier.

20 Q How much earlier? A Probably two months apart, or three months apart.

Q Did any of these attacks from gallstones effect him mentally? A I never saw that they did.

Q At any time during your visits to Mr. John Dolan did he speak to you concerning his will?

Mr. Tansey objects on the ground that Dr. Palmer has been noticed to testify here as a medical witness only.

30

A No, he never mentioned the word will.

Q Did he ever tell you that he had made a will?

Objected to by Mr. Tansey as leading.

A He never said anything about a real will.

Q What did he say about disposing of his property?

Objected to as leading.

40

Deposition of Charles A. Palmer, cross.

A Yes, when he and I were talking about the two girls that were living with him.

Q What two girls? A Mary Maloney and Ellen Maloney; and he said they seem to be the only ones that had much interest in him, and that he would take care of them for their services, and that he had to look after them, that he was going to look after them. 10

Q Did he mention any others except the two girls you have mentioned? A No, sir.

Cross examination by Mr. Tansey.

Q Can you remember as to those attacks of gallstones, how long they continued when they came on? A They would attack him very suddenly, and I would be called up there, severally times in the nighttime, to give him a hypodermic injection; and of course after the hypodermic injection he would quiet rapidly down and be comfortable, and after that I would advise him to stay in for a few days, but his suffering would be relieved by the hypodermic. 20

Q His suffering would be very painful during those attacks? A Yes.

Q He would not be able to leave home at all during those attacks? A No, sir, not at all.

Q His relief depended how soon you could get there with the hypodermic injection? A Yes. 30

Q Did he have a telephone in his house? A No, I don't think so.

Q How far from his house was your office? A About two miles.

Q That is, when you were living in Holmdel? A Yes.

Q And such word as you got from him to call on him was by a messenger? A I think 40

Deposition of Charles A. Palmer, cross.

they got word to me by telephone from some of the neighbors.

Q They would either send a messenger to you or get you on the telephone saying that he had a gallstone attack? A Yes.

10 Q How long did those intermittent attacks of gallstone trouble last, and how many were there? A He had about three attacks a year, and each continued two or three days; and they continued for three or four years; but they gradually grew better, and later he had not had a gallstone attack for a couple of years since the last time I attended him.

Q But he had attacks of that character up to about two years before you finished with him? A More than two years before, possibly 20 three years or even more than that; he appeared to have got better of the sciatica condition by 1921, and then he appeared to get better of the gallstone condition.

Q The grippe attack, did that continue for a week or two? A Yes.

Q And you also treated him for that? A Yes.

Q And that was the latter part of the time when you were treating him? A That was the 30 latter part of the time. I can't say just when it was, but it was previous to 1920.

Q And the sciatica and lumbago attack, when was that? A That was in 1921.

Q In the spring? A Yes.

Q The last attack, that is the lumbago and sciatica attack, you would meet him at your office at Red Bank? A Yes.

Q This conversation between you and him about the two girls, Mary Maloney and Ellen Maloney, where did that take place? A It took 40

Deposition of Charles A. Palmer, cross.

place one day when there wasn't anything the matter with him; I was visiting him socially and he and I were walking around his farm.

Q About when was that? A Previous to 1916, I can conscientiously say it was in 1915.

Q You had known Mary Maloney and Ellen Maloney in High School, hadn't you? A Yes. 10

Q Were you in Mary Maloney's class in High School at Keyport? A Yes; I was ahead of her in graduating, and then I went back there and took a post-graduate course when she was taking her graduating course.

Q You were in school with her about two years? A Yes.

Q Can you fix that time? A I graduated in 1892 and she graduated in 1893, I think.

Q And was it in 1892 and 1893 that your school acquaintance with her continued? A Yes. 20

Q And as to Ellen Maloney, did you also go with her to the Keyport High School? A Yes.

Q You both graduated in the year 1892? A Yes.

Q And your high school relations with Ellen Maloney were about the same as with Mary Maloney? A About the same.

Q Did you bring up this conversation with him about the two girls or did he? A Partly, I think I did. 30

Q You said you thought that they had been good to him? A I think so.

Q And your suggestion brought out his reply? A Yes.

Q Did you know at that time that he had a number of nephews and nieces besides these two girls? A No, they were the only ones I knew that he had.

Q At the time of these gallstone attacks, after he would be relieved of most of the acute 40

Deposition of Charles A. Palmer, cross.

pain, there would be sometimes a few days before he could get around? A He always wanted to go out right away, but I wouldn't let him; he would be feeling pretty good.

Q You kept him confined longer than he wished? A Yes, I kept him confined more than
10 he wished, it was always against his will, he would think he was better than he really was.

Q You would tell him that you thought he should stay at home until the full effect of the attack had disappeared, say for a week for an acute attack? A No, not always; for possibly two or three days after the attack.

Q From the time he would be taken with an acute attack you would tell him that it would be from three to four days or a week in your opinion
20 before he should go out? A Yes, three or four days.

Q It would depend upon the severity of the attack as to whether he should stay in bed a week or two weeks? A I don't think he ever stayed in bed two weeks.

Q You were scolding him for not staying in? A I was seeing to it that he was taking my advice.

Q There were times that you thought that he
30 had got out too soon? A No, I can't say that there was; I was heading him off; I knew that he was going out and I was heading him off; I don't think that he thought that I was going to keep him home any longer than it was necessary.

Q During these attacks, can you say how many visits you would make? A If he had a bad attack I would make visits until he got better of it, and then when he got feeling better
40 I would quit until he had another attack; that

Deposition of Charles A. Palmer, cross.

would be between five and six days before I would quit.

Q So that you began and ended your visits according to the length of the treatment? A Yes; according to the length of the treatment five or six days.

Q They have surgical operations to remove those gallstones, don't they? A Yes. 10

Q You did not proceed to do that in his case, did you? A He had one very bad attack when I advised it; and we called Dr. Field in for consultation.

Q Who was Dr. Field? A He practiced here in Red Bank; he was a physician in the Long Branch Hospital.

Q The Memorial Hospital? A Yes.

Q You are not a surgeon? A No. 20

Q On surgical matters you referred to Dr. Field? A Yes.

Q And do you remember about when that was? A That was during the early part of his attacks, about 1911.

Q And after you consulted with Dr. Field and he consulted with Dr. Field, was such an operation ever performed? A No, he decided to wait, and he got well without it.

Q Was the subject of an operation after that ever brought up? A No, his symptoms did not call for it; he never afterwards quite had such a severe attack. 30

Q The 1911 attack was a bad one, serious? A Yes.

Q How long was he suffering under that attack? A Longer than usual, possibly over a week, possibly two weeks, I couldn't say.

Q Do you recollect whether that was the time you were summoned to attend him during the 40

Deposition of Charles A. Palmer, re-direct.

nighttime? A I couldn't say, possibly it was because I was called to him in the nighttime several times.

Q That is, when he would be taken in the night? A Yes.

10 Q Were not these attacks very weakening to his system? A If they lasted long enough they would be; the short attacks did not weaken him much.

Q And your method of procedure in treating him was to use an hypodermic injection? A To relieve the suffering, and of course, medicine internally to remedy the condition.

Re-direct examination by Mr. Slocum.

20 Q Did you call on John Dolan and make friendly visits as well as professional visits to him during the years 1919 and 1920? A Yes.

Q Did you call there very often? A No, about two or three times in the summer when I would be going up there; if I had time in the daytime I would stop in and see him.

30 Q Do you know of any other time except during the summer months that you would call on him in that way? A I can't say as to that; when ever it was that I would call there it would be in the spring or in June, September or October, because then I would have more time to go around; at other times I would not be able to get the time to go around, always too busy.

Q At any time during your acquaintance with John Dolan did you see or observe anything about his mental condition which was not normal?

Objected to as leading.

40 A No.

Master's Certificate.

Re-cross examination by Mr. Tansey.

Q During these acute gallstone attacks of John Dolan did he ever attempt to talk business with you during these attacks? A No.

Q Did he ever attempt to talk about anything except about the particular matter of the gallstone attack? A That is all, that was the entire conversation when he was sick. 10

It is stipulated by counsel of the respective parties that the signature of the witness to his deposition be and the same is hereby waived.

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|--|---|--|---------------------|
| <p>In the Matter of the Probate of the Last Will of JOHN DOLAN, deceased, and of the Appeal from the Surrogate's order admitting said will to probate.</p> | } | <p><i>On Notice of taking Deposition de bene esse before Master in Chancery. Master's Certificate.</i></p> | <p>20</p> <p>30</p> |
|--|---|--|---------------------|

I, BENJAMIN J. DOWNER, a Master in Chancery of New Jersey, do hereby CERTIFY:

That the foregoing deposition of Charles A. Palmer was taken before me as such Master, on January 9th, 1928, at three o'clock P. M., at my office 4 Broad street, Red Bank, Monmouth County, New Jersey, for the reason that said Charles A. Palmer is about to depart from the State of New Jersey and that his testimony will 40

Master's Certificate.

not be available on the hearing of the above entitled matter, as by the petition of the proponents herein for the taking of such deposition will more fully appear.

10 I further certify that the annexed notice is a true copy of the notice of the taking of said deposition at the time and place aforesaid given to Michael J. Tansey, Esquire, appellant and proctor for all the parties named in the petition of appeal in the above entitled matter, which notice was served on him on January 4th, 1928 as appears by the acknowledgment of service thereof endorsed on said notice and signed by him.

Dated, Red Bank, N. J., January 11th, 1928.

20 BENJAMIN J. DOWNER,
Master in Chancery of New Jersey.

30

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ORDER FOR COMMISSION.

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of the Appeal
from the Probate of the Last
Will and Testament of JOHN
DOLAN, deceased.

*On Appeal
from
Probate.*

10

*Order for
Commission
to Examine
Charles E.
Fitzgerald on
Interroga-
tories.*

This matter being opened to the Court on
motion of Michael J. Tansey, Esq., proctor for
appellants, in the presence of Frederick W.
Hope, Esq., proctor for the proponents and
John W. Slocum, Esq., of counsel, and notice
thereof being waived, and it appearing and being
shown to the Court, that one, Charles E. Fitz-
gerald, a resident of St. Paul, Minnesota, knows
certain facts material to the issue in the above
cause of action, which are necessary to establish
the claims of the appellants at the trial of this
issue, and it further appearing that the appel-
lants desire an opportunity to have the said
Charles E. Fitzgerald examined by interroga-
tories submitted to a commission duly awarded
and issued out of this Court, pursuant to the
Statute in such case made and provided, and
the said Frederick W. Hope, Esquire, proctor
for proponents and John W. Slocum, Esq., of
counsel, consenting hereto and submitting cross-
interrogatories thereto and the Court approving

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30

40

Order for Commission.

of the interrogatories and cross-interrogatories submitted by the parties to this action,

10 It is thereupon on this thirty first day of March, 1928, on motion of Michael J. Tansey, Esq., proctor for the appellants, Ordered that a Commission pursuant to the Statute in such case made and provided be awarded and do issue out of this Court to Baldwin Schroeder, Esq., of the City of St. Paul, County of Ramsey, and State of Minnesota, to examine and cross-examine the said Charles E. Fitzgerald, a material witness in the above stated cause, who resides in the City of St. Paul, Minnesota, under oath, upon the interrogatories and cross-interrogatories, submitted by Michael J. Tansey, Esq., proctor for appellants and Frederick W. Hope, Esq., proctor for proponents and John W. Slocum, Esq., of counsel, in the above cause of action and to return the answers in writing thereto duly sworn and subscribed, to the Clerk of this Court, as expeditiously as may be possible.

JACOB STEINBACH, JR.,
Judge.

We hereby waive notice hereof and consent to the foregoing Order.

30 Filed April 3rd, 1928.

FREDERICK W. HOPE,
Proctor for Proponents.

JOHN W. SLOCUM,
Of Counsel.

Order for Commission.

MONMOUTH COUNTY SURROGATE'S
OFFICE.

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

I, JOSEPH L. DONAHAY, Surrogate of said County, do certify the foregoing to be a true copy of the Order for Commission to examine Charles E. Fitzgerald on interrogatories, in the matter of the estate of John Dolan, deceased, as the same remains of record in my office. 10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal (L. S.) of office, at Freehold, the Third day of April, in the year of our Lord one thousand nine hundred and twenty-eight. 20

JOSEPH L. DONAHAY,
Surrogate.

COMMISSIONER'S OATH.

I, BALDWIN SCHROEDER, do swear that I will faithfully, fairly and impartially execute the annexed commission to the best of my skill and knowledge so help me God.

BALDWIN SCHROEDER. 30

Sworn to and subscribed before me, at St. Paul in the County of Ramse^l, this 26th day of April, 1928.

FRANCIS M. SMITH (L. S.)

FRANCIS M. SMITH

Notary Public,

Ramsey County, Miss.

My Commission expires March 2, 1932. 40

INTERROGATORIES.

MONMOUTH COUNTY ORPHANS' COURT.

10 In the Matter of
JOHN DOLAN, deceased.

Interrogatories to be propounded by Baldwin Schroeder, Commissioner designated to take testimony in the above-entitled matter by virtue of Commission issuing out of the Monmouth County (New Jersey) Orphans' Court, on behalf of Michael J. Tansey, proctor for the appellants to Charles E. Fitzgerald:

- 20 1. What is your full name?
2. Where do you reside?
3. What was your relationship to John Dolan?
4. Did you visit John Dolan at his farm in Everett, New Jersey, at different times between 1887 and 1923?
5. In what years did you visit him? Give dates.
- 30 6. Was his mother living during any of those visits?
7. Did you visit her also?
8. How did he receive you on those occasions?
9. Were the Maloneys, Ella and Mary, there when you visited John Dolan?
10. Were Michael Maloney and Margaret Maloney Harrington there?
40 11. How did Mary Maloney treat you when there?

Interrogatories.

12. How did Ella Maloney treat you?
13. What was the conduct of Mary Maloney towards John Dolan?
14. What was the conduct of Ella Maloney towards John Dolan?
15. What was Mary Maloney's conduct towards Bridget Dolan? 10
16. What was Ella Maloney's conduct towards Bridget Dolan?
17. Did you and John Dolan talk together about their conduct?
18. If so, what was said?
19. What did he say, if anything, about Michael Maloney? 20
20. Did you notice anything in regard to his hearing?
21. When was this?
22. Was he sick at any time when you visited him?
23. If so, when?
24. Describe his condition at those times.
25. What was the conduct of Mary Maloney at those times towards him? 30
26. What was the conduct of Ella Maloney at those times towards him?
27. What was the conduct of Mary Maloney at those times towards you?
28. What was the conduct of Ella Maloney at those times towards you?

Interrogatories.

29. What was the conduct of Mary Maloney, at those times towards his other relatives who visited him?
30. What was the conduct of Ella Maloney at those times towards his other relatives who visited him?
- 10 31. What was the conduct of Mary Maloney and Ella Maloney, or either of them, that you observed towards John Dolan's other relatives who visited him at other times?
32. What conversation, if any, did you have with John Dolan about the conduct of Mary Maloney or Ella Maloney toward him?
33. What, if anything, did he say about it?
- 20 34. What did he say if anything about Michael Francis Maloney?
35. What did he say, if anything, about Margaret Maloney Harrington?
36. Did John Dolan say anything to you about sharing his property with you?
37. What did he say?
38. Did you correspond with him?
- 30 39. How frequently?
40. Did you receive letter dated May 23, 1924 and here produced from him?
41. Is that his signature?
Letter offered in evidence.
42. Did you receive letter dated June 24, 1925 and here produced, from him?
43. Is that his signature?
Letter offered in evidence.
- 40

Interrogatories.

44. What was John Dolan's condition as to hearing when you visited him?

45. Was this before 1920? If so, when?

46. Describe your efforts to make him hear.

47. When you visited him in 1922 did John Dolan tell you anything about his being taken sick in the night? 10

48. Did he tell you how he obtained help and what did he say about being taken sick and about getting help, if anything?

49. How long did you remain with him at that time?

50. What, if anything, did Ella Maloney say to you during that time? 20

51. Did John Dolan mention to you, at that time, what he had done for the Maloney family, Ella, Mary, Michael and Margaret or any of them?

52. What did he say, if anything, as to how those persons, or either of them treated him?

30

40

CROSS-INTERROGATORIES.

MONMOUTH COUNTY ORPHANS' COURT.

| | | |
|----|---|---|
| 10 | In the Matter of JOHN DOLAN, deceased. | } |
|----|---|---|

Cross-Interrogatories to be propounded by Baldwin Schroeder, Commissioner designated to take testimony in the above entitled matter by virtue of commission issuing out of the Monmouth County (New Jersey) Orphans' Court, on behalf of John W. Slocum, proctor for the defendants to Charles E. Fitzgerald:

- | | |
|----|--|
| 20 | <ol style="list-style-type: none"> 1. Did you visit John Dolan in the year 1915? 2. If so, when and where did you meet him and how long did such visit or visits last? 3. Did you visit John Dolan in the year 1922? 4. If so, when and where did you meet him, and how long did such visit or visits last? 5. Who was present at any visit or visits made by you on John Dolan, at his home in |
| 30 | <ol style="list-style-type: none"> Everett, N. J. in the year 1922? |

**ANSWERS TO INTERROGATORIES AND
CROSS-INTERROGATORIES.**

Answers to the Interrogatories and Corss-Interrogatories by Charles E. Fitzgerald, witness, in the matter of the appeal from the probate of the will of John Dolan, deceased, produced, sworn and examined before me, Baldwin Schroeder, Esquire, by virtue of a commission issued out of the Monmouth County Orphans' Court in the above matter. 10

TO THE INTERROGATORIES.

1. Charles E. Fitzgerald.
2. 730 Laurel Avenue St. Paul, Minnesota.
3. Nephew. 20
4. I did.
5. 1888, 1906, 1909, 1915, 1922.
6. Yes.
6. Yes.
8. Very friendly.
9. Part of the time.
10. Michael Maloney was there my first two visits and on my visit in 1922 he was there a couple of times on the latter part of the visit by reason of an invitation from his sisters, His visits at that time in 1922, was, as I said, by reason of his sisters' invitation. Margaret Maloney Harrington was there a number of times during my last visit. 30
11. Unfriendly. Ignored me when I first arrived there and for some time after I had arrived. 40

Answers to Interrogatories.

12. The same.
13. At times very quarrelsome with him.
14. Very quarrelsome at times.
15. Very disagreeable—frequently quarreling
with her and bossing her.
- 10 16. Frequently quarreling with her.
17. Yes.
18. I asked John Dolan as to why he permitted
such conduct from those girls, towards him and
his mother, as I supposed that he was the boss
or the head of the house there. John Dolan made
the reply to me, he said: "Charles, I cannot
help or correct this treatment because I am try-
ing to keep peace here in the house by reason of
20 our old age and my mother's infirmity." He
says: "I try to get along the best I can with
them, which if I do concede to their demands,
makes it more easy for us to keep peace in the
house."
19. John Dolan told me that he would not have
Michael Maloney on the property under no cir-
cumstances, for the reason that he was very
disagreeable and would not do anything at all
that he wanted him to do around the farm. He
30 refused to do it.
20. Yes.
21. My first notice was in 1909 that he was
getting deaf. 1915 he was quite deaf—very
noticeable. In 1922 he was almost totally deaf—
totally deaf, and the only way that I could make
him hear would be to holler direct in his ear.
22. Yes.
- 40

Answers to Interrogatories.

23. In 1915, he complained of being quite ill and told me he had been very ill just previous to my arrival there. In 1922 he was very sick dangerously ill when I arrived there at his home. Did not expect him to live. The doctor was there when I arrived and told me that he did not think that he would live.

10

24. The first time, 1915, when there he was quite feeble. He informed me by reason of a previous sickness. 1922 his condition was verily ill or very sick and confined to bed.

25. 1915, not very friendly—1922, apparently more friendly towards him by reason of his serious illness.

26. Same.

27. Unfriendly—apparently not wanting me there, ignored me when I first arrived there.

20

28. Same.

29. Her attitude was not friendly and practically gave them to understand that she did not want them there.

30. My mother had been called there by her mother, Bridget Dolan and her brother, John Dolan, for the purpose of taking care of the old lady. Mary Maloney and Ella Maloney objected to her being there and made it so disagreeable for her, snubbing her, frequently ignoring her, refused to eat at the same table with her and objected to her being in the house. This same conduct applies also to Mary Maloney.

30

31. Apparently not very friendly.

32. I said to John Dolan, "I notice that Mary and Ella threatened to run you and boss you and

40

Answers to Interrogatories.

disagreeable and quarrelsome with you. Why do you permit this? "His answer to me was that he had to do it by reason of his age and infirmity in order to keep peace and live there with them. He also said that he could not bring any one else, I mean outsiders, into the house to care for him for the reason that Mary and Ella, would drive them out in a very short time.

10

33. He said that he would have to put up with it as long as they stayed and remained in the house.

20

34. He said that under no circumstances would he permit him on the property as he was very disagreeable with him and there was no way possible that he could get along with him and, therefore, he would not permit him on the property at all.

35. Not much of anything to me.

36. Yes.

37. He told me a number of times that he would remember me in his will and that I was his favorite nephew.

38. Yes.

30

39. About three or four times a year.

40. Yes.

41. Yes.

Exhibit No. 1 received in evidence.

42. Yes, sir.

43. It is.

40

Exhibit No. 2, received in evidence and consisting of two sheets.

Answers to Interrogatories.

44. 1909 he was deaf—1915 I noticed him quite deaf. 1922 almost totally deaf. The only way I could get him to hear was to holler direct in his ear in 1922.

45. Yes it was before 1920 and on my visit there in 1906, 1909, and 1915, he was quite deaf and 1922 almost totally deaf.

10

46. Had to holler direct in his ear in 1922.

47. Yes.

48. He told me that he was taken very sick at night, two or three o'clock in the morning, I think it was. By a great effort he crawled out of bed; *when* out of his house crawled on his hands and knees to a neighbor's house, a distance of about half a mile, or more. He said that he thought he would die before he reached this house. He was all alone in his house, nobody to give him any assistance. When he arrived at this neighbor's house, he woke them up and they took him in the house and gave him some assistance or relief. After daylight in the morning they got a doctor for him from the nearest town to him, Red Bank I think, it is some distance away, I should judge ten miles. The doctor pronounced him very sick man and the neighbor took him home. I want to say that he emphasized the fact that it was pretty tough to be left in the house at his advanced age all alone with nobody to assist him and that he told me he was getting very feeble at that time.

20

30

49. About one week.

50. She did not have an opportunity to say very much to me at that time for the reason that she was there only at the week-end as she is a school teacher and there only Saturday and

40

Answers to Cross-Interrogatories.

Sunday. I did not talk with her very much that time.

51. Yes.

10 52. He said that he had raised them from infancy, educated them, clothed them and gave them an education so they might go out into the world and be able to do for themselves, and as soon as they were able to do for themselves they all practically left him all alone and he was left alone most of the time for several years back from that time.

TO THE CROSS-INTERROGATORIES.

1. Yes.

20 2. At his home—the visit lasted about a week or ten days.

3. Yes.

4. At his home. About one week.

30 5. Margaret Tansey, Delia Tansey, Margaret Griffin, Dr. Will Tansey, a priest—name forgotten, and some friend of his accompanied him, Michael J. Tansey, Margaret Maloney Harrington, Mary Maloney Wiggins, Ella Maloney; Michael Maloney—the last two days that I was there for an hour or so each time; A number of other relatives and friends, whose names I do not recall.

CHARLES E. FITZGERALD,
Witness.

Exhibits.

Examination taken, reduced to writing and sworn, this 26th day of April, 1928, before me.

BALDWIN SCHROEDER,
Commissioner.

10

Exhibits.

Exhibit No. 1 was produced before me in the Matter of the Appeal from the Probate of the Will of John Dolan, Dec'd. this 26th day of April, 1928.

BALDWIN SCHROEDER,
Commissioner.

Everett, N. J.

May 23, 1924.

20

Dear Charles. I write those few lines to you hoping to find you all well as this Leaves me at present I am always glad to here from you and if I do not write prompt do not mind it I am getting old nearly 77 years I run the farm yet But it is hard to get help we had a late Spring Cold and Rain.

I got my farm seeded Down I do not want much help yours as Ever.

30

Uncle John Dolan,

40

Exhibits.

Exhibits.

Exhibits No. 2. Consisting of two sheets marked sheet 1 and sheet 2 was produced before me in the matter of the Appeal from the Probate of the Will of John Dolan, deceased, this 26th day of April, 1928.

10

BALDWIN SCHROEDER,

Commissioner.

Everett, New Jersey, June 24 25

Sheet 1.

20

Dear Charles I try to write you one more to Let you Know that I well today is my Birthday I am 78 years Old I keep house all a Lone I have no help I take Care of 5 horses 9 head of Cattle, 3 hogs I cannot say much of poultry they have stood them all Ella comes home every friday nights and goes Back Monday morning so you see I live a Very peaceful Life I have no One to fight with is a dry season here Every thing is Burnig up I have my place all seeded down in grass so I *donot* need much help men are *carse* and wages is high there are plenty farms here and no Body on them.

Exhibits.

30

Exhibit 2.

Sheet 2.

I expected you would Come in when *Bernard* was in I could not *Envite* you I could Entertain But I there—plenty friend here would be glad to see you Both so do not mind me I am no good to write any more I would be glad to get *alletter* from *enywere* I close with Love to you all

Uncle John Dolan Keyport, N. J.

R. D. 2

40

Certificate of Commissioner.

CERTIFICATE OF COMMISSIONER.

This is to certify that I, BALDWIN SCHROEDER, duly commissioned by a Commission issuing out of the Monmouth County Orphans' Court, Freehold, New Jersey, in the Matter of the Appeal from the Probate of the Will of John Dolan, deceased, on the Thirty-first day of March, 1928, did examine the witness CHARLES E. FITZGERALD, at St. Paul Minnesota, on the 26th day of April, 1928, on the annexed interrogatories and cross-interrogatories submitted in this matter, and had the Answers thereto committed to writing, sworn and signed by the said Charles E. Fitzgerald, and I do return said Answers annexed to this Commission, sealed and subscribed by me, and I further certify that the annexed exhibits were produced and proved before me in this matter and are returned by me with the said Commission. And I further certify that all of said papers, Commission, Answers and proceedings before me as Commissioner are returned sealed up under my hand and seal to Joseph L. Donahay, Esq., Surrogate, Monmouth County Orphans' Court, Freehold, New Jersey, this 28th day of April, 1928.

BALDWIN SCHROEDER (SEAL)
Commissioner. 30

STIPULATION.

Filed September 27, 1928.

MONMOUTH COUNTY ORPHANS' COURT.

10

In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Appeal
from
Probate of
Will by
Surrogate.
Stipulation.*

It is stipulated and agreed between the parties to this appeal as follows:

20

1. That the depositions of Dr. Charles A. Palmer and Charles E. Fitzgerald taken *de bene esse* in this cause be made and considered as part of the record without formal reading thereof before the court.

2. That the taking of depositions in this matter is closed.

30

3. That Judge Jacob Steinbach, Jr., before whom the appeal is pending, may fix a time and place for hearing argument and the submission of briefs by the respective parties without further notice between counsel.

Dated, September 18, 1928.

MICHAEL J. TANSEY,
Proctor and Counsel for Appellants.

FREDERICK W. HOPE,
Proctor and Counsel for Proponents.

40

**NOTICE OF APPLICATION FOR DECREE,
ETC.**

Filed November 1, 1928.

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of the Will of
JOHN DOLAN, deceased.

10

To Michael J. Tansey, Esquire, Proctor and
Counsel for Appellants in the above stated
matter.

You are hereby notified that the Surrogate of
Monmouth County has just informed me by letter
received this morning that Judge Steinbach has
fixed Thursday October 18, 1928 for hearing of
argument and submission of Briefs in above
stated proceeding; and that pursuant thereto an
application will be made to Honorable Jacob
Steinbach, Jr. Judge Thursday October 18, 1928
at 10 o'clock in the forenoon at the Court House,
Freehold, Monmouth County, New Jersey in
behalf of Proponents for a decree affirming the
Order of the Surrogate of Monmouth County
admitting to probate the Will of John Dolan,
deceased, and for such further order as may
be proper in the matter.

20

30

Dated Red Bank, Monmouth County, N. J.,
October 2, 1928.

FRED W. HOPE,
Proctor and Counsel for Proponents.

Service of the within notice is hereby acknowl-
edged this 3 day of October, 1928.

MICHAEL J. TANSEY,
Proctor and Counsel for Appellants.

40

TESTIMONY.

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|----|--|---|-------------------|
| 10 | In the Matter of the Estate of JOHN DOLAN, deceased. | } | <i>Testimony.</i> |
|----|--|---|-------------------|

Transcript of testimony taken in the above entitled cause before Steinbach, J., at the Court House, Freehold, New Jersey, on Thursday, the nineteenth day of January, 1927.

Appearances:

20 John W. Slocum, Esq., and Frederick W. Hope, Esq., for the Proponents of the will.

Michael J. Tansey, Esq., and Henry J. Dolan, Esq., for the Caveators.

John F. Trainor, Court Reporter.

30 Mr. Slocum: If your Honor please, counsel will admit for the record that John Dolan died at Everitt, Monmouth County, New Jersey on July 12, 1927. I might say for the information of the Court that the will of John Dolan was admitted to probate by the Surrogate and the appeal was filed within the three months and the hearing now comes before your Honor in the Orphans' Court on the appeal, Mr. Tansey, representing the appellant.

Mr. Tansey: If your Honor please, of course on those probate proceedings nobody had notice.

By the Court: I understand that.

Frederick W. Hope, for Proponents, direct.

FREDERICK W. HOPE, a witness produced in behalf of the Proponents, being duly sworn, testifies as follows:

Direct examination by Mr. Slocum.

Q Mr. Hope, where do you live? A Red Bank, New Jersey. 10

Q What is your profession? A I am a lawyer.

Q How long have you been a member of the Bar of New Jersey? A Since eighteen hundred and eighty-two.

Q I show you a paper dated December twenty-first, nineteen hundred and twenty and ask you if you know whose signature that is opposite the seal? A That is the signature of John Dolan, formerly of Everitt, New Jersey. 20

Q How do you know that is his signature? A I saw him sign it.

Q Whose signature is that below? A My signature is there as one of the witnesses, Mr. Dolan's signature and Miss Blanche L. Tilton is the other witness.

Q Was this paper signed in your presence? A It was.

Q Where? A In my law offices in Red Bank, New Jersey. 30

Q And when? A On the date of the paper, December twenty-first, I think, nineteen hundred and twenty.

Q Where was it signed? A In my office, one of my offices there, my private office.

Q Who was present at the signing? A Mr. Dolan, the testator, Miss Blanche L. Tilton and myself.

Q Won't you tell us who prepared this paper? A Mr. Dolan came in the office inquiring for me 40

Frederick W. Hope, for Proponents, direct.

and was shown in and he told me he wanted to make his will. I told him "all right, it was part of my business." I had become acquainted with him by two or three visits to the office by other people who brought him there, not any of his family. I am not acquainted with any of them or was not until after he died, but I talked with him and found he wanted to make a will in favor of the children of one of his sister's.

10 Q What did he tell you? A And he gave me the names and told me what he wanted to do, how he wanted it made. I made a memorandum of it and then I asked him if he had other relatives "oh, yes," he said, "a great many," and I asked him if he wanted to name anybody else in his will, any other nephews or nieces and he said "no." I said, "it would be nice to give them one hundred dollars as a little remembrance."

20 Q What did he say? A He said, "no, this is my will, my property, I want it made just the way I told you, if you will do it," and I said, "yes, just exactly," and I read over my memorandum to him and so on and he said, "that is right, when that is made up like that is, it will be just the way I want it." Then I called my stenographer and dictated the will in the presence of Mr. Dolan from my memorandum there, and that was Miss Blanche L. Tilton, and she transcribed the paper, wrote it as a will on the typewriter.

30 Q And then what was done? A And then a duplicate was made of it then, and then I read it over to Mr. Dolan.

Q Who were present when you read it to Mr. Dolan? A Mr. John Dolan, Blanche L. Tilton and myself.

40

Frederick W. Hope, for Proponents, direct.

Q All right. What did he say then? A He said, "that is right, that is the way I want my will," and I said, "you are sure about it, you don't want to put in anybody else?" I asked him again because I was impressed with it. I knew sometimes members of a family feel hurt if they are not named and I wanted to avoid anything of that character. I said, "think them over and be sure about it," and he said, "I am sure." He was a very positive man in his speech and in his way, a man used apparently to having his own way. I fixed it up and put on the seal and asked him if he wanted to sign that now, I had read over the will and the attestation clause before, and he said, "yes." 10

Q Did he sit in your office while the will was being prepared? A Oh, yes. He came in late noontime apparently. 20

Q Did anyone come with him? A No.

Q He was all alone? A He was all alone, he came there all alone.

Q This is the paper I have shown you that you prepared at that time? A Yes, I looked it over just now.

Mr. Slocum: I offer the paper.

By the Court: As an exhibit? 30

Mr. Slocum: As an exhibit.

Mr. Tansey: I suppose, if your Honor please, the intention is to prove it by the other witness also?

Mr. Slocum: Yes.

By the Court: It may be marked for identification.

Will marked Exhibit A for identification.

Frederick W. Hope, for Proponents, cross.

Q Can you recall any of the other details that took place at the time of the execution of this paper, Mr. Hope? A Mr. Dolan then signed the will and I read that attestation clause again to him and asked him whether that was his will and whether he wanted the other witness
10 and myself, Miss Tilton, to sign as witnesses.

Q What did he say? A He said he did.

Q And then you and Miss Tilton subscribed as witnesses? A We did.

Q After he had signed it? A We did, there in his presence. We both signed in his presence.

Mr. Slocum: Cross examine.

Cross examination by Mr. Tansey.

20 Q You hadn't done any work for Mr. Dolan, personally, before that? A I had drawn a paper between him and other people he brought there, I think, people named Long, I think it is.

Q Long? A Yes, up in that vicinity. John Long was one.

Q What was the nature of the paper you drew for him? A I was a member of the Draft Board there and his father and mother were very anxious that he should be relieved from going to the World War and he brought Mr. Dolan in
30 there twice anyway, and some other people at different times to have their affidavits taken by me.

Q Mr. Long brought him in in connection with his draft exemption affidavit? A Yes, sir.

Q He was there to identify or vouch for Mr. Long? A Yes, he was.

Q No, I am asking you if he was there vouching for Mr. Long? A Mr. Long and his
40 father and mother. This was John Long, I

Frederick W. Hope, for Proponents, cross.

believe and his father and mother brought Mr. Dolan in there in order that I might take his affidavit.

Q In connection with John Long's exemption?

A Yes, sir.

Q I suppose, to the effect that Mr. Dolan was acquainted with John Long and such things as that, that the draft board wanted? A Yes, he was acquainted with him and lived up there, working with Mr. Long, I mean he worked for Mr. Dolan. He was a thresher and things like that. 10

Q What other item of business besides the work on the exemption matter— A He was in there twice.

Q You mean Long was in twice? A Yes, Long and his wife.

Q Mr. Dolan came once in connection with Mr. Long? A He came there twice. There was something more they wanted. 20

Q What else did he ever have done in your office? A Nothing that I know of.

Q That was the only occasion that you had any business dealings with Mr. Dolan, the Long matter and drawing his will? A Just as I explained.

Q When he named to you the persons he wanted to remember, did he give you the names as they appear in the will, Sarah Ellen Maloney? A Yes. 30

Q And Margaret Maloney Harrington? A I believe that is one name.

Q Mary C. Wiggins and Michael Francis Maloney? A He gave me the four names that are written in there. I may not remember their initials.

Q Did he give them in just that way? A Yes. 40

Frederick W. Hope, for Proponents, cross.

Q Did he have them written on any paper to hand to you? A No.

Q He told you right out what their names were? A I don't think he did.

Q You don't think he did? A No.

10 Q He gave you the names right out of his own mouth, did he? A Yes.

Q So far as you now recall he didn't hand you a memorandum with the names on it, did he? A No.

Q Did he hand you any memorandum as to the disposition of the will, the distribution of his property? A No.

Q He told you that in your office? A He told me.

20 Q Did he tell you anything about what property he had? A No, only as he named it there in the will, about the farm.

Q He told you he had a farm of ninety-seven acres? A I don't know as he said how much of a farm it was.

Q You put it in the will as he told you, didn't you? A Well, then, he told me.

30 Q He specified in the will it was to go to Sarah Ellen Maloney who lived with him? A Yes.

Q Did he say "who lives with me"? A Yes, he told me that. I never was acquainted with the family, any of them.

Q You were never acquainted with them? It was only that he told you she lived with him and you put it in the will that way? A That is what he said.

40 Q You said he told you he wanted to leave it to some children of his sister? A I think Sister Ellen, he called her.

Frederick W. Hope, for Proponents, cross.

Q He said these persons he was mentioning in the will were children of his sister Ellen? A I believe so.

Q When you asked him whether he had any other relatives, he answered generally, "plenty of them"? A I asked him if he had any nephews and nieces, no brothers and sisters, and he had plenty of nieces and nephews. 10

Q He didn't name them? A No, he said they were scattered all around the country.

Q You are quite sure Mr. Dolan came to your office alone? A Yes.

Q At any rate, he appeared alone in your office? A No, he came there alone.

Q And he opened up his business by telling you he wanted to make his will? A That is it.

Q And then he gave you the details that you spoke about? A Yes, as they are written in that will. 20

Q At any time, either before or after the execution of the will, did you see anybody with him except the young lady whom you named in your office? A The young lady that signed, Miss Tilton, who signed as a witness you mean?

Q Did you see anybody who was in the office at that time? A There was nobody else with him. 30

Q At any rate you saw nobody with him that day, did you? A No.

Q How long did this transaction take? A Maybe an hour. No more than that.

Q He signed the will and executed it before leaving your office that day? A He certainly did. He didn't go out of my room after he came in. I commenced talking to him about preparing the will in my private office and he didn't leave that room until after he signed the will. 40

Blanche L. Tilton, for Proponents, direct.

Q Do you remember what kind of weather it was that day? A I do not. I know he came in just what would be after early noon.

Q Your previous transaction with him had been about two years before that, maybe a little more, during war time? A Yes, it would be
10 two or three years. Between that.

Q And before the first incident you had had no business with him whatever before the Long incident? A No, not that I ever remember of at all.

Q After the drawing of the will you didn't have any other business with him, did you? A No.

Q The will was the only actual business you ever did for him? A Yes, for him personally.

20

Mr. Tansey: That is all.

Mr. Slocum: That is all.

Q By the way, did you ever do any business for or with any of the persons named in the will before that? A No, I never had been acquainted with any of them until the death of the old gentleman at all, at the death of John Dolan. I was never acquainted with any of
30 them until that time.

BLANCHE L. TILTON, a witness produced in behalf of the Proponents, being duly sworn, testifies as follows:

Direct examination by Mr. Slocum.

Q Miss Tilton, where do you live? A In
40 Red Bank.

Blanche L. Tilton, for Proponents, direct.

Q Are you in Mr. Hope's office? A I am.

Q Were you employed in his office in December, nineteen hundred and twenty? A I was.

Q I show you a paper marked A for identification and ask you if you know that signature opposite the seal? A I do.

Q Whose signature is it? A John Dolan's. 10

Q How do you know it is his signature? A I saw him sign it.

Q Who are the other signatures below on the same page? A Frederick W. Hope and myself.

Q Where did you see Mr. Dolan sign that paper? A In Mr. Hope's office.

Q And when? A The date of the will.

Q Who were present at the time he signed? A Mr. Hope, Mr. Dolan and myself. 20

Q Who typewrote this paper? A I did.

Q What do you know about the execution of the paper, the details of it, after you had typewritten it? A I brought it back into the inner office and Mr. Hope read the will with the attestation clause and then asked Mr. Dolan to sign, which he did. He said at the time, "It was just the way I want it," and then Mr. Hope asked if he wanted us to sign as witnesses and he said, "yes." 30

Q And then you and Mr. Hope signed? A We signed as witnesses.

Q Were you all present at the same time? A Yes, sir.

Q Where? A In Mr. Hope's inner office.

Q Did Mr. Dolan ask you to sign this as a witness to his will? A He did.

By the Court: Did you hear him ask Mr. Hope to sign it? 40

Blanche L. Tilton, for Proponents, cross.

The Witness: I did.

Mr. Tansey: Of course, that is leading, if your Honor please.

By the Court: Mr. Hope already testified to it.

10 Mr. Slocum: I now offer the paper as an exhibit.

By the Court: It may be marked as an exhibit.

Will marked Exhibit P. 1.

Cross examination by Mr. Tansey.

Q Miss Tilton, how long had you worked for Mr. Hope at this time? A Nineteen hundred and twenty?

20 Q Yes. A One year.

Q Had you prepared other wills? A I had.

Q The day Mr. Dolan came in there do you recollect what kind of weather it was? A I do not.

Q Whether it was cold or stormy? A I don't remember at all.

Q When he came in did you see anybody with him? A No one was with him.

30 Q Do you recall how he was dressed? A I do, by that I mean he had on yellow trousers and a white shirt, if I can remember correctly. He was dressed like a farmer.

Q I didn't know they had any distinctive uniform. Did he have an overcoat on or a cap on? A I can't recall that.

Q You remember the yellow trousers? A I do.

Q Was it a strikingly pretty pattern? A I wouldn't say that.

40 Q You remember it? A Yes.

Blanche L. Tilton, for Proponents, cross.

Q After Mr. Dolan signed this document, did he say what it was? A I knew what it was.

Q Did he say what it was? A I don't think he did.

Q You didn't hear him say anything after he signed the paper? A He said "it is just the way I want it."

10

Q That is all he said? A That is just what he said.

Q You heard him giving the directions for the preparation of the paper? A I was not in the room when the memorandum was made.

Q You wrote the will from the memorandum?

A I did not. Mr. Hope dictated the will to me.

Q Why did you say about the memorandum?

A Mr. Hope had a memorandum in his hand, as he generally does, with wills.

Q What did he do, read from that memorandum? A He did.

20

Q Was that memorandum preserved? A I do not know.

Q You don't know whether that memorandum was handed to Mr. Hope by Mr. Dolan, do you? A I do not.

Q You saw the memorandum in Mr. Hope's hand and he dictated the will to you? A I did, in Mr. Dolan's presence.

Q Was it in the same room that you typed it? A No, sir, that was in the inner office. I typed it in the second office.

30

Q But you went inside to take dictation on the will? A I took complete dictation inside.

Q And then was when the signatures were appended? A No, Mr. Hope read the entire will over to Mr. Dolan and Mr. Dolan signed and Mr. Hope again read the attestation clause and then he asked if he wanted us to sign as witnesses.

40

Blanche L. Tilton, for Proponents, cross.

Q The year that you previously had been there you had not seen Mr. Dolan come in? A I had not.

Q He was an old gentleman at that time, wasn't he? A Well, no, I wouldn't say that. He was about, I thought at that time, about sixty-
10 five or seventy.

Q You don't consider that old? A No, I don't.

Q It's a good thing to be so cheerful. He looked as though he might have been sixty-five or seventy at that time? A Yes, sir.

Q What time of the day did this happen? A I can't remember exactly. People come in and out all the time in a law office.

Q When Mr. Hope dictated the will to you, did he mention the names in the will, Mary Ellen Maloney? A Just as it is in the will.
20

Q Do you recall him saying "who lives with me"? A I do not, unless it is in the will.

Q What you recall about it particularly is that Mr. Hope had a memorandum in his hands which he dictated from to you? A Yes, the same kind of a memorandum he always has when he dictates wills to me. I think it is the same kind. I think possibly it had the names on, I don't know.
30

Q It is the same kind of a memorandum he uses for wills? A Always.

Q And any other papers? A No, he doesn't have a paper in his hand every time he dictates.

Q But in these will cases, he does? A Always.

Q Do you know whether he preserves these memorandums? A I do not.

40 Mr. Tansey: That is all.

Blanche L. Tilton, for Proponents, re-direct.

Re-direct examination by Mr. Slocum.

Q You say after you had prepared this paper marked Exhibit P. 1 and before Mr. Dolan signed it, Mr. Hope read it over? A He did.

Q Who were present when that was read over? A Mr. Dolan, Mr. Hope and myself. 10

Q Did Mr. Dolan ask you to witness it? A He did and on his way out—

Q One minute. Did he ask Mr. Hope to witness it? A He did.

Q What were you going to say? A On his way out he stopped at the desk and thanked me for being a witness.

Mr. Tansey: I want to ask Mr. Hope if he preserved that memorandum. 20

Mr. Hope: I may have. I think I saw it in going over some of the papers not so long ago.

Mr. Tansey: Would you mind producing it?

Mr. Hope: No, I will not.

Mr. Slocum: If Mr. Hope has it he will produce it.

Mr. Hope: Yes. 30

Mr. Tansey: If we want any further questions will Mr. Hope appear?

Mr. Hope: No doubt about that, if I am able to.

Mr. Slocum: That is our case.

Mr. Tansey: I suppose without any formal matter we can go ahead and prove our case?

By the Court: Yes. 40

Henry R. Dolan, for Caveators, direct.

HENRY R. DOLAN, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows:

Direct examination by Mr. Tansey.

10 Q Mr. Dolan, what is your business? A I am a lawyer.

Q Where are you in business? A 1060 Broad street, Newark, New Jersey.

Q How long have you been practicing law? A Since nineteen hundred and seventeen.

Q Nineteen hundred and seventeen? A Yes.

Q Are you practicing law in your own office or with someone else? A I am, yes.

Q You were a nephew of John Dolan? A I am.

20 Q Your father's brother, was he? A Yes, sir.

Q Were you quite friendly with John Dolan? A Well, I always was very friendly with him, yes.

Q You visited back and forth? A Yes.

Q Do you remember on one occasion when you remained there with him part of the winter? A I do.

30 Q What was the reason for that? A Well, he had been quite sick and he came over to get one of the boys, as he called them, and I was assigned to the position and I went over with him and stayed one winter. I think it was the winter of 1904.

40 Q Nineteen hundred and four? A Nineteen hundred and four. He had been ill and he was there alone and my father sent me over and I stayed there a good part of the winter until right after quite a snow storm and he became very ill and I went home to get my father and

Henry R. Dolan, for Caveators, direct.

then my father went over and stayed with him the remaining part of the winter.

Q He was, as you say, at that time, a sick man? A A very sick man, yes.

Q You were at that time a boy? A I was about twelve years old.

Q And your father then remained the rest of the winter? A He remained the rest of the winter. 10

Q Did you have any subsequent dealings with John Dolan? A Nothing other than when I would see him and talk with him, he was always very glad to see me and I was very glad to see him.

Q He was always very friendly? A Very friendly and very solicitous.

Q Do you remember Sarah Ellen Maloney? A Yes. 20

Q Mary C. Wiggins? A Do I remember them?

Q Being at Uncle John's, Mr. Dolan's? A During the time I was there?

Q Before that time? A Yes, they were there.

Q And also Michael Maloney? A I don't remember Michael Maloney being there.

Q And Margaret Harrington? A Margaret Harrington. 30

Q You remember they were there before you went there that winter? A They were, yes.

Q What had become of those people at that time? A They had had some sort of a dispute, as I understood from Uncle Johnny.

Mr. Slocum: I object to this.

Q Did Mr. Dolan tell you that? A Yes, he did. 40

Henry R. Dolan, for Caveators, direct.

By the Court: What of that?

Mr. Tansey: Well, if your Honor please, we are endeavoring to lay our case for undue influence and want to show the family conditions and particularly that which appears as undue influence.

10

By the Court: Why is it objectionable, Judge Slocum?

Mr. Slocum: He asked him a question about something which relates to three of the beneficiaries under the will, in 1904. The will was in 1920.

By the Court: Uncle Johnny, is that the testator?

20

Mr. Tansey: We say "Uncle Johnny" we should refer to him as John Dolan.

By the Court: Do you still object, Judge Slocum?

Mr. Slocum: I do.

By the Court: What time was this in years. The witness, what time was this?

The Witness: 1904.

By the Court: What is the date of the will?

30

Mr. Tansey: 1920.

By the Court: Of course, you can admit evidence on a dispute of this kind, undue influence, at the time of the will but this is quite remote.

Mr. Tansey: It is a condition that carries along for about twenty years. We shall connect it up in a regular chain but we have got to begin with the first link.

40

By the Court: I will receive it and strike it out if you don't connect it up.

Henry R. Dolan, for Caveators, direct.

Q He himself, told you that? A He told me that.

Q What was the result of the dispute? A They had walked out and left him there all alone during this winter.

Q When you went there there was nobody there? A There was no one there at all. 10

Q All the time you stayed there nobody came? A Yes, sir.

Q The Maloneys had gone? A Yes.

Q What did he say in regard to that? A He seemed to be very glad they were gone.

Q What did he say? A He said he was very glad they were gone.

By the Court: That was in 1904?

The Witness: Yes. 20

Q Do you know how long previous to that time they had been at his house, making it their home? A I couldn't tell you.

Q Was there any further incidents?

By the Court: Just a moment. I asked if that was in 1904.

The Witness: 1904. 30

Q Was there further incidents in regard to his state of mind with reference to the Maloneys in your experience? A No, not that I know of, other than at different times he would talk with me and tell me certain personal things.

Q Which, for instance? A Which related to the different members of the family, particularly one incident he showed me when I was over there by the clothesline, a line of clothes were hanging on the clothesline and he said, "that 40

Henry R. Dolan, for Caveators, direct.

is what they do for me, it is their own apparel, nothing of mine on that line."

Q When he said "their own" whom did he refer to? A Mary and Ella at that time.

Q Did you ever hear him refer to Ella Maloney as Sarah Ellen Maloney? A I did not.

10 Q What did he always call her? A Ella.

Q Did you ever hear him refer to Mary C. Wiggins as Marie C. Wiggins? A I never did.

Q What did he always call her? A Mary.

Q Did you ever hear him refer to Michael Maloney as Michael Francis Maloney? A I can't say that I ever remember him referring to him.

Q And Margaret Maloney Harrington, did he ever refer to her that way? A Not to my knowledge. He called her Maggie.

20 Q All through Uncle Johnny's lifetime, from then on, was he friendly to you and your side of the family? A Always very friendly.

Q Did you write him an personal letters? A No, I never did.

Q Did you ask him for anything one time when you were a boy for the purpose of fixing your teeth or something? A Not I.

30 Mr. Slocum: I object to the question, as being immaterial.

Q What further do you know about the attitude of Uncle Johnny or Mr. Dolan, to your family? A His attitude has always been very friendly.

Q Did you know anything about his having prepared this will? A No, in fact, he had always given me the impression that he had no will.

40 Mr. Slocum: I move it be stricken out.

Henry R. Dolan, for Caveators, direct.

By the Court: Objection sustained.

Q What did he say in regard to a will? A He said he wouldn't make a will.

Q How often did he say that? A I don't know. I may have heard him say it three or four times.

10

Q What did he say in that connection? A I remember one time he said he wouldn't make any will and they could fight over his property like they were fighting over the Kaiser's.

Q Did he ever say anything to you indicating his idea of any division with his nieces and nephews? A Well, he told me, he always gave me the impression—

Q What did he say to you? A He said, "you boys will be better off by my having saved and my having done this and that." He never came out directly and said, "I am going to leave you this or leave you that."

20

Q What he said was, "you would benefit—"
A Yes.

Mr. Slocum: One minute. If your Honor please, I object to this witness answering when I make an objection.

30

By the Court: Yes.

Mr. Tansey: If your Honor please, he already testified that the testator said, "you will benefit by my having saved."

By the Court: No need repeating it. Go on, Mr. Tansey.

Q What else did he say in regard to that particular feature of it? A That is about all I can tell you.

40

Henry R. Dolan, for Caveators, cross.

Q How long, over what period of time, did those conversations extend? A All during his life.

Q Do you remember one particular instance, sometime before his death when he mentioned the matter specifically?

10 Mr. Slocum: I object to it as leading.

A I do not.

By the Court: The objection is sustained.

Q Is there anything further that you remember in that connection? A No, I do not.

Q Were you there at the time your father took care of Mr. Dolan? A I left. I went home when my father came. In fact, I went home and my father went over.

20 Q When did you first know Mr. Dolan had left a will? A I don't know, I think someone told me it had been probated.

Q Had any of the persons named in the will, the executors or anybody else named in the will told you there was a will? A No, they had not.

Q And you learned it from some outsider? A I learned it from an outside source.

30 Q That there was a will? A That there was a will and that it had been offered for probate.

Mr. Tansey: That is all.

Cross examination by Mr. Slocum.

Q Mr. Dolan, you were at John Dolan's farm in the year nineteen hundred and four? A In the year nineteen hundred and four.

40

Henry R. Dolan, for Caveators, cross.

Q How long did you stay there at the farm with him? A About two months.

Q What months of the year were they? A It was in the winter time. I couldn't tell you just exactly what months they were. I remember it was in the winter because when I went home I went home through a very severe snow storm. 10

Q And you, at that time, were twelve years of age? A Twelve or thirteen years of age.

Q Did you say at that time that no one was living there with John Dolan excepting yourself? A And the aged mother, my grandmother.

Q Her name was Bridget? A Yes.

Q She was there? A Yes.

Q Where was Mrs. Harrington living at that time? A At that time I think she lived in Wickatunk or some of those places up there. 20

Q Wickatunk, Monmouth County? A Yes, sir.

Q Didn't you see her down there every day or two? A She was not there.

Q Didn't you see her there at all during those two months? A No.

Q You know Sarah Ellen Maloney? A If that is Ella Maloney, yes.

Q Didn't you ever see her there? A She was not there. 30

Q She was not there for the two months that you were there? A She was not there.

Q You never saw her visiting the place? A She was not there.

Q After you left, after you returned in nineteen hundred and four, when did you next visit John Dolan? A Oh, I don't know, perhaps the next year.

Q Next year? A Yes.

Henry R. Dolan, for Caveators, cross.

Q And again after that? A Well, I saw him maybe four or five times a year. I didn't see him very often.

Q Did you see Mr. Dolan four or five times a year regularly from nineteen hundred and four to nineteen hundred and twenty? A Until
10 nineteen hundred and twenty?

Q Yes? A Well, I would say I did, yes.

Q Where did you see him? A Sometimes at his home in Everitt and I saw him at my mother's home.

Q Where is that? A On Lloyd Road, Matawan.

Q Where else? A And I saw him at Harrington's. I think that was after nineteen hundred and twenty, however.

Q So you have seen him at Matawan and you
20 have seen him at Everitt and you have seen him at the Harrington home, anywhere else? A That's all.

Q Did you ever talk with your uncle about making a will? A I never did.

Q Did he ever mention the subject to you? A Well, yes, he did. He said one time that he would never make a will.

Q Where did he tell you that? A He told
30 me that at my father's funeral.

Q At your father's funeral? A Yes.

Q What was the date of your father's funeral? A November the eleventh, nineteen hundred and eighteen.

Q Did you ask him at that time not to make a will? A I did not.

Q How did he come to speak of it to you? A Well, he said the farm that my father worked so hard on and that he had labored on would some day go to all the heirs that had
40

Henry R. Dolan, for Caveators, cross.

helped to build up that fortune and he said "I have been—I have thought the matter over and I am not going to draw any wills."

Q Where did he tell you that? A Right out on the sidewalk at my father's home.

Q On the sidewalk in front of your father's home? A On the pathway going past the porch. 10

Q And it was the day your father was buried? A That was the night before he was buried.

Q Who else was there? A Just he and I.

Q You say he made some reference to fighting over the will, let them fight the same as they do over the Kaiser's, is that right? A Yes.

Q When did he make any such expression as that? A He made that before my father's death. 20

Q That was before your father's death? A Yes.

Q And where? A Right in our dining room at home.

Q How long before your father's death? A I should imagine it was nineteen hundred and sixteen.

Q How did that come about? A Well, my father and he were talking about some differences that they had had in the past and about certain properties that they had owned. I do not remember now just what it was. I remember his having said he wouldn't make any will and all the sisters and brothers would come in for the homestead. 30

Q Then your father and John Dolan had had a serious controversy in their lifetime, hadn't they? A Not that I know of.

Q Didn't they have some dispute about family matters? A Not that I know of, outside of 40

Henry R. Dolan, for Caveators, re-direct.

the fact that the grandmother had it all in her name, that is all I know.

Mr. Slocum: That is all.

Re-direct examination by Mr. Tansey.

10

Q You say they had labored for the building up of the fortune? A Yes.

Q Had your father worked in conjunction with Mr. John Dolan? A My father had.

Q Originally? A Yes.

Q And the property was in the name of Bridget Dolan? A Yes.

Mr. Slocum: I object to that.

20

Mr. Tansey: That is a matter of record.

By the Court: That is merely a reiteration of what you just brought out.

Mr. Slocum: Counsel is injecting here some partnership in this property standing in the name of Bridget Dolan.

Mr. Tansey: Not at all.

Mr. Slocum: Some contribution to it, that is entirely improper, irrelevant and not in the case at all.

30

By the Court: I don't see how it is in the case.

Mr. Tansey: Mr. Slocum brought it out. He said "my father had labored to build up the fortune." I am asking him particularly how he labored.

40

By the Court: Mr. Slocum asked the witness if there had been something said and he said "no" and then he asked him about the property being in his grandmother's name. I think that is what it was.

Henry R. Dolan, for Caveators, re-direct.

Q Did you say there had been a dispute because of some property in your grandmother's name? A Yes, I think there had been, the details of which I cannot very well give you.

Q But at this time they were in friendly conference? A Oh, yes, they had always remained friendly. 10

Q And the condition of affairs which related to the property was independent and you and your father had taken care of Mr. Dolan this winter you spoke about? A Yes, and the following winter.

Q Did your father remain there with Mr. Dolan after you left there? A Oh, yes, he remained there the balance of that winter.

Q What was he doing there? A There was nobody there *by* my grandmother, who was a very aged woman and my uncle was very sick; and, of course, someone had to stay there and take care of the livestock and things in general. 20

Q The cattle and horses, you mean? A Yes.

Q Did you take care of them when you were there? A Yes.

Q And after you left your father took care of them? A My father took my place.

Q And your grandmother was sick? A Yes. 30

Q She was an aged woman? A Yes.

Q And your father remained there the balance of the winter? A Yes, he did.

Q And this conference which he had in your home was about nineteen hundred and sixteen?

Mr. Slocum: He is leading him right along.

By the Court: The objection is sustained. 40

William B. Dolan, for Caveators, direct.

Mr. Tansey: That is all, Mr. Dolan.

Mr. Slocum: That is all.

10 WILLIAM B. DOLAN, a witness produced in
behalf of the Caveators, being duly sworn, tes-
tifies as follows:

Direct examination by Mr. Tansey.

Q You were a nephew of John Dolan? A Yes.

Q And you remember John Dolan for a number of years do you? A Yes, he happened to be my God-father.

20 Q He was your God-father? A Yes.

Q Were you and he friendly? A Very.

Q Did that friendliness continue for any length of time? A Oh, yes, always.

Q Did you have any talks with Mr. Dolan in regard to his property at any time? A Well, I never went into any detail about his property, only just what I would hear him say, different things.

30 Q Do you recall what you heard him say at times? A Well, I went to see him when he was sick at Harrington's three years ago. I brought him some fruit and they were laying out the property there in front of Harrington's, what they called Marlboro Gardens, it is a development right in front of Harrington's, and he says "this property here that I have in the rear of that will be all taken in by those people" and he says "you will benefit by it, but not me, I won't live to see it."

40 Q Did he have property right in that vicinity? A Yes, he had property in the rear of

William B. Dolan, for Caveators, direct.

it that belonged to the old Dolan Estate, grandmother Dolan's property.

Q About when did that happen, Mr. Dolan?

A Three years ago.

Q Did you know that he had made a will?

A No, no, he said he would never make any will. 10

Q When did he say that? A He said that down to our house, the same as my brother Henry told you, he said "they will fight over his will like they did over the Kaiser's property, he would make no will."

Q You say he said they would fight over his will? A Like they did over the Kaiser's.

Q Did he say how he would divide his property?

Q Did you visit Mr. Dolan at frequent intervals? A When he was living? 20

Q Yes. A Certainly.

Q Do you remember this incident when your father was there taking care of him? A Yes, I was living at Keyport then and Uncle John was pretty sick and Henry was over there, as a boy, and Uncle John got so sick that Henry was not able to take care of him and take care of the stock and he left there right in a snow storm and he went home and informed father, and father went back that night and stayed the rest of the winter with him. I told father at that time— 30

Mr. Slocum: I object.

By the Court: Objection sustained.

Q Did you go there at that time, when your father was there? A Yes, sure.

Q You went up there for what purpose? A Just to go up to see him. 40

William B. Dolan, for Caveators, direct.

Q What was your father doing then? A He was doing all the work, that is what I was objecting to, he had five or six horses and ten or twelve head of cattle and he also had to take care of those inside.

10 Q Was Mr. Dolan and his mother both sick at that time? A I went there to tell father to get somebody else to do the work.

Q Where were the Maloneys at that time? A I don't know.

Q Did you see them there? A No.

Q Sometime after that when you went there did you see the Maloneys at the place? A I never went around there, never when they were there.

20 Q Why not? A Because when we would go there they always tried to keep us away from Uncle John. I would go there when they wouldn't be there.

Q What was the treatment you received from the Maloneys when you went there and found them there? Don't smile. We can't get a smile on the record. A They acted as though they didn't want to see anybody there. When I went there I went there when I was sure they were away.

30 Q The times you did go there and found they were there how would they treat you? A They wouldn't treat me at all, they wouldn't let me in.

Q When did that happen? A That was the last time I was there, when they were there.

Q About when was that? A That was some-time ago, it must be fifteen years ago.

Q Do you remember particularly of that incident? A Excepting last summer when I was there to dinner.

40 Q No, do you remember this incident when say they wouldn't let you in? A I went there

William B. Dolan, for Caveators, direct.

on a Sunday, I could see I wasn't wanted in. I knew when they wouldn't be there so I went at that time. He came to my house at one time and he asked me to come there oftener and I told him of the conditions and he said "come any time to the Middletown Station or Red Bank and I will meet you there and bring you over to the house." I said "that won't do, Uncle John, I would like to be received by the people there. I see you four or five times a year at other places and that is sufficient." 10

Q Mr. Dolan was always glad to have you come? A Why certainly.

Q The year you say you were there at a party, when was that? A Last year.

Q What was the occasion of that party? A They said it was a birthday party. 20

Q It was held on what day? A Sometime last summer.

Q Whose birthday was it? A Uncle John's.

Q And you were there? A Yes.

Q Did he receive you? A I should say yes.

Q Was he glad to see you? A I should say, yes, he was.

Q Did he make any talk at all about his property or things of that kind? A He took me out to show me around the place, he took me out to the barns and orchards and I said "Uncle John, you are walking around too much for a man of your age" and he said "oh, no" he was so happy he cried. Half the time he laughed and half the time he cried. 30

Q He was so glad to see you? A Yes.

Q At that time did you know there was any will made? A No, no.

Q Where did you first learn there was a will made? A After it was probated. 40

William B. Dolan, for Caveators, cross.

Q Nobody told you before then? A No.

Mr. Tansey: That is all.

Cross examination by Mr. Slocum.

10 Q Mr. Dolan, where do you live? A 86
Broad street, Newark.

Q What is your business? A Retired.

Q What was your business before you re-
tired? A Real estate.

Q If I understand you correctly you didn't
visit John Dolan between the birthday party,
which took place a year ago and fifteen years
previous, is that right? A Oh, no, I was in
there several times but I didn't go there to have
20 any dinners in fifteen years. Oh, no, that isn't
right.

Q You went to call on him then during that
time? A I went to call on him, yes.

Q When was the last time you went to call
on John Dolan that you can remember? A I
generally called on him about the first or second
week after school started because I knew he
would be alone and then I would see him out to
the different funerals and church and different
30 places. I never had any dinners there after that
time, I would meet him outside.

Q You would wait until something occasioned
your meeting him away from his home, is that
right? A Yes, certainly, and I would go to his
home, too. When I went to his home I wanted
to see him and he wanted to see me.

Q You said somebody refused to receive you
at his home and that was the reason you didn't
go to see him? A Probably you have been in
40 that position yourself. I wasn't told to get out.

William B. Dolan, for Caveators, re-direct.

Q Who do you say refused to let you see him at his own home, just name who it was? A The people that were there at that time.

Q Well, who were they, that is what I am trying to find out. A Well, Ella Maloney and Mary Maloney.

Q Anybody else? A No. 10

Q Those two? A Yes.

Mr. Slocum: That is all.

Re-direct examination by Mr. Tansey.

Q Did you ever hear Mr. Dolan call Ella Maloney, Sarah Ellen Maloney? A No.

Q What did he always call her? A Ella.

Q Did you ever hear him call the lady that is mentioned in the will as Mary C. Wiggins? 20

A No, Mary Maloney.

Q Did you ever hear him say Michael Francis Maloney? A No, Mickey Maloney.

Q That is the way he always called him? A Yes.

Q He never used the words Michael Francis? A No.

Q What was the condition of Mr. Dolan's health, say around for five or six years before he died? A He was very sickly. He had doctors all the time. The man was a very old man. I had to smile when I heard the girl say he was sixty-five years old. He was ninety years old. They had an eighty-one years old birthday for him but he was very nearly ninety. 30

By the Court: He was nearly ninety?

A Yes, sir, my father died in nineteen eighteen and he was eighty-three and he was three years 40

William B. Dolan, for Caveators, re-direct.

older than my uncle. My uncle was eighty years old in nineteen eighteen. That is what I always heard them say. He was a very deaf man.

Q How long had he been deaf? A He had been deaf for forty years. If you asked him one thing he would answer something else. I
10 was listening to the others testify—

Q Was he afflicted otherwise? A He was in pretty bad shape for the past fifteen or twenty years.

Q Had he had any stroke that you know of? A Yes.

Q Do you remember when he used to carry his head to one side? A I am not a physician. I can't qualify on that but I know he was in very bad shape.

Q At the time you went to see him he was
20 all alone? A All alone. The last day I was in to see him he wanted me to come in to have something to eat with him. I said "no, I have a car here, I will take you to get something to eat" and he said "no, I will go in and eat a little milk and bread."

Q Was anyone there to get his milk and bread for him? A No one whatever.

Q Do you remember when that was? A That was about four years after my father died.

Q That would be about nineteen hundred and
30 twenty-two? A About nineteen hundred and twenty-two.

Q Do you know where Ella Maloney was at that time? A I presume she was living there—

Mr. Slocum: I object.

A I know she was in Newark, where she lived.

Q What was her business? A School
40 teacher in Newark.

William B. Dolan, for Caveators, re-direct.

Q She had been that for a number of years, hadn't she? A A number of years.

Q And Mary Wiggins, where was she, if you know? A She was a school teacher in Paterson, New Jersey.

Q And Margaret Harrington, where was she? A Morganville. 10

Q Living with her own family was she? A Yes, sir.

Q And Michael Francis Maloney, where was he? A In New York.

Q Do you remember when he left Uncle John? A He left Uncle John. They had a fight and he left him when he was about fourteen years old, about fourteen as near as I can tell.

Q Do you know about the dispute between him and Uncle Johnny or don't you know about it? A I knew about it but I didn't know what it occurred about. 20

Q Who told you about it? A Uncle John.

Q What did he say? A He told me Michael was going to lick him and he said "I have raised you big enough for you to think you can lick me, he said, I have packed your clothes and left them outside the gate."

Q And he left? A Yes.

Q How long was that before this sickness of Uncle John's occurred? A That occurred in 1904, maybe seven or eight years. 30

By the Court: Before.

A I can't think of those things right off.

Mr. Tansey: That is all, Mr. Dolan.

William B. Dolan, for Caveators, re-direct.

Re-cross examination by Mr. Slocum.

Q That was seven years before nineteen hundred and four? A Yes.

10 Q Mr. Dolan, when you attended the birthday party a little more than a year ago, wasn't that known and celebrated as Mr. John Dolan's eighty-first birthday? A I don't know.

Q Isn't that what they talked of that day when they were all there together? A That is what the people, I suppose, that got up the birthday party talked about, but I happened to know different.

Q And that party was at his home in Everitt, was it not? A Yes.

20 Q And was Ellen Maloney there that day? A Yes.

Q Was Mrs. Harrington there that day? A Yes.

Q And Mrs. Wiggins, was she there? A Yes.

Mr. Slocum: That is all.

Re-direct examination by Mr. Tansey.

30 Q You were invited to that party, weren't you, Mr. Dolan? A Yes, they sent me a letter.

Q Who signed the letter? A Some one of the Maloneys, I suppose.

Q Did you ever receive an invitation of that sort before to come to his house? A Never.

Q During all the years you knew them? A No, never.

Q You, yourself, went? A I went myself.

40 Q By the way, Mr. Dolan died two weeks after that, didn't he? A Well, he was found dead anyhow.

Mary Toomey, for Caveators, direct.

Q He was found dead in bed, wasn't he? A Yes.

Q That was two weeks after this birthday party? A Yes.

Q He was pretty feeble at that time, wasn't he? A Yes.

Q But he knew you? A Yes. 10

Mr. Slocum: The witness has described how he found him and how they walked around the farm. I object.

Mr. Tansey: All right, Mr. Dolan.

MARY TOOMEY, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows: 20

Direct examination by Mr. Tansey.

Q Mrs. Toomey, where do you live? A Brooklyn.

Q Speak louder because we would like to hear you. You live in Brooklyn? A Yes.

Q Did you know John Dolan in his lifetime? A Yes. 30

Q Did you know Mrs. Bridget Dolan in her lifetime? A Yes, sir.

Q That was his mother? A Yes, sir.

Q Did you live with him, with his family, for a number of years? A I was nine years there, almost nine years.

Q When did you go there first? A December, 1909.

Q How long did you stay? A Nine years, I left there on the fifth day of December, 1916. 40

Mary Toomey, for Caveators, direct.

Q Was Mr. Toomey, whom you later married, employed there during that time? A He was employed there eight years during my time.

Q You subsequently married Mr. Toomey? A Yes.

10 Q When you first went to Mr. Dolan's were the Maloney girls there? A Not when I went there.

Q I mean, were they making their home there? A Occasionally.

Q They were employed at other places, I suppose? A Yes.

Q Where was Mary Maloney? A She was in Paterson, she was a school teacher at the time.

20 Q Where was Ella Maloney? A She was in Newark, I guess.

Q She was also a school teacher? A Yes.

Q Where was Margaret Maloney Harrington? A She was in Morganville.

Q Where was Michael Francis Maloney? A I guess he was in New York. I can't say.

Q At any rate he wasn't there at Uncle John's? A No.

30 Q What work did you perform at Uncle John's? A Housework.

Q You were the housekeeper? A Yes.

Q Were you the only inside employee of the household? A That is all, at that time.

Q And your subsequent husband did the work on the outside? A Yes, and he used to go home at night.

Q Mrs. Dolan, the mother, was sick at that time? A Yes.

40 Q And she died about nineteen hundred and eleven? A Yes.

Mary Toomey, for Caveators, direct.

Q Mr. John Dolan, was he sick, too? A At different occasions he was sick. Several times he was sick during my time there.

Q When you first were going there did he make any statement to you about the Maloney girls? A Yes, he did, the first week I went there he said his nieces were school teachers and that they were very domineering and not to take any notice of them, to go on and mind my own business, which I did. 10

Q Did you have some experience with them afterwards as to their domineering way? A I did.

Q Do you remember one instance of their conduct?

Mr. Slocum: I object to the conduct of these girls toward this housekeeper. 20

By the Court: Yes, I don't see how it is material at all.

Mr. Tansey: We are not talking about their conduct to the housekeeper, we are talking about the general conduct to people.

By the Court: I don't see how that would matter.

Mr. Tansey: If they kept people away by their conduct? 30

By the Court: At the time of the making of the will?

Mr. Tansey: Sure. We are starting at nineteen hundred and four and we will show it all the way up. In Markle's will, conduct is admissable.

By the Court: Their attitude?

Mr. Tansey: Their attitude. If he has nieces and nephews who were as much en- 40

Mary Toomey, for Caveators, direct.

titled to consideration as they were and they kept them away from him, that is material.

By the Court: Are you going to prove they kept them away?

10

Mr. Tansey: Yes.

Mr. Slocum: Your Honor will allow me to move to strike it out if he doesn't prove it?

Mr. Tansey: If we don't connect it up the whole case falls.

Q Did you see any samples of their domineering conduct? A Yes, at times.

20

Q Did you see any samples of their domineering conduct to Mr. Dolan, himself? A Well, they had a heavy influence over him, as far as I could see, all through my life there.

Q Do you remember his getting ready to make a will? A No.

Q Or having prepared some memorandum for a will at one time? A No.

30

Q What kind of an influence do you speak about as being a heavy influence? A They just seemed to want to be alone with him all the time and didn't want the rest of the family to come there.

Q What do you mean by the rest of the family? A The rest of his relatives.

Mr. Slocum: I am not objecting because I take it my objection goes to this whole line of testimony.

By the Court: If there are specific acts come down to them.

40

Mary Toomey, for Caveators, direct.

Q What do you remember as to their attitude of keeping people away? A They didn't want them to come there.

By the Court: What did they do?

The Witness: At times I would see them coming and they would say "here they come again, why don't they stay home, we don't want them here. This is our home." 10

Q Whom did it refer to, for instance? A The different parts of the family, the Tansey family.

Q The Tansey family came there? They were his nieces and nephews? A Yes.

Q And if the Dolans came there, the young men you just heard testify on the witness stand, you have heard them say such things about them as you have just told us? A Yes. 20

Q What would they do? A Try to be polite to them. They were kind of nice to them after they got there. These were outside sayings.

Q Do you remember any statement by Mary Maloney in regard to a will of John Dolan? A I heard at one time she should get the lion's share.

By the Court: Where did you hear that? 30

The Witness: Right in Mr. Dolan's home.

Q Who said it? A Mary Maloney.

Q Had she been discussing the matter with Mr. Dolan? A I couldn't say. She made that remark.

Q To whom was she talking at that time? A In general, to everybody in the place.

By the Court: Who was there? 40

Mary Toomey, for Caveators, direct.

A Ella Maloney was there.

Q And who else? A Just myself.

Q Was Mr. Dolan there? A Not that I can recall now.

Q Did Mr. Dolan have any dealings, personally, with her to show whether or not she had this heavy influence? A No, sir, the only thing I knew of was he had a building and loan and he turned it over to her at one time.

Q Where was the building and loan? A Freehold, I guess.

Q He had some shares in the Freehold Building and Loan? What were they, ten shares? A Yes.

Q Do you remember when he paid the mortgage off on the farm? A I was there at the time.

Q You remember that he paid the mortgage off on the farm? A Yes.

Q Do you know whether he had any bank accounts? A Yes, I know he had.

Q How many if he had more than one? A I know he drew money out of a savings bank to pay me off.

Q Where was the banks? A New York and Brooklyn.

Q Tell us what banks they were?

Mr. Slocum: What difference does it make, if your Honor please?

Mr. Tansey: We have got to show a course of treatment for a number of years.

By the Court: How is it material?

Mr. Tansey: We start with nineteen hundred and four and we have got to nineteen hundred and sixteen and we will carry it up to nineteen hundred and twenty.

Mary Toomey, for Caveators, direct.

By the Court: Carry what?

Mr. Tansey: The story up to nineteen hundred and twenty.

Mr. Slocum: This witness doesn't know after nineteen sixteen.

Mr. Tansey: I have other witnesses to continue. We are asking what banks he had money in. 10

By the Court: How is that material?

Mr. Tansey: It brings up the cause of this dispute between these girls and their uncle.

Mr. Slocum: There is no evidence of any dispute between them.

By the Court: I don't know of any evidence of any dispute. 20

Mr. Tansey: All their conversations are material. I mean, all their conversations showing undue influence.

By the Court: What conversation was there with regard to bank accounts that showed undue influence?

Mr. Tansey: First of all, the fact that he has a bank account and if these young women had such influence to take it here or there and to show they had business relations with him. 30

By the Court: It might be influence but not undue influence.

Mr. Tansey: That is a matter for the Court to decide. If it is undue, the Court decides it, we don't.

By the Court: Go on, we will strike it out later if it is not connected up. 40

Mary Toomey, for Caveators, direct.

Q What banks did he have it in? A The Immigrant Bank and the Dime Savings Bank of Brooklyn, the Greenwich Bank and the Red Bank Bank, Second National Bank of Red Bank and the Williamsburg Bank.

Q Did he have a safe deposit box? A Yes.

10 Q Where was that? A The Second National Bank of Red Bank.

Q Who had the key for that? A He carried the key in my time, so far as I could know.

Q Did any of the girls keep their papers in that box? A Not that I know of.

Q You go on now and tell us about what you know of Mr. Dolan's dealings, I mean so far as this domineering conduct is concerned. Did you ever see a dispute between him and Mary Malony? A Yes, every time she came home we had a regular ring fight in the home.

Q What was the reasons, if any? A Some trifle that didn't amount to anything, at times.

Q Would she fight with him? A Yes, she would fight with him.

Q And make trouble with him? A Yes.

Q Do you remember a situation about a basket of eggs one time? A I do.

30 Q What was that incident? A He was taking them to the store and she tried to stop him and he broke them on the sidewalk. He *trunned* the basket upside down and broke them all. She tried to stop him and he broke them.

Q Was there a dispute one time with her in regard to a chicken? A Yes.

Q What was that? A Mr. Dolan was going to Red Bank to the Fair and there was a chicken cooked and he said "let me have my dinner first, I will eat my dinner and get away early," so my
40 youngster sat down at the end of the table and

Mary Toomey, for Caveators, direct.

he gave him a piece of the chicken and they rose the variance over it.

Q What was said? A He tried to keep peace and he didn't say anything.

Q Who was that, Miss Mary Maloney? A Yes, the only thing they said was they wouldn't use it after the child used a part of it. We ate the rest, I guess. 10

Q Did Mr. Dolan and she have any trouble at that time? A Not that amounted to anything.

Q Did you see her at any time have any dispute with Mrs. Dolan, the mother? A Yes, I did.

Q What was that? A Mrs. Dolan had some money and she wanted to take it away from her and she knocked her down on the floor and took it away from her. 20

Q She knocked Mrs. Dolan down on the floor and took it away from her? A Yes, it was one dollar.

Q She knocked the old lady down and took it away from her? A Yes.

Q Which one of the Maloneys did that? A Mary.

Q Do you remember one occasion when he attempted to take one of his nieces or nephews home that had come to visit him? A No. 30

Q Do you remember any time when they objected to his going out? A They objected to him going out because the man was very deaf.

Q And they would make trouble constantly? Do you answer yes? A Yes, just a family quarrel.

Mr. Slocum: I am letting this attorney go along in his own way. 40

Mary Toomey, for Caveators, cross.

Mr. Tansey: That is the way to do.

Mr. Slocum: I think that is the expeditious way to do in this case but it is improper.

By the Court: Were you conscious of what you said?

10

Mr. Tansey: What was that?

By the Court: You asked the witness "did they make trouble constantly, do you answer yes." Strike that out.

Q Mrs. Toomey, was there anything else in your dealings with those girls which you remember in relation to their treatment of Mr. Dolan? A Nothing. Just trifling things that don't amount to anything.

20

Q When did they come home? A They used to come home week-ends. Ella used to come home at times. When I went there first they usually came home very rarely.

Mr. Tansey: Cross examine.

Cross examination by Mr. Slocum.

30 Q Mrs. Toomey, you left Mr. Dolan's home in December, 1919, is that correct? A Nineteen hundred and sixteen, the fifth of December, nineteen hundred and sixteen.

Q Have you ever returned to visit him since that time? A Yes, on many occasions.

Q When have you visited him, give me some dates that you paid visits to him? A I can't give you the exact date but my husband and myself used to go to see him maybe once a month, twice a month and my husband had dealings with him.

40

Mary Toomey, for Caveators, cross.

Q How far did you and your husband live from Mr. Dolan's farm? A About three miles, three miles and a half. We lived in Middletown.

Q These quarrels that you speak of were between John Dolan and Mary Wiggins? A Yes, sir.

Q Is that right? A Yes. 10

Q Was she married at the time these quarrels took place? A No, before she was married.

Q It was before she was married? A Yes.

Q But she is the only one of the girls that you heard have any words with Mr. John Dolan? A That is the only one.

Q What is this chicken dinner that you speak of? I would like to be in on that. What was that for, a chicken dinner to someone that took offense because the child was treated to a portion of the chicken first, as I understand it, is that right? A Yes. 20

Q When was that? A I couldn't give you the exact date of it but I know it was sometime in the summer because I know there was a fair in Red Bank the same day.

Q What was there about— A The Tansey family were there the same day.

Q Was my friend, Mr. Michael Tansey there? A I couldn't say if he was there. Sarah Tansey was there. 30

Q And who else? A I don't know whether Cassie was there and Margaret Tansey was there.

Q Who else? A I couldn't recall. The rest I can't recall.

Q Were any of the girls named in the will there? A Yes, they were both there, Mary and Ella was there.

Q Tell us what the trouble was that this piece of chicken caused and who with? A Well, Mr. 40

Margaret Tansey, for Caveators, direct.

Dolan was getting read to go to the fair at Red Bank and he was in a hurry to get out and he said to me, he says, "put my dinner on the kitchen table and I will eat and go" so I did, and he sat my little boy, which was small at the time, at the other end of the table and gave him a piece
 10 of the chicken and the girls said they would not use it after that or eat it after that.

Q What girls said that? A Mary Maloney.

Q She said she wouldn't use the chicken or eat the chicken after that? A That's all.

Q That is all there was to it? A Yes.

Mr. Slocum: That is all.

Mr. Tansey: That is all for the present,
 Mrs. Toomey.

20

MARGARET TANSEY, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows:

Direct examination by Mr. Tansey.

Q You were a niece of John Dolan? A I
 30 was.

Q And a grand-daughter of Bridget Dolan?
 A Yes.

Q Where do you live? A Keyport.

Q Speak louder because I would like to hear you. A Keyport.

Q Do you remember visiting at Mr. Dolan's house? A Yes.

Q On various occasions? A Yes, sir.

Q Were your relations with him friendly all
 40 through his life? A Very friendly, always.

Margaret Tansey, for Caveators, direct.

Q Do you remember the Maloney girls being at his house? A Yes, I do.

Q Do you remember when they first came there? A I do.

Q About when was that? A I think it was about 'eighty-six.

10

Mr. Slocum: Eighteen eighty-six.

The Witness: Yes.

Q They were children of your Aunt Ellen? A Yes.

Q And your Aunt Ellen died when? A I think she died in 'eighty-one.

Q These children were small when they came there? A Small, yes.

Q They made their home from that time on with Mr. Dolan? A Yes. 20

Q Mr. Dolan had taken Mary, I believe, first? A Yes.

Q And a little later on the other three came? That was Michael— A Ella and Mamy.

Q And they remained there off and on until they either married or he died? A Yes.

Q Do you remember the situation with the Maloney girls when they got a little bit larger, as to their treatment of the other nieces and nephews when they came there? A Well, personally, they treated me very well. 30

Q They had no objection to you? A They didn't seem to have.

Q Did you notice anything in connection with some of the rest of the relations? A Well—

Q Your uncle, for instance. Your uncle Michael Dolan. A They didn't seem to want him there.

Q You had noticed something in connection with that? A Had I? 40

Margaret Tansey, for Caveators, direct.

Q Do you remember on one occasion when you were there and Mr. Michael Dolan was there? A I do.

Q John Dolan, what was his condition at that time? A He was sick in bed.

10 Q Where was Bridget Dolan? A She was sick on the couch, in his room.

Q What was your errand there? A I heard they were sick and I went up there because there was no one else to do anything.

Q It was your practice to go there frequently to visit, was it? A Yes, it was.

Q And you found Mr. Michael Dolan there? A I did.

20 Q After awhile did he have occasion to go to the store for something? A Yes, my uncle John asked him to go to the store and get some groceries.

Q How far away was that? A Across the field to the store.

Q About two miles, isn't it? A I should say so.

Q What kind of weather was it at that time? A Well, it was drizzling, the kind of weather it is in early spring, kind of stormy.

Q Did he go? A He did, willingly.

30 Q Was he at that time looking after the work outside the place? A Yes, he was.

Q Whom did Mr. Dolan have to do his house-work? A A colored woman. She had been there a week or two.

Q And his brother was looking after the outside, the horses, cattle and so on? A Yes.

Q Upon his return from the grocery store, were you there? A I was, yes.

40 Q Did any of the Maloney girls come in after that? A Mary came in from school and she

Margaret Tansey, for Caveators, direct.

greeted me very nicely, she found me in the sick room, but she did not know Uncle Mike was there at the time, until later, and when he came back from the grocery store with the groceries she upbraided him for going for groceries and he said he was sent and he said Uncle John sent him, that the woman needed groceries in the kitchen and he said to her "yes, I sent him," and she said "Uncle John" and she walked over and shook her fist in his face and said "you have no business to send anybody to the store from here" and she ordered him home and she said "Who sent for you" and he stood there non-plussed for a minute or two and looked at her and she scolded away at a great rate for about a half hour, she kept it up, and she said everything to him and he concluded he would go home but I persuaded him to wait until morning and then in the morning, Ella came home by some conveyance from Middletown and she hadn't heard about Uncle John being sick and she came in and then my Uncle Michael Dolan was ready to go home and I also was ready to go, as I wasn't needed, as they informed me they were going to stay until the sick people got well. So I got ready and Ella Maloney took me together with my uncle to Matawan and I took a trolley to Keyport and she let my uncle out at Matawan at his brother-in-law's. I don't know anything further about what happened that day.

Q What was said, if anything, by Ella Maloney about Uncle Mike being there? A "I am not going to stand in front of the Hotel and wait for him, he said he was coming out in a few minutes," and she continued on.

Q What was said by Mary Maloney when she shook her fist in Mr. John Dolan's face? A

Margaret Tansey, for Caveators, direct.

She said, "you must not run up bills at that store that we have to pay," and he said, "Mary, I pay my own bills, I don't need anybody to pay my bills," and she ran over to him and shook her fist in his face, although he was sick in bed, she said, "don't you dare open your mouth." I was astonished at her.

10 Q Was there some remark between her and the colored woman in the kitchen? A Yes, my uncle went out to tell the colored woman he would return the groceries and the colored woman said "why" and presently Mary ran out and there was a regular altercation in the kitchen. My grandmother said, "you had better see what the trouble is," and I kept the colored woman from giving Mary a thrashing.

20 Q Did you hear some conversation about Mr. Michael Dolan? A Yes, I did.

Q What was that? A She said he was drunk and "you are out there in the kitchen hugging the wench," and the wench went for her and she said she would "sweep the floor up with her," so I had to make peace between them.

Q Was Mr. Michael Dolan drunk? A He was not, positively.

30 Q Was he hugging the wench? A No, he was not.

Q And the wench came near hugging her? A Yes, I had to interfere.

Q Mr. Michael Dolan was not a drinking man, was he? A No, he was not.

Q That was one incident. Do you remember anything else about their treatment there? A Well, that was before my grandmother died that that occurred, that occasion.

40 By the Court: About when was that?

Margaret Tansey, for Caveators, direct

A I should judge it was about two years.

Q Two years before your grandmother died?

A Yes.

Q When did she die? A In 1911.

Q Did you see any subsequent actions of Mary Maloney or Ella Maloney to show what power they had over John Dolan? A I went up there when he was sick. My brother and myself, we went around to the kitchen door and got in and he had his cane alongside of him. 10

Q Was anybody there? A Not anybody. I said to him, "Uncle Johnny, are you all alone?" and he said, "me and the cat," and I said, "you should have a dog," and he said, "the hunters took and killed my dog, so I haven't any." I said, "Uncle Johnny, you shouldn't be here all alone, why don't you get a housekeeper." He said, "Oh, well, they wouldn't let me have a housekeeper, you know they wouldn't." I said, "Who are they?" He said, "The girls, Mary and Ella. Ella told me plainly she would leave the minute I got a housekeeper, she would leave bag and baggage" and he said, "I don't want to be fighting with them all the time, I like peace, but then I have good neighbors and they come across the field to me and I have a neighbor next door that comes in and they do for me." I said, "Ella is away all week, how do you manage?" and he said, "She cooks enough on Sunday night to last until she comes again, but Margaret Harrington comes up with a kettle of hot soup for me." Looking up at the clock he said, "She will soon be here because that is the time she comes." He said, "That is the way I get along, I don't want to be fighting." 20 30

By the Court: We will take a recess until one-thirty. 40

Margaret Tansey, for Caveators, cross.

AFTER RECESS.

Freehold, New Jersey, January 19, 1928.

1:30 P. M.

10 Same appearances as hereinbefore noted.

MARGARET TANSEY on witness stand.

Direct examination by Mr. Tansey, resumed.

Q Did you stay with him sometime that visit?

A Just for a short time.

Q Who was with you? A My brother.

Q Which brother was that? A Dr. Will.

Q Can you fix that time when this occurred?

20 A Not exactly.

Q I mean, as to the year? A I would think it was about in nineteen hundred and twenty-three. I think it was in nineteen twenty-three, I am not sure.

Q What was Mr. Dolan's hearing condition at that time? A Very poor.

Q Could he hear you by talking in an ordinary conversation? A With great effort; when I spoke right to his face it was difficult for him to hear me.

30 Q What was the trouble, do you know? Was he very deaf? A He was very deaf.

Q How long had he been that way? A I don't know, I judge about four or five years.

Mr. Tansey: That is all. Cross examine.

Cross examination by Mr. Slocum.

40 Q Miss Tansey, what year was it that the incident relating to Michael Dolan occurred?

Dr. William A. Tansey, for Caveators, direct.

A Well, I think it was about two years before my grandmother died.

Q What year did she die? A Nineteen hundred and eleven.

Q So then, your best recollection is that it was nineteen nine? A I would judge so, nineteen hundred and nine, I won't be positive. 10

Q That is your best recollection? A Yes, that it was about that time.

Mr. Slocum: That is all.

Mr. Tansey: That is all, Miss Tansey.

DR. WILLIAM A. TANSEY, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows: 20

Direct examination by Mr. Tansey.

Q Doctor, are you a nephew of John Dolan, doctor? A I am.

Q What is your profession? A Physician and surgeon.

Q Where are you practicing? A Newark.

Q How long have you been such physician and surgeon? A Fifteen years. 30

Q Did you have occasion to visit John Dolan in the later years of his life? A Yes.

Q Can you fix the time when you recall first visiting him? A Well, when I first visited him—

Q I mean, the latter years of his life, when it was impressed on your mind particularly? A The first time it was impressed on my mind particularly was the summer of nineteen twenty-one. 40

Dr. William A. Tansey, for Caveators, direct.

Q Where did you find him then? A I found him in bed, right off the kitchen.

Q What was the occasion of your visiting him at that time? A He was suffering with a severe attack of neuritis.

10 Q Who was with you at that time? A No one but myself.

Q Was anybody home there with him? A Mary Wiggins and her little boy was there.

Q He was suffering from neuritis at that time? A He was.

20 Q State what occurred? A He was unable to get out of bed and he said he had been suffering pain for six weeks and when I arrived Mary Wiggins, first off, some member of the family told me he was very sick and I had better see him, so I think it was my sister Sarah, so I
drove down to see him and when I got there Mary Wiggins met me and she said, "Hello, Will, I was thinking about you," and I said, "How long has Uncle Johnny been sick?" and she said, "six weeks," and I said, "you had a long time to think about me." I went in to see him. He was unable to move in the bed. The neuritis was very intense in the back and right thigh, so I treated him at that time and relieved him of his pain entirely so that he
30 was able to get out of bed, in fact, I had him out of bed before I left there and he gradually improved. And then I asked Mary if she were there with him all the time and she said, "No, I have my work to take care of," and I said, "this man should not stay alone, he is a very sick man," I said, "how does he arrange for his meals?" She says, "Ella comes home on Friday and cooks his meals to last him from Monday to Friday night." I said, "that is no
40 way for a sick man." She said, "he is satis-

Dr. William A. Tansey, for Caveators, direct.

fed, that is all there is to it." That was all I was interested in and I drove on. I saw him again about two years later. I saw him before that on a visit but he was sick you mean—

Q Yes. A Yes, I saw him two years later. My office wasn't notified officially but we got a notification of his being sick and I, with my sister, drove down to see him. 10

Q Which sister was it? A Catherine.

Q From Newark you drove down? A From Newark. On my way down I stopped at Keyport and took one or two of my other sisters along with me, which ones I do not remember, and I notified you to meet us there at that time. So I got in there and found him sick in the bed, that he had had—

Q First of all, tell me how word came to your office. You say you got word at your office? 20

A To my office, Mary Wiggins called my office to locate her sister Ella.

Q Was Ella then in Newark? A Ella was in Newark and she said she was trying to locate her sister Ella, that Uncle John was sick and she wanted Ella to come home. So, my wife notified my sister about it and I came in a few minutes afterwards on Decoration Day. I came in a few minutes afterwards and my sister wanted to drive to Keyport. I said, "and since he is sick, I will drive along with you," so we drove on down to Everitt. 30

Q Did Mary Wiggins leave word for you to come? A No.

Q You got there and found him sick? A I got there and found him sick and he had quite a severe attack that morning.

Q What kind of an attack? A As far as I could learn it was that he had a cerebral hemorrhage. 40

Dr. William A. Tansey, for Caveators, direct.

Q That is, a hemorrhage of the brain? A Hemorrhage of the brain, yes.

Q Was there indications there that he had had a hemorrhage of the brain? A He had a slight facial paralysis; his face was slightly twisted, showing a clot of blood in the area of the brain controlling the face.

10 Q What was his heart action? A His heart action was very poor, very, very bad. His heart was very irregular, muscle quality very poor, and his general condition was very feeble.

Q Was there any chronic condition shown in the heart muscles? A Yes, it showed a chronic miocardial change in the muscles of the heart.

Q That is, a heart disease? A Yes.

Q What is the effect of that kind of a heart disease? A It is very dangerous.

20 Q And a man is liable to pass out quickly with it? A Yes, any minute.

Q He needs constant care and attention? A Yes, always.

Q When you got there, what did you find besides examining him? He was there in bed? A I examined him and I took his pulse and took his blood pressure and found his blood pressure was, his systolic pressure was one hundred and ninety and his diastolic, or lowest, pressure was one hundred.

30 Q Did that show good or bad? A Bad. It showed high blood pressure, always dangerous. I told him then that he ought to have a nurse, so just about that time, at about that instant, Mary Wiggins arrived and she came rushing up the stairs.

Q Just wait a minute. At what instant do you refer to? A At this time. Just about the time I finished the examination.

40 Q Mary Wiggins arrived? A Yes.

Dr. William A. Tansey, for Caveators, direct.

Q She was coming from her own place? A Her own place.

Q Had Mary Maloney came at that time? A She was there already.

Q Had she come before you got there? A She was there before I got there.

Q And Mary came in afterwards? A Afterwards, yes. 10

Q What was said? You remarked he needed a nurse. A As Mary arrived, she came upstairs and she said, "I called up my sister Ella and the whole damn Tansey family are here." So she came in the room and rushed right in and paid no attention to any of us and rushed up to Uncle Johnny and made sort of a fuss over him and I said, "Mary, this man needs a nurse badly." She said, "The boss will take care of that," and I said, "who is the boss around here?" and she said, "my sister Ella is the boss around her, she will take care of that." So I said I would go down and see the boss. So I went down to interview Ella and Ella told me the nurse had been there but she knew Uncle Johnny wouldn't have a nurse, she didn't go up to see Uncle Johnny, the nurse didn't go up the stairs. She turned around and left the house. 20

Q Did she say who told her to leave the house? A No, she said she knew Uncle Johnny would not have a nurse so she left the house. So I said it was very necessary he should have a nurse because he needed expert care. 30

Q How long did you stay then? A I stayed about two hours.

Q And you took care of him while you were there? A I left some orders for him and some prescriptions to have made up, whether they were made or not, I don't know. 40

Dr. William A. Tansey, for Caveators, direct.

Q Had you any evidence of any previous paralytic stroke that he had had? A Only from facial condition.

Q That referred to that particular time? A That is the only time, except he had his head to one side.

10

By the Court: When was that, doctor?

The Witness: That was in 1924, I think.

Q I thought you said it was 'twenty-three?
A Twenty-three.

Mr. Slocum: Which is it, twenty-three or twenty-four?

The Witness: Nineteen twenty-three.

20

Q Is that the time Fitzgerald was there? A That is the time.

Q He was there in nineteen hundred and twenty-two? A That was the time he was there.

Q Did you notice what the condition of the hearing of Mr. Dolan was? A His hearing was almost entirely gone. He could hear with a great deal of difficulty, if you spoke loudly directly into his ears.

30

Q How long had you noticed that deaf condition? I mean, previous to that time? A I noticed that back, if I remember, I noticed it at least ten years back.

Q He was very hard of hearing? A Yes.

Q Had you any experiences with the Maloney girls before then when you went to see Uncle Johnny, as to how they treated the relatives when they came there? A I don't know as I had anything special to do with them further than that.

40

Dr. William A. Tansey, for Caveators, cross—re-direct.

Q Do you remember on one occasion when a night cap was made for Mrs. Bridget Dolan, after her death? A I do.

Q What was that occasion? A That was an occasion when my grandmother was dead and there was a question of putting a night cap on her head and my wife made the night cap and placed it on her head. After she did, Mary took it off and showing it to Uncle Johnny said "Look what I made for grandma." In other words, Mary took credit for it herself. 10

Q That was in your own recollection? A Yes.

Mr. Tansey: Take the witness.

By the Court: When was that, doctor?

The Witness: 1911, at the time my grandmother was dead. 20

Cross examination by Mr. Slocum.

Q Doctor, in nineteen hundred and twenty-two when you visited your Uncle John and found him sick you learned he was under the care of Dr. Irwin? A Yes, sir.

Q You knew he was treating him at that time? A Yes, sir.

Mr. Slocum: That is all. 30

Re-direct examination by Mr. Tansey.

Q You had heard that Dr. Irwin had sent the nurse? A I had.

Q That was the information you got that Dr. Irwin had sent the nurse? A Yes.

Mr. Tansey: That is all.

Mr. Slocum: That is all. 40

James H. Griffin, for Caveators, direct

JAMES H. GRIFFIN, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows:

Direct examination by Mr. Tansey.

10 Q Mr. Griffin, you were a nephew of John Dolan? A I was.

Q Where do you live? A New York, Brooklyn, rather.

Q You must open your mouth, you are a big man and we would like to hear your voice. How long have you lived in Brooklyn? A Twenty-one years.

Q Do you remember John Dolan in his lifetime? A Yes, I do.

20 Q What were your relations with John Dolan? A Very friendly, always.

Q And that continued so up to the time of his death? A It did.

Q Did you visit him occasionally? A I did.

Q Was he glad to see you? A He was always glad to see me.

Q Do you remember one occasion when you visited him after your father's death? A I do.

Q When was that about? A I think about

30 Q About nineteen fourteen? A Yes.

Q Who was there when you visited him? A Well, there was no one there at that time, I don't think. I just drove there, I was going around the country like I always was and every time I went around that section I stopped in to see him. I just stopped in in the daytime and it was during the harvesting of potatoes and I just stopped in to tell him the condition of the potato situation for the year.

40 Q You were in the market? A Yes.

James H. Griffin, for Caveators, direct

Q Who was there with him? A I think Ella was there. I only stopped for about half an hour or an hour.

Q When you went there did you have a talk with him with reference to his property and things? A I did. I just walked out to the field where he was and I asked him "what the devil he was working so hard for" I said "what have you got here, some gold here" and I told him "this year was going to be the highest in history and I told him to look out for himself and not sell his potatoes early, that the market would be the highest in history this year" and then I got to talking about working hard, how foolish he was that he didn't spend some of his money and enjoy it and so forth and he said "that is all right, you will all have all the more when I am gone by my hard work." I said "I don't want any of it" just like that. "You ought to come up to Brooklyn with me and try it for awhile." I only stayed a short time and then we talked about other things. 10 20

Q Did he say anything more specific about what he was going to do with his property? A He told me at that time he had an offer for thirty-five thousand dollars.

Q How much? A Thirty-five thousand dollars. 30

Q What you say now is what he told you at that time? A Yes.

Q Did you see him after that in his lifetime? A Oh, yes.

Q When did you see him? A I used to stop there once in awhile.

Q Do you remember the occasion of his birthday celebration, a year last June? A Yes.

Q You were there then? A No, I think I was in Texas. 40

Bernard Griffin, for Caveators, direct.

Q Do you know anything about his making a will? A No, Dr. Tansey told me in September.

Q You didn't hear about the will being made until the September after he died? A Yes.

Mr. Tansey: That is all.

10 Mr. Slocum: No questions.

BERNARD GRIFFIN, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows:

Direct examination by Mr. Tansey.

20 Q Mr. Griffin, are you a nephew of John Dolan? A Yes, sir.

Q Where do you live? A In New York, 159 East 123rd street, New York.

Q Did you visit John Dolan in his lifetime? A Yes, sir. About sixteen years ago I made a visit. That was the last up until a short time ago.

Q How did you come to make a visit then? A I was on a vacation and I went down there with my wife in the middle of the week, around 30 Wednesday, and I insisted on going home the following day and he said "no, wait until Ella comes, she comes home on Friday." I stayed until she came and when Ella came I gave her an introduction to my wife. I don't know whether she accepted it or not to tell you the truth, the way she acted. There was no conversation from the time she arrived until we went home. After the introduction she went up to the attic and stayed there the rest of the time. The following 40 day, Saturday, I didn't see her until I made the

Anna Tansey, for Caveators, direct.

announcement I was going home and she came down and hooked up and drove me to Middletown.

By the Court: When was this?

The Witness: About sixteen years ago. I felt I wasn't wanted there.

10

Q Did she speak to your wife? A Casually at the time, and that was all. And, oh, yes, when it came time for dinner when she went to designate a seat for my wife she said "sit down."

Q Was Uncle John there? A No, Uncle John was not in the room at the time. Uncle John entertained us after his retiring hour, because I knew his habits when I was a boy.

Q He was glad enough to see you? A Yes. 20

Q Did he talk to you? A Yes, in fact he took me out around the farm and talked to me outside alone about different things.

Q What Ella did you have just told? A Yes.

Q That is all that happened to her until you left there was it? A Yes.

Mr. Tansey: That is all.

Mr. Slocum: No questions.

30

ANNA TANSEY, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows:

Direct examination by Mr. Tansey.

Q Miss Tansey, you are a niece of John Dolan? A I am.

40

Anna Tansey, for Caveators, direct.

Q Don't shake your head, talk because the stenographer can't get a shake of the head. A Yes.

Q Where do you live? A Newark, 526 Sanford avenue.

10 Q Do you remember visiting John Dolan in his lifetime? A Yes, several times.

Q You remember being at the house when Mary Maloney and Ella Maloney were there? A Yes, many times.

Q What was their attitude toward you when you came there? A That of dominance. I would see the place always torn up and something new added. I would say "how does grandma tolerate that, she is old fashioned" and he would come up and say "anything for peace."

20 Q Why do you say he did it for peace? Did he tell you anything about it? A He would say "well, anything for peace." I would say "Well, how did grandma tolerate her prized closet that she used to keep her things in, and a fancy corner put in its place in order to modernize the place?" When I spoke to him about it I wondered how grandma tolerated that and he said "anything for peace."

30 Q Did you visit Uncle John around nineteen twenty? A Yes. There are many interesting events before that, too.

Q Tell us if you know what was the first event which you wish to describe now? A Well, the night of grandma's death, I sat talking to Uncle John and as it was Mary's custom, to take his attention or take him away from the one he was talking to or else step in, so I saw her motioning out of the side of my eye and I pretended not to see her—

40 Q To whom was she motioning? A She was trying to catch my attention and I wouldn't

Anna Tansey, for Caveators, direct.

look and I sat talking to Uncle John, who was comfortably listening and finally my brother who is now dead, stepped from the room and she said that Uncle Johnny was recently out of his mind. I was very angry, I knew he had a stroke once upon a time but I didn't think it effected him that particular night and I stepped back and she had him safely put to bed. The next time I came in contact with him was when the funeral procession was forming and his father was talking to him, he was the only one referred to her as Sarah Ellen. He motioned the girls they should take their place in line right immediately after the hearse. 10

Q Did you ever hear Uncle John speak of them as Sarah Ellen Maloney — A No.

Q Did you ever hear him refer to Mary Wiggins as Marie C. Wiggins? A No, he always called her Mary. 20

Q And he always called Ella— A He used to call her Ella or Ellie.

Q After this incident you spoke about when did you next see him? A The next notable was in nineteen hundred and seventeen, in the spring of nineteen hundred and seventeen, I had heard that Mrs. Finnerty had left—

Q That is Mrs. Toomey, the lady that was on the stand this morning? A Yes, and there was a scarcity of potatoes and I said to my sister "I will go up to Everitt and see the lay of the land" so I went up there and I met Mary Wiggins who was there with her baby. She was very nice to me that particular day. Uncle Johnny came in and he was very nice to me. She called him aside and being as he was deaf she had to make a stake whisper to him and I heard her say "folks are here because they think you have money." He first turned his head a little and 30 40

Anna Tansey, for Caveators, direct.

posed and he said "I haven't any money, some people have an idea I have money, but I haven't any money." It struck me as rather funny. It went on until the next day and we were talking about some improvements she had put in—

- Q Who put in? A Mary Wiggins and the
 10 Maloneys, generally, on the co-operative plan. I said "that is a new door that opens in the kitchen." "Yes, she says, it cost me four hundred dollars to put that door there" "what, I said, I think you should get those people to tend to that." "Well, she said it cost Ella and me so much money lately" and I said "How is it you are putting so much money on another man's house" and she started to scream and I sat there
 20 spell bound. And I said "and how my grandmother died a pauper, she had signed everything over to Uncle Johnny and that she would have everything eventually and I would have nothing thorough my grandmother" and later on I laughingly told Uncle Johnny about it and he laughed. And that night he told me how much he missed Mrs. Toomey, prior to that, I said he should have a housekeeper. And she said "we don't want any trollops, we were glad to get rid of Mary Finnerty, she was a nuisance" and I said "in
 30 order to put anyone in charge of a house you don't have to have a trollop" and she said "we don't want her here." The next night Uncle Johnny and I sat talking in the dining room and he was telling me about having Mary Toomey and Mary Wiggins ran in and shook her hand in his face and told him not to speak another word or he would have to get out of her house. Uncle Johnny said it was his house. She said to me "what have you got to say" I said "nothing, only I don't get easily frightened, when I feel
 40 like saying it, I will say it." He was just tell

Anna Tansey, for Caveators, direct.

me about his housekeeper, she had just left recently. The next day I went home. In 1922 I was down in Avon, at my brother's summer home and we had heard that he was very, very ill, at the point of death, and my cousin from Minnesota came in and my brother got his car and said "let's go up to see him." We all went up, children and all, and Mary Wiggins came along, I don't remember seeing Ella that day. She came in and staggered, she never spoke a word to me, not a word that I remember and she didn't speak to my cousin Charlie Fitzgerald. The night our grandmother died we weren't notified at all. The next night somebody outside told us about it. 10

Q Your grandmother died and you weren't notified? A My grandmother died and we weren't notified until Miss Jane Igo notified us, of Morganville. 20

Q Was the 1922 incident the time Mr. Dolan got sick in the middle of the night and had to go to the neighbors? A I don't know when he got sick in the middle of the night. I do remember the neighbors—

Mr. Slocum: I object to what the neighbors said. 30

By the Court: Objection sustained.

Q Did he say what he did at that time? A He didn't tell me directly what he did.

Q At the time you speak of, the incident of the housekeeper incident, he didn't have anybody there at that time, did he? A He did not have anybody and Mary did say "we are boss here" and I said "Uncle Johnny, do you pay the help or the Maloney girls" and he said "I do all 40

Anna Tansey, for Caveators, cross.

the payng here" and they say, "it is a mutual affair," and one time in Newark while Ella Maloney was boarding with me for just a little while and Uncle Johnny got very sick and I said I would go down that night if she couldn't go down and they relieved me of the necessity.

10 When she came back I said "that man should get married and have somebody to look after his house" and she said "under the existing circumstances that couldn't happen—

By the Court: What year was that?

The Witness: I would think that was about nineteen hundred and eight or seven.

Q What did she refer to as the "existing circumstances?" A I presume they were supposed—

20

Mr. Slocum: I object.

By the Court: That objection is sustained.

Mr. Tansey: I guess that's all.

By the Court: Just a moment.

Cross examination by Mr. Slocum.

Q Miss Tansey, did you advise John Dolan to take a wife in nineteen hundred and seven and eight? A I didn't get a chance, but I am afraid I would have had I gotten near him.

30

Q Then, your visits, after the grandmother died, which was in 1911, your visits consisted of three as I understand you, right? A 1917, in the spring of 1917.

Q And then when was the next one? A My visits, I didn't take note of that didn't amount to anything.

40

Anna Tansey, for Caveators, re-direct.

Q But I mean the visits where you stayed some little length of time? A Only this 1917 visit because I didn't always feel it was quite comfortable to do so.

Q Then, was 1917 the only time until 1922? A That was the only time until 1922.

Q And you have told us all that you remember about the visit in 1922? A Well, I haven't told you all but I think I have told you the principle points. It would take too long.

10

Mr. Slocum: I guess that is all.

Re-direct examination by Mr. Tansey.

Q He was a bachelor all through his life, wasn't he? A Yes.

Q He never married? A He never married.

20

Q He died a bachelor? A He died a bachelor, yes.

Q He and his mother lived together during his mother's lifetime? A Yes, and the mother had to take a back seat when the others—

Mr. Slocum: I object.

By the Court: Objection sustained.

30

Q I think you were going to say something about conditions not being comfortable to go visiting there? A No. you couldn't be at rest, there was a fight picked or something. If you wanted to be peaceful you had to be a mummy. Ella was rather conservative but Mary was never peaceful.

Q And the trouble was it wasn't comfortable to go visiting there? A Things would be misconstrued.

40

Sarah Tansey, for Caveators, direct.

Q Mr. Dolan always received you pleasantly?
A Very pleasantly. She told me, "we were glad to come and to get something to eat."

Q You didn't go there to get money from them or something to eat, did you? A No, not particularly. Oh, yes, there is another incident
10 I remember.

Q Go back on the witness stand. A She spoke about the money and the next day she talked about money and just what she should have and what they should have, the Maloneys principally, that everything belonged to them, she said. And one night over on Bleecker street—

Q When was this, in 1917? A This was in 1917, she told me that everything that is in that house was theirs. There were some things
20 I had remembered before she came there.

Mr. Tansey: That is all.

Mr. Slocum: No questions.

SARAH TANSEY, a witness produced in behalf of the Caveators, being duly sworn, testifies as follows:

30

Direct examination by Mr. Tansey.

Q You were a niece of John Dolan? A I am.

Q What is your profession? A Teacher.

Q Where are you employed? A Newark.

Q What position do you hold there? A Supervising Vice-President.

Q You have taught there a number of years, have you? A Yes.
40

Sarah Tansey, for Caveators, direct.

Q Do you remember going to see Mr. John Dolan in his lifetime? A Yes, very often.

Q And you went there very often? A Yes.

Q What sort of a reception did he give you when you went there? A He was always very cordial to me.

Q Do you remember any particular incident about his health at times? A He had illnesses, very severe illnesses. Sometimes they would last a long time and then he was very deaf toward the end of his days, that it was very, very hard for anyone to make him understand. He always seemed very glad to see me. At one time he loaned me his silver watch and I returned it to him and then for quite a little while he didn't come down to our house and we wondered why he didn't, and on one occasion my brother Frank went up there for a vacation and had to return and Uncle Johnny brought him back and it surprised us very much but he seemed to be so much relieved, I had been under the impression—

Mr. Slocum: I object.

By the Court: Objection sustained.

Q You don't need to say what impression you were under. A He seemed to be very glad to be in our house.

By the Court: When was this, Miss Tansey?

The Witness: I think it was either 1917 or 1918, it was sometime around, during, 1916, sometime around that time.

Mr. Slocum: Which do you say it is, please, nineteen sixteen, seventeen or eighteen?

Sarah Tansey, for Caveators, direct.

The Witness: I couldn't say definitely. It was sometime around the war time on account of my brother's vacation. I think it was right around that time that he went up there for a day or two.

Mr. Slocum: In one of those three years?

10

The Witness: Yes.

Q It was between nineteen hundred and sixteen and eighteen, you think? A I think so.

Q He looked and appeared as though he was glad to be with you? A Yes.

Q And you always maintained friendly relations with him? A I always did.

20

Q Did you have any experience with the Maloney treatment when you went there different times? A At their house they were always very friendly to me. There was a time you mention when we were visiting Marie Wiggins and myself were visiting at my brother's, Frank, and I brought up the subject of buying potatoes and she said, "I beg of you not to go down to Everitt." I said, "Why not?" and she said, "There has not been any potato crop at all." The next spring the paper came out with an article that John Dolan had had three hundred barrels of potatoes. That was the only time that I ever noticed there seemed to be any difference.

30

Q You had been very friendly with both your uncle and your grandmother, hadn't you? A Yes, I had.

Q When your grandmother died, Ella Maloney was teaching in Newark, wasn't she? A Yes, about six blocks away from where I was.

Q You saw her quite often? A Quite often.

40

Sarah Tansey, for Caveators, direct.

Q Yes. Did she tell you about your grandmother's death? A No, she didn't tell me she was sick, she didn't let me know.

Q You didn't even know your grandmother was sick? A No.

Q You didn't know about it until sometime after she died? A No. 10

Q How long was it after she died that you found out she was dead? A I think she had been dead over a day.

Q And then did you learn it through the Maloneys? A I don't remember how we heard. I think we heard it through someone in Keyport.

Q And not through them? A No.

Q How long had Miss Maloney taught in Newark? A I can't recall the date.

Q Do you recall about the time she began there? A It might have been nineteen hundred and eight or seven. I really don't remember when she did begin. 20

Q But she was teaching school for probably eight or ten years there, wasn't she? A Perhaps, but I am not sure.

Q She is still teaching there is she? A Yes.

Mr. Tansey: That is all.

Mr. Slocum: No questions. 30

Mr. Tansey: I would like to recall Dr. Tansey.

Dr. Wm. A. Tansey, for Caveators, re-direct.

DR. WILLIAM A. TANSEY recalled.

Re-direct testimony by Mr. Tansey.

10 Q Doctor, did you treat John Dolan for sickness at another time, beyond the times you speak of now? A I did.

Q That you previously told us about? A I did.

Q When was that? A That was about a year before he died.

Q Where was he at that time? A At Margaret Harrington's.

20 Q What was the occasion of your then treating him? A I was notified at my office that he was very low, he was very sick and would I go down and see him, by some member of my family. So I made the trip down to see him at Margaret Harrington's and found him in very bad condition, apparently, at that time he had a very bad bronchitis, together with a heart condition which was very bad, very bad, miocarditis, and it looked as though he was not long for the world then.

30 Q Did you have any conversation with him at all? A I had quite a long conversation with him and I told him how careful he would have to be for a long time.

40 Q How did you make yourself heard? A I hollered close to his ear. I mentioned to Ella Maloney, not that time but at another time, I mentioned about having ear phones for him, that would help him a little and she told me it cost forty dollars to get ear phones and she did not think it would be beneficial enough to get it and consequently she did not get them. At that time, at Margaret Harrington's, he was so very bad, he was in such a condition, he never should have

Dr. Wm. A. Tansey, for Caveators, re-direct.

been left alone, day or night. A physician was not in regular attendance at that time nor he was not in regular attendance at any time. He would be summoned at periodical attacks.

Q Which time do you refer to, nineteen twenty-two? A Nineteen twenty-two. That was one attack that he was summoned for at that time. 10

Q Was that the time the nurse was sent? A That was the first time. The doctor was notified that day—

Q You say Dr. Irwin was not in attendance? A No, Dr. Irwin was not in attendance.

Q He had been notified that day? A He had been notified that day.

Q In your examination of Mr. Dolan you found he had been sick six weeks? A That was the previous time. That was the neuritis attack. 20

Q This time he had been taken sick the night before? A The night before, yes. He was in such a condition that he should have been under the constant care of a physician.

Q Did you have any conversation with Uncle John as to how he had been living, whether he had had a housekeeper or living alone or how? A I had had a conversation with him and I told him he should have somebody there with him all the time and he said he had been doing it so many years he was used to it. I said, "there is no reason why you should do it, a man as well fixed as you are, you should be in some place with a housekeeper looking after the home and your clothing and meals and to take care of you when you are sick. That you are entitled to and well able to pay for." He usually had his food cooked from Monday morning until Friday night. At that time, it was in the summer 30 40

Dr. Wm. A. Tansey, for Caveators, re-direct.

time, when certainly no food stuff could be kept properly that long.

10 Q Could you fix that time, about what year was that that you saw him there? A That was in nineteen hundred and twenty-one. That was the month of June, nineteen hundred and twenty-one.

Q And you then said he shouldn't be alone there at all? A Yes, I did, but each time before he was alone when I saw him. At Margaret Harrington's he was in a very deplorable condition. His heart was in a very deplorable condition.

20 Q How long back did that condition extend back, do you suppose? A It extended back at least fifteen years.

Q Do you know whether or not Mr. Dolan saw the nurse? A No, he did not see the nurse.

Q You say that condition when he needed attention extended back at least fifteen years? A At least fifteen years.

Q And the conditions you have recited were the conditions of the heart? A Miocardial degeneration of the heart.

30 Q And this evidence of having had a paralytic stroke? A Yes, cerebral hemorrhage.

Mr. Tansey: That is all, doctor.

By the Court: Doctor, when did he have these cerebral hemorrhages?

A The one I know of was in nineteen hundred and twenty-two. I got a history of the others.

By the Court: Is that all, Mr. Tansey?

40 Mr. Tansey: Yes.

Frederick W. Hope, for Proponents, re-direct.

Re-cross examination by Mr. Slocum.

Q Doctor, if I understood you correctly you say you treated John Dolan for bronchitis and that was about a year before he died, is that correct? A It was, yes.

Mr. Slocum: That's all.

10

FREDERICK W. HOPE, recalled.

Re-direct examination by Mr. Slocum.

Q Mr. Hope, have you made a search for the memorandum that you made when Mr. John Dolan came to your office and talked about his will? A I have and I found it in my case here today. 20

Q Will you produce it? A That is the paper (handing paper to counsel).

Q In whose handwriting is that memorandum? A In mine. My own.

Q What did you put down on that memorandum? A Do you want me to read it?

By the Court: Is this the memorandum that Mr. Tansey wanted?

The Witness: Yes.

30

By the Court: Of course, it isn't admissible unless there is consent. You both want it admitted?

A I talked with Mr. Dolan, learned the particulars and full name and he told me the various names as they are written here and he called them by their first names, the same as you do in families, but I got out of him the exact names as written in here and that they were 40

Frederick W. Hope, for Proponents, re-direct.

the correct names, so I wrote this down after I learned what disposition he wished to make of his property, including their names. Shall I read all this?

10 Mr. Tansey: I would like to have it filed so I can refer to it.

Mr. Slocum: I am going to have it marked for identification and Mr. Tansey can offer it if he likes.

Mr. Tansey: Put it in without any formality.

20 By the Court: I don't see how I can seriously consider it. Whatever was done merged into the instrument that was afterwards drawn. If both sides want it in it may be marked.

30 Mr. Slocum: If your Honor please, I don't want it in. I don't want to be placed in that position. What happened was that Mr. Tansey asked Mr. Hope if he had the memorandum he took down at the interview with Mr. Dolan and from which he dictated the will. Mr. Hope said he didn't know he would look for it. He looked for it and among the papers he finds the memorandum. So, at Mr. Tansey's request I produce the memorandum. So, at Mr. Tansey's request I produce the memorandum.

By the Court: With both sides' consent it may be admitted in evidence.

Mr. Slocum: Yes.

Mr. Tansey: Yes. Is that all you wanted to ask Mr. Hope?

Mr. Slocum: That is all.

Frederick W. Hope, for Proponents, re-cross.

Re-cross examination by Mr. Tansey.

Q Mr. Hope, how did you make Mr. Dolan hear when you were talking to him? A I had no trouble in making him here. You didn't have to talk loud to him.

Q You found no difficulty in using your natural tone to him? A Yes, but you had to talk a little slower and a little more distinct. 10

Q You had to get nearer to him than usual? A Only as near as you usually sit in conference.

Q Did he tell you whether or not he was hard of hearing? A No, he did not.

Q You dictated that as you went along? A No. He seemed to be a little dull of hearing.

Q And you found no difficulty in making him hear you? A No, if you talked plain to him he would understand you. He also read the paper over himself. I handed it to him the first thing and then he asked me to read it for him. 20

Q He read it himself? A He looked it over.

Q You didn't testify to that the first time? A I don't know whether I did or not.

Q I am saying you didn't. A He looked it over and read it himself and he said, "now read it to me again, read it to me," and I did. 30

Q Did he use glasses to read with? A I don't remember.

Mr. Tansey: That is all.

Mr. Slocum: That is all.

Mr. Tansey: I would like to recall Miss Tilton.

Frederick W. Hope, for Proponents, re-cross.

BLANCHE L. TILTON, recalled.

Re-cross examination by Mr. Tansey.

Q You were there when the will was read to Mr. Dolan you said? A Yes.

10 Q Did you find there was any difficulty in making him hear? A Not at all.

Q He could hear apparently without any trouble? A Yes, sir.

Q Did you notice whether Mr. Hope had to raise his voice or not to him? A No.

Q He didn't? A No.

Mr. Tansey: That is all.

20 Mr. Slocum: Now, we have no more witnesses today. I would like to speak about the adjourned day.

FREDERICK W. HOPE, recalled.

Re-cross examination by Mr. Tansey.

30 Q Whose handwriting is on the endorsement on this? A Miss Tilton's. That was pinned right to the carbon typewritten copy of the will and I folded them up and handed it to her and she folded them up and endorsed them all together. You can see where it was pinned together. I pinned it right to the carbon copy.

Q That is her handwriting? A That is Miss Tilton's handwriting, the one who was the other witness to the will.

40 Mr. Tansey: That is all. Speaking of the continuance, if it cannot be heard in

William B. Dolan, for Caveators, direct.

January may I ask for a continuance until sometime in March. I don't think any interest will suffer by that. I understand Judge Slocum is going to be away during the month of February.

By the Court: I will fix Friday, March second, at ten o'clock. 10

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of the
Estate of
JOHN DOLAN, deceased.

} *On Appeal
from Probate.* 20

Freehold, N. J., March 23, 1928.

The hearing of the cause was resumed at 10 A. M. pursuant to the several adjournments. Appearances as before.

WILLIAM B. DOLAN, recalled for Caveators.

30

Direct examination by Mr. Tansey.

Q Mr. Dolan, you were examined on the last day we were before the Court on this day? A Yes.

Q And when your testimony was written out there appeared to be some inaccuracy about it?

A Yes.

Q Do you recall one instance that you now wish to correct? A The stenographer got it

40

William B. Dolan, for Caveators, direct.

that there would be a contest of the will. I said contest of the property, of the estate.

Q What would be the connection of it, that Mr. Dolan said something, or the testator?

10 Mr. Slocum: I object to counsel leading the witness. This is important. He is correcting some testimony.

The Court: Call his attention to the testimony as it appears in the record.

Mr. Tansey: The question was, when did he say that.

Mr. Slocum: What is the page?

20 Mr. Tansey: Page 37 of the testimony. The question was, "Did you know that he had made a will?" And the answer was: "No, no, he said he would never make any will. Q When did he say that? A He said that down to our house, the same as my brother Henry told you. He said, 'They will fight over his will like they did over the Kaiser's property;' he would make no will."

30 Mr. Slocum: He is reading a quarter of a page of the testimony. He should direct himself to the particular answer, and then if the witness wants to correct it, well and good, but I object to his reading half a dozen questions and answers. That is not the proper way.

Mr. Tansey: I am now going to direct—

Mr. Slocum: I am going to insist in having my objections on the record. Mr. Tansey the last time walked away with that. He is not going to do it today.

40 The Court: Mr. Tansey, direct yourself to the question and the answer that you say are inadvertently misquoted.

William B. Dolan, for Caveators, direct.

Q Directing your attention to the question: "When did he say that?" and the answer: "He said that down to our house, the same as my brother Henry told you. He said 'They will fight over his will like they did over the Kaiser's property;' he would make no will." A I didn't say that.

10

By the Court.

Q What did you say? A I said they would fight over his property. I didn't say that he wouldn't make a will. I didn't say that they would fight over the will. It would be ridiculous for me to say such a thing. I didn't say that.

Q What you said was—

Mr. Slocum: Objected to.

20

A I said what I said.

Q And another question, you said they would fight over his will? A That is what I didn't say.

Q That is what you didn't say? A No, sir.

Q What you said was just—

Mr. Slocum: Objected to.

A What I said was—

30

The Court: Objection sustained.

Q Did you have any talk with Mr. Dolan at all about his will, as to whether— A The only talk I have ever had with him about his will was when he would bring it up himself and say that he was not going to make a will, that there were people that wants him to make a will, and he wouldn't do it.

40

William B. Dolan, for Caveators, direct.

Q Did he mention who the people were? A Yes.

Q Who were the people? A Maloneys. That is the way he recognized them, all at once.

Q The Maloneys? A Yes.

10 Q And who were the Maloneys? A Well, Ella, Michael, Mary and Maggie.

Q And they are the persons named in the will? A Yes.

Q Do you remember any serious illness of Mr. Dolan along in 1884 and 1885? A At the time he had a stroke, you mean?

Q Yes. A In 1885.

Q What was that?

20 Mr. Slocum: Objected to as too remote and immaterial.

The Court: When?

The Witness: In 1885.

Mr. Tansey: A stroke of paralysis, if your Honor please, is what we spoke about the other day, and your Honor said you wanted a little more information about it.

The Court: When did the testator die?

30 Mr. Tansey: 1927. But the testimony is, if your Honor please, that he had been sick some time, seriously, for about twenty-five years.

The Court: No, I don't think so. I think I told you that if you could show that there was a time that he became seriously ill, and that that affected him the rest of his life, or was progressive, that I would permit that testimony. That is the basis on which some of his testimony has been admitted.

40 Mr. Tansey: That is exactly the idea.

William B. Dolan, for Caveators, direct.

The Court: And a stroke in 1884—have you got medical testimony?

Mr. Tansey: 1885. No, we have testimony of persons employed, and who made a diagnosis of it and saw the effects of it.

The Court: How does that affect the will? How are you going to show that that affected the will made in 1927? 10

Mr. Tansey: It shows that he was a man sickly, and between the serious attacks of illness, had been so for all those many years, and in his last days he was considerably weakened by what had gone before, and would more or less come in—

The Court: We are all. What is there to show he was not of sufficient mental capacity to make a will? 20

Mr. Tansey: We are alleging undue influence. If your Honor please, I will say right here—

The Court: That he was particularly susceptible to undue influence?

Mr. Tansey: Yes, I say now we are not attempting to show a want of mental capacity.

The Court: I will allow it, and allow Judge Slocum an exception on the record. 30

Mr. Tansey: Very well. We expect to go quite a distance.

Q Go ahead and answer.

(Question repeated.) What was that?

A He had a stroke at the end of his lane where he lived and fell unconscious, and two of the men 40

William B. Dolan, for Caveators, direct.

that were there had to come out and carry him back and put him in bed. They sent for Dr. Cook, at Holmdell.

The Court: How do you know all this?

The Witness: I was there.

10

Q You were there? A And my father was there, and we thought he was dying, and Dr. Cook said he had a stroke.

By Mr. Tansey.

Q How long was he sick? A All that summer.

By the Court.

20

Q What did you see about him?

By Mr. Tansey.

Q What effect did it have on him as to— A Well, his left side was twisted over, and his head bent over, and it affected his left eye, and he was in that condition to the day of his death.

30 Q You say his head was bent over? A His head was bent over sideways like that (indicating), and his arm bent and one eye, his left eye. Anybody could see he walked sideways.

By the Court.

Q One eye, was it? A One eye was turned, twisted like, like it looked that way from birth, but it was not that way before that stroke.

By Mr. Tansey.

40 Q When did you receive knowledge of there having been a will left, Mr. Dolan? A Why,

Anna Tansey, for Caveators, direct.

when you started this. Let me know when you started this. I didn't know anything about it till then.

Q Did you attend Mr. Dolan's funeral? A Yes. I was a bearer. I was one of the bearers.

Q You were there at his house before the funeral? A Yes. 10

Q After he died? A Yes.

Q Was anything said to you by anybody, the executrix of the will, or any person named in the will, about a will being left? A No.

Q Nobody said anything? A No.

No cross examination.

MISS ANNA A. TANSEY, recalled, for Caveators. 20

Direct examination by Mr. Tansey.

Q On page 86 of the testimony in the case there appears this question: "What was their attitude toward you when you came there? A That of dominance. I would see the place always torn up and something new added. I would say, 'How does grandma tolerate that? She is old-fashioned.' And he would come up and say, 'Anything for peace.'" He says, "She is old-fashioned." A I didn't say, "She is old-fashioned." 30

Q Well, who did say, "She is old-fashioned?"

A I asked Mary Ella Maloney how she permitted her closet to be torn out of her bedroom and herself relegated to the rear room; and she said she couldn't help it. "We are new fashioned; we know what is going on"— 40

Anna Tansey, for Caveators, direct.

Q No, no. A They said she was old-fashioned in her ways. They said that. They forced her to the rear, and he was for peace.

Q Whom did you mean when you said "he"?

A Uncle Johnny.

10 Q On page 87, at the bottom of the page, there appears a question, "To whom was she motioning?" And the answer, "She was trying to catch my attention and I wouldn't look. I sat talking to Uncle John, who was comfortably listening, and finally my brother, who is now dead, stepped from the room, and she said that Uncle Johnny was recently out of his mind. I was very angry. I knew he had a stroke once upon a time, but I didn't think it affected him that particular night. And I stepped back and she had
20 him safely put to bed. The next time I came in contact with him was when the funeral procession was forming and his father was talking to him. He was the only one referred to now as Sarah Ellen. He motioned the girls they should take their place in line right immediately after the hearse."

Q Did you say as stated therein, "My brother who is now dead, stepped from the room, and she said that Uncle Johnny was recently out of his mind?" A Yes.
30

Mr. Slocum: I object and I move to strike it out.

Mr. Tansey: She says yes, she did say that.

Mr. Slocum: The point I am raising, if your Honor please, and you must observe it, that this witness talks whether there is an objection or not.
40

Anna Tansey, for Caveators, direct.

The Court: I realize that, Judge, but there is no jury here, and we can handle it.

Mr. Slocum: I know, but I want my record straight.

The Court: She says she did say that.

Mr. Slocum: I submit then, if he is going to inject questions of that kind, it is improper examination, and as I understand the rule, in an examination of that kind he reads the question and he reads the answer and asks the witness if he desires to modify or correct it, and then she can make such explanation as she likes. Now that is my understanding of the law and the practice. 10

The Court: Well, she says he has said it now. Follow up a new question, Mr. Tansey. 20

Q "A The next time I came in contact with him was when the funeral procession was forming and his father was talking to him." A "His" is not right there.

Q What correction do you make? A The Maloney's father, the father of the Maloney girls. The father of the Maloney girls was talking to the girls. It should have been "their."

Q You mean the Maloneys' father? A Maloneys' father. 30

Q On page 89, near the bottom of the page, there is this: "Q Who put in? A Mary Wiggins and the Maloneys, generally, on the co-operation plan. I said, 'That is a new door that opens in the kitchen.' 'Yes,' she says, 'It cost me \$400 to put that door there.' 'What,' I said, 'I think you should get those people to tend to it.' 'Well,' she said, 'It cost Ella and me so much money lately.' And I said, 'How is it you are putting so much money on another 40

Anna Tansey, for Caveators, direct.

man's house?' And she started to scream and I sat there spellbound; and I said, 'And how my grandmother died a pauper; she signed everything over to Uncle Johnny, and that she would have everything eventually, and I would have nothing through my grandmother.' And later on
 10 I laughingly told Uncle Johnny about it and he laughingly told Uncle Johnny about it and he laughed. And that night he told me how much he missed Mrs. Toomey." I think we can stop there because the answer goes on. What did you say, where she says, "I sat there spellbound." Did you say your grandmother died a pauper? A No, she said it, because I was spellbound in listening to her chat.

Q She says, "Your grandmother died"? A She said she, she began with grandmother.
 20

Q "I" should be "She," then? A Yes.

Q At the top of page 90, continuing the former answer, "I said he should have a housekeeper," and she said, "We don't want any trollops. We were glad to get rid of Mary Finerty. She was a nuisance." Whom did you mean by "she"? A Mary Wiggins.

Q Is there a meaning to the word "trollop"?

Objected to; objection sustained.

30

Q Did you know about a serious illness of Mr. Dolan along in 1884 or 1885? A I was.

Q I say, did you know about it? A I did. I was there at the time and heard Dr. Cook pronounce it a stroke, Dr. Cook of Holmdel.

Q And do you know what happened to him?
 A To Mr. Dolan?

Q Yes? A He fell out at the gate.

Q Fell out of what? A Out of his carriage.
 40 And he was quite a long time, and grandmother

Anna Tansey, for Caveators, direct.

wondered where he was. The horse walked into the back yard and we wondered why that—

Objected to.

The Court: Strike it out. Just tell what you saw.

10

A Well, in nineteen—

Q No, never mind that on this thing. Was he carried to the house or not? A He called after awhile, after about a half hour, and was carried to bed.

Mr. Slocum: I would like to know whether she was there.

By the Court.

Q Were you there? Did you see it? A Yes, I did.

20

By Mr. Tansey.

Q And he was put to bed? A And wasn't himself for several weeks.

Q And did he show any effects of it in after life? A All his life. One eye was raised very high, and one shoulder, and he walked a little sideways. And in nineteen—

30

Mr. Slocum: One minute. There is no question.

The Court: Miss Tansey, just answer the questions asked by your counsel.

Q Did you wish to say something about a later day? A I would like to.

Q Did you wish to say something? A I wish to say that he sympathized—

40

Anna Tansey, for Caveators, direct.

Q No, you are asked if you wished to say something about the year 1919? A That he said he could—

Q No, do you wish? A Yes, I do.

Q All right. A You won't let me.

10 Q Now, what was there about 1919 you wanted to say? A I spoke of someone whose weak spells caused them to have very odd impulses. I was blaming them. I said since they have had those weak spells they appeared to have very odd impulses. And Uncle objected to that and he got tears in his eyes, and he says, "Don't feel that way about it," for me not to blame the person.

Q Then he said, "Don't blame them?" A "Don't blame the person. They can't help it," he said.

20 Q What did he say about himself? A He says, "I know; I have days of feeling like that since I have been sick."

Q And tears came in his eyes? That is all.
A I want to state—

Mr. Slocum: One minute.

Q Were you there before Mr. Dolan was buried, after his death? A Yes.

30 Q How were you notified of his death? A Well, I think I was informed from Keyport. Dr. Tansey got a telephone message.

Q And you went to Mr. Dolan's family home?
A Yes.

Q And you were there— A The night before he was buried.

Q You talked to the various persons mentioned in the will? A I did, yes.

40 Q Did anybody tell you that there was a will?
A Nobody spoke of one to me.

Anna Tansey, for Caveators, direct.

Q You attended the funeral? A I did.

Q Did anybody after the funeral or during the funeral speak of a will? A No.

Q When did you first learn there was a will?
A When I wrote and asked to be told about it to Ella Maloney.

Q Did you get a letter from Ella Maloney? 10
A Yes, I did. No, not a letter. She sent the will. The will will answer for itself. She didn't say anything.

Q How long was that after the funeral? A I think it was about two weeks. I wouldn't be positive.

Q Had the will been probated, do you know, at the time you got the copy of it? A I couldn't say sure about that.

Q That is all. A Well, I want to speak 20
about the matters of the church—

Mr. Slocum: I object to your speaking except as your counsel asks you.

The Court: Isn't Mrs. Tansey an appellant?

Mr. Tansey: Yes, she is one of them.

The Court: She is one of the appellants?

Mr. Tansey: Yes.

The Court: What do you want to speak 30
about?

The Witness: I want to speak about prior to 1917 Ella Maloney took my uncle to church back and forth to Keyport and frequently asked me to ride on my way home. When he was in the car she always requested me to get out at Broad street, which was about four blocks from my home, but when he was not with her she occasionally took me to my gate. Uncle Johnny wasn't 40

Anna Tansey, for Caveators, cross.

there to our house after that day excepting the day my father was dying—

Mr. Slocum: I object to this and ask that it be stricken out as incompetent, irrelevant and immaterial.

10 Mr. Tansey: I think it is not irrelevant. It shows a course of conduct tending to keep the testator away from the natural object of his bounty.

The Court: I overrule the objection and give you an exception on the record.

Q How long was it that he continued to stay away from your home? A Well, I think it was almost 1911; we began to notice it as soon as grandma died. I wouldn't say positive about
20 the length of time. But he once came down and we know about it, how cold it was out there, and someone told him there was an objection—

Objected to; objection sustained.

Mr. Tansey: That is all.

Cross examination by Mr. Slocum.

30 Q You state that you saw Mr. John Dolan in 1884 or 1885? A 1885.

Q And at that time he was suffering from a paralytic stroke; is that right? A Yes.

Q Where were you living at that time? A With my grandmother.

Q In the same house with John Dolan? A The same house.

Q And how old were you at that time? A Now, Mr. Slocum—I am just past twenty-one.

Q Well, you were under twenty-one, then?

40 The Court: Mrs. Tansey—

Margaret Tansey, for Caveators, direct.

A Yes, I was quite grown up, Mr. Slocum. I was not twenty-one, but I was quite some grown-up.

Mr. Slocum: This is an important thing, if the Court please.

The Witness: Very well; I was seven- 10
teen years old.

Q Did you see Dr. Cook go home with Mr. Dolan at that time? A Yes.

Q Did I understand you to say that he fell out of a wagon and had to call into his home; is that right? A Yes, sir.

MISS MARGARET TANSEY, recalled, for 20
Caveators.

Direct examination by Mr. Tansey.

Q On page 67 of the testimony in the case, and the answer which you gave to the question—to which you don't want me to read the whole question and answer—do you? It is a whole page? I just want to direct her attention—

30

Mr. Slocum: I would read the question and then refer to the answer.

Mr. Tansey: The question is at the bottom of the page.

Mr. Slocum: The question is at the bottom of page 66. "Did any of the Maloney girls come in after that?" And the answer is, "Mary came in from school and she greeted me very nicely. She found me in the sick room but she didn't know Uncle Mike was

40

Margaret Tansey, for Caveators, direct.

there until later, and when he came in from the grocery store with the groceries she upbraided him for going for groceries, and he said he was sent, and he said, "Uncle John sent him, that the woman needed groceries in the kitchen," and he said to her, "Yes, I sent him."

10

Q Whom did that "he" refer to? A Uncle Michael. Uncle Johnny sent Uncle Michael to the store.

Q You said that he said to her, "Yes, I sent him"? A Yes.

Q That refers to Uncle John? A Uncle John.

Q And further down the page it says, "She walked over and shook her fist in his face and said, 'You have no business to send anybody to the store from here.' And she ordered him home." Whom did you mean by "him"? A Uncle Michael.

20

Q She ordered Uncle Michael home? A Yes.

Q And further down the page it says, in the same answer, "So I got ready but Ella Maloney took me together with my uncle to Matawan." What uncle was that? A Uncle Michael.

Q At the bottom of page 64 there is a question: "And a little later on the other three came," do you recall, and the answer is, "Ella and Mamie"? A That is wrong.

30

Q What should that be? You have already spoken about Mary up above. Ella and who else? A Ella was the only one came in that morning.

Q No, this is, "The other three came to make their home at Mr. Dolan's." A Oh, that is different. Oh, yes. That is—

40

Margaret Tansey, for Caveators, direct.

Q You have already mentioned Mary and Ella. Mary, and who was the other one? A Margaret.

Q Margaret? So it was Margaret instead of Mamie? A Yes.

Q On page 69, near the bottom, there is a question, "Q Did you see any subsequent actions of Mary Maloney or Ella Maloney to show what power they had over John Dolan?" And the answer was: "I went up there when he was sick. My brother and myself, we went around to the kitchen door and got in, and he had his cane alongside of him"; and you wanted to add something to that? A He was lying in bed. 10

Q The cane was alongside of him in bed? A Alongside of him.

Q On page 70, near the bottom, continuing the answer, where Mr. Dolan says, "But Margaret Harrington comes up with a kettle of hot soup for me." Did you want to add something to that? A She came up during the week. 20

Mr. Slocum: One minute. If your Honor please, he is reading part of a long answer which is all right; but when he completes the long answer which is given in the exact words of the witness, let her explain if she wants to correct it. It is not a case of supplemental testimony in an examination of this kind. 30

Mr. Tansey: I asked her whether there was anything else she said. That was the objection.

The Court: Anything else she said at that time?

Mr. Tansey: At that time, yes, which was omitted. 40

Henry Dolan, for Caveators, direct.

The Court: I think, Mr. Tansey, you may ask her if anything occurred at that time, anything else occurred. That is what she wants to tell us.

10 Q Did anything else occur at that time as to when she came with the soup? A Around about noontime, she said, on Wednesday.

Q Usually, she said, she came about noontime on Wednesday? A Yes.

Q With a kettle of hot soup for him? A Yes.

Q How many times a week did he say she came? A Well, he didn't specify, but I judged—

20 Mr. Slocum: One minute. No, never mind what she judged. He didn't specify?

The Witness: He didn't specify. He said in a week.

No cross examination.

HENRY DOLAN, recalled, for Caveators.

30 Mr. Slocum: If your Honor please, it seems to me this is a most unusual proceeding. Henry Dolan was sworn. What they have done is gone over the transcript of the testimony and recalling every witness for the purpose of making corrections. That is a most astounding situation.

The Court: I don't see any objection to that, Judge, if there were actual errors.

40 Mr. Slocum: Well, I don't see that they have a right to correct the testimony from one half of their witnesses.

Henry Dolan, for Caveators, direct.

The Court: Well, it takes a lot of time. It should have been done properly at first. But if the condition exists—

Mr. Tansey: We didn't have a transcript at first.

The Court: I understand that. Do you want an exception? 10

Mr. Slocum: Yes.

Objection noted for proponents as ground of appeal.

Direct examination by Mr. Tansey.

Q Mr. Dolan, on page 32 of the testimony as typed there appears this: "You say he made some reference to fighting over the will: 'Let them fight the same as they do over the Kaiser's?'" Is that right? A I said property, not "will." 20

Q What was his remark about that then? A Well, he said at that time that they could fight over his property but he wouldn't make a will.

Mr. Slocum: What page is that?

Mr. Tansey: That is on page 32.

Mr. Slocum: What happened? Did the stenographer make that error in the testimony of two persons? 30

Mr. Tansey: Yes, there were several errors.

Mr. Slocum: But, if your Honor please, that is the point I make. They don't say the testimony was not taken down properly, but they say there are errors in the testimony.

The Court: Well, he said he didn't say that. He said "property." 40

Henry Dolan, for Caveators, direct.

Mr. Slocum: What are you going to do, have an issue joined between the stenographer and the witness?

The Court: The Court will have to determine what was said.

10 Q Is there any other correction which you wish to make to your testimony, Mr. Dolan? A That is all.

Mr. Tansey: If your Honor please, that closes our case at present except that we have not been able to get that commission for the testimony of the witness in Minneapolis.

The Court: Has the commission been issued?

20 Mr. Tansey: No, sir, if your Honor please; we spoke to your Honor about it the last time.

The Court: I don't see how the other side could rebut your testimony if it is not all in yet.

30 Mr. Tansey: But Judge Slocum and I agreed, to save time, that we might stipulate; then we couldn't stipulate and I sent the questions to Judge Slocum, and he seemed to have some objection to consenting to the order, and I then said to him that possibly we could straighten it out before your Honor today. We have the questions submitted and we are ready to go ahead and take the testimony of the party in the West. I have no objection to Judge Slocum recalling his witnesses that he wants—

40 The Court: No, we are not going to take testimony and recall witnesses and run up expenses to the estate in that manner.

Colloquy.

Mr. Tansey: Well, I am all through—

The Court: How large is this estate?

Mr. Tansey: About fifty thousand dollars, I guess. As far as I am concerned, I did my best to get the witness. I thought I would have him here, but each time he would select his heart would give out, or something.

10

The Court: Why didn't you take his deposition?

Mr. Tansey: That is what I have told your Honor I tried to do, but Judge Slocum has some objections to the questions. We are satisfied to have you look them over without notice.

The Court: Well, do you waive notice?

Mr. Slocum: Now, if your Honor please, I think Mr. Tansey states it generally correct, probably definitely correct, except this: and let us see whether we are agreed on it. Mr. Tansey's case is now closed with the exception of a witness by the name of Fitzgerald, who lives in St. Paul or Minneapolis. Now, if his case is closed with that exception I am willing to appear before your Honor at some definite day, this afternoon, preferably, if your Honor can give us the time, and have you approve the interrogatories. He has asked half a dozen questions that I don't think are proper and I want to preserve my rights. But anything which Mr. Fitzgerald may say as against any of the Maloneys, I reserve the right to call the Maloneys in rebuttal, if your Honor please; but I would reserve that right, and if that is agreeable to the Court we can go on with our case today.

20

30

40

Colloquy.

The Court: I think you ought to have the right, as a matter of fact. I don't think you ought to be forced to meet the issues until the testimony is in.

Mr. Slocum: That is just the point. I can't tell just what I am going to meet.

10 The Court: What I have to meet is the question whether or not it is fair to the people, no matter who the beneficiaries are, to make it necessary to go over the same ground again, if this witness will testify to a matter that Judge Slocum has not already rebutted in his testimony.

20 Mr. Tansey: Well, Judge Slocum is going to cross examine. I have submitted the questions to him. He will submit cross examining questions and then we have no objections to his calling witnesses if he wants to. As to the expense your Honor speaks of, I can't see that it would be overpowering if I should call a few witnesses and then he can call witness in rebuttal. I have no objection.

The Court: If you gentlemen agree, go ahead.

30 Mr. Slocum: Is the understanding exclusive and thorough between Mr. Tansey and I and the Court and is it agreeable to the Court? I am willing to proceed now with the witnesses with the understanding that Mr. Tansey has closed his case with the exception of this one witness who resides in St. Paul.

Mr. Tansey: Closed it and tight locked it, if your Honor please.

40 Mr. Slocum: I reserve, however, the right to recall some witnesses in rebuttal to

Dr. Millard B. Ervin, for Proponents, direct.

anything that Fitzgerald may say against the Maloneys, if it becomes necessary.

The Court: You can call any witnesses who might be necessary to rebut any testimony of this witness who has not yet come in. Now, as to the rest of the witnesses, you are through with them, Mr. Tansey? 10

Mr. Tansey: Yes, sir.

PROponents' TESTIMONY IN
REBUTTAL.

DR. MILLARD B. ERVIN, a witness produced on the part of the Proponents, being sworn according to law, testified as follows: 20

Direct examination by Mr. Slocum.

Q Doctor, what is your profession? A Physician.

Q Where did you graduate? A Long Island College Hospital.

Q When? A 1919.

Q Did you know John Dolan in his lifetime?
A I certainly did. 30

Q Were you at any time his physician? A I was for the last five or six years of his life.

Q What years did that cover? A I should judge it would cover from 1921 and 1922 to his death.

Q Do you remember attending him Decoration Day of 1922? A I remember attending him, yes.

Q What was he suffering from at that time?
A Bronchitis and congestion of his chest. 40

Q Where was he living? A Everett.

Dr. Millard B. Ervin, for Proponents, direct.

Q Who was living at the house with him at that time? A I don't remember.

Q Who did you see there at that time? A I saw Mrs. John Harrington there, and Miss—I don't know what her name is. She is a school teacher, I know that. Maloney, I think her name
10 was.

Q Maloney? A I think so. I don't know her name.

Mr. Slocum: Miss Maloney, stand up.
(Miss Maloney stands.)

Q Is that the lady you saw there? A That is one of them, yes; and a Mrs. Ryder.

Q Mrs. Ryder? A Yes.

20 Q Anyone else, if you recall? A No, I don't.

Q What did you prescribe for Mr. Dolan at that time? A Treatment for bronchitis at that time.

Q At any time during your attendance on him as his family physician, was he suffering from any other disease than bronchitis? A Yes, he had a chronic myocarditis, and he had a rupture, and he was complaining of being dizzy, and at
30 times somewhat hard of hearing.

Q You say at times hard of hearing? A Yes.

Q Did you observe that? A Yes, I did.

Q Did it vary? A Varied, yes.

Q What was the cause of the deafness that you observed? A The cause of the deafness, he had wax in his ears, and the first time I took care of Mr. Dolan, I think the last or the next to the last call, I syringed his ears out, and I improved
40 his hearing quite some; but as a result of his

Dr. Millard B. Ervin, for Proponents, direct.

heart condition he had more or less stomach trouble, and when that stomach trouble would become worse it would cause a congestion in his throat and close off his ears and make him hard of hearing at that time.

Q Ordinarily could he hear you in talking to him in an ordinary voice? A At times he could, and at other times he couldn't. 10

Q What was your first date of attending him? A It was around Decoration Day in 1921 or 1922.

Q Had you attended him earlier than 1921? A No, sir.

Q At any time during your acquaintance with him did he have any disease or any infirmity that affected his mind or mentality? A I couldn't see any. 20

Q Did you ever see any evidence of a paralytic stroke? A No.

Q Did he ever tell you that he had a paralytic stroke? A No.

Q Now, when you attended him in 1922, did you request that he have a nurse in attendance? A No.

Q Who did? A Some other physican, some relative of his.

Q Did you bring a nurse there? A I had a nurse brought there, yes, sir. 30

Q And did you talk with John Dolan about the nurse? A Yes, sir.

Q What did he say? A Refused to have the nurse come in his room to take care of him.

Q Now, you tell us the whole conversation on that subject between you and Mr. Dolan. A I was instructed to inform Mr. Dolan that a nurse was downstairs to take charge of him. I went upstairs and told Mr. Dolan that I had a 40

Dr. Millard B. Ervin, for Proponents, direct.

nurse downstairs to take care of him, and he said that he didn't see that it was necessary to have a nurse, and that if the people that he was going to take care of couldn't take care of him, that he would have to see about it—words to that effect. I don't remember the exact phrasing.

10 Q Was Miss Maloney, the lady who stood up in the court room, there at that time? A I couldn't vouch for it. I know one of the girls spoke to me downstairs, and they were afraid to take the nurse upstairs.

Q Which one of the girls was afraid to take her up? A The whole bunch.

Q Why were they afraid to take her up? A He was apparently boss.

20 Mr. Tansey: Of course, that is highly objectionable.

The Court: Yes, it may be stricken out; "He was entirely boss" may be stricken.

Q Was or not Mr. Dolan a man of strong character and determination?

Mr. Tansey: I object to that. How is this man going to testify to that?

30 Mr. Slocum: Why, he knew him, he was family physician. He is thoroughly competent.

Mr. Tansey: He is not a character doctor.

The Court: I will sustain the objection. He can tell actual facts, what he observed.

Mr. Tansey: Yes.

40 Q Well, what did you observe about the doings and acting of John Dolan as you saw him?

Dr. Millard B. Ervin, for Proponents, cross.

Mr. Tansey: Directed to what point, generally? If it is general I object to it, if your Honor please.

Mr. Slocum: I am talking about the time when this physician was attending him, covering a period of four or five years, and I submit that the question is proper. Repeat the question. 10

(Question repeated.)

A For his age, he was a very active man and was a very determined man.

Q Do you know how old he was? A No, I don't, but he was well along.

Q Was he an inform man in any way? A Not for that age.

Q Well, you say you don't know his age, and yet he was not inform for that age. What do you mean by that? A I mean for a man of the years that he apparently carried and apparently the way he carried those years, that he was pretty active for that. 20

Q Well, what do you mean by active. What did his activities consist of? A Working on the farm.

Q And was he actually working on the farm while you knew him? A Yes, sir. 30

Cross examination by Mr. Tansey.

Q What weight of years did he appear to be carrying?

Objected to.

Mr. Tansey: He spoke of a weight of years.

The Court: Oh, yes, I think that is proper. 40

Dr. Millard B. Ervin, for Proponents, cross.

A Appeared to be carrying?

Q Yes?

Mr. Slocum: I tried to bring out the same thing, and your Honor ruled me out.

10 The Court: Oh, no, not his weight of years. If you know.

Q What weight of years did he appear to be carrying? A A man past middle life.

By the Court.

Q What do you mean by middle life? A Past fifty or sixty.

By Mr. Tansey.

20 Q Past fifty or sixty? A Yes.

Q What is your school of medicine, homeopathic or allopath? A I don't know. I never bothered to investigate that.

Q Well, don't you know? Is it a matter of common knowledge that physicians are either allopaths or homeopaths? A I didn't bother with that.

30 Q Is the college that you attended a homeopathic or an allopathic college? A I don't know.

Q You said he was a man who appeared very active, I think it was you said—if I am wrong correct me—he appeared very healthy, wasn't it, you said? A I said active.

Q Active; and I think you also said that he was as active as he should be at his age or at his apparent age?

40 Mr. Slocum: I don't recall any such testimony as that from the witness.

Dr. Millard B. Ervin, for Proponents, cross.

The Court: He said what, Mr. Tansey?

Mr. Tansey: I thought he said as active as he should be at his apparent age.

The Court: You may ask him, if you want to. I don't think he has answered it.

Mr. Tansey: I don't want to ask it. I was just trying to draw the witness' attention to it. 10

The Court: Then what were you going to do after that?

Mr. Tansey: I was going to ask him whether, in view of the fact that Mr. Dolan had a chronic mild myocarditis, a rupture and dizziness and hard of hearing, from his stomach affection, in view of all that, whether he would consider him a man of active abilities. 20

A He must have been active when they got him into the field and fell down from a sunstroke.

Q He had a sunstroke, did he? A Fainted out in the field.

Q When did that happen? A Sometime after I treated him, two or three years, about a year before he went up to Mrs. Harrington.

Q Sunstroke after that? A Anyhow, he fell down in the field and I saw him on the following day. 30

Q Now you judge his ability from the fact that he worked out in the field? A He walked out in the field. He came to my office many a time. I had twenty steps to climb up and he climbed up them.

Q Did you treat him after this incident in 1922? A I treated him after I had seen that.

Q At your office or his place? A At his house, at my office, at Mrs. Harrington's. 40

Dr. Millard B. Ervin, for Proponents, cross.

Q Did he come to your office alone, or did somebody take him there? A Whenever I saw him he would come to my office alone, and came up the steps alone.

Q Do you know whether he drove there or whether he walked there? A I don't know.

10 Q Did you treat him before 1922? A I couldn't vouch for that. Either 1921 or 1922.

Q Was that the first time you treated him, when you went over there when you spoke about the nurse incident? A Yes.

Q That was your first attempt to treat him? A Yes, sir.

Q And you said he ought to have a nurse? A I beg your pardon?

20 Q You say that you were there and that you heard somebody say he ought to have a nurse?

A Somebody instructed me that. Somebody there had said he ought to have a nurse.

Q Then you secured one? A Then I secured one after consulting the family.

Q And did you think he should have a nurse at that time? A I didn't see that it was necessary.

Q You didn't see that it was necessary? A No, sir.

30 Q Nevertheless you got one? A Got one so there would be no trouble so far as the family was concerned, the members of the family would holler.

Q And he refused to have a nurse? A He flatly refused it.

Q You didn't think he was sick enough to have one? A No, sir.

Q Did you ever have experience with a patient who refused treatment? A Mr. Dolan never—

40 Q I say, do you have experience occasionally with a patient who refuses treatment? A Yes.

Dr. Millard B. Ervin, for Proponents, cross.

Q And then do you stop treating him? A I pull out, yes, sir.

Q You don't treat a patient sometimes even when he says he won't take it? A If he don't want to take what I prescribe for him, let him get another doctor.

Q Have you had any hospital experience? A 10
I was connected with one as soon as I was graduated.

Q And did you find patients in the hospital sometimes refusing to take medicine? A Very rarely.

Q You didn't find them sometimes refusing? A I don't think I ever did, no.

Q Have you had any experience of making a patient take medicine when he refused it? A Didn't try to. 20

Q Didn't do that? A No, sir.

Q You let the patient be his own guide? A If he doesn't want to take my medicine, he can get somebody else.

Q Or he can die; is that so? A As far as I am concerned, yes.

Q When did the nurse get there that day? A I couldn't vouch. She was there when I came in the morning.

Q And who was the nurse? A At that time it was a girl named Miss Vigne. She is married now. 30

Q Was she one that you brought? A I instructed somebody where to locate her, and they got her and brought her there.

Q You didn't bring her yourself? A No, sir. She went away with me.

Q Did you come again the next day after that? A I think I did, yes.

Q And the next day? A I came there pretty regular. I couldn't vouch for exactly the num- 40

Dr. Millard B. Ervin, for Proponents, cross.

ber of days that I came, but I came there quite a few times.

Q Right after that? A Yes, sir.

Q Well, then, did he get well when you stopped? A He was up and around when I left.

10 Q Then when did you come again? A I couldn't vouch for that.

Q That year or another year? A I couldn't vouch for it. Off and on until Mr. Dolan died.

Q Now, this off and on again, does it mean twice a year or does it mean once a year? A Oh, it would be two or three times during a year he would see me.

Q He would see you or you would go to see him? A Either way.

20 Q But when he went to Harrington's he came to see you at the office? A I saw him at Mrs. Harrington's.

Q And when was that? A When he was at Mrs. Harrington's.

Q I say what year was that? A I think it was the last year just before he died.

30 Q Did you attend him for any serious illness at that time? A He had attacks of stomach trouble, apparently, at that time.

Q And that was the same old trouble that he had before, wasn't it? A Yes.

Q Now were you there to take care of him shortly before he died? A I don't think—no, the last I saw him was up at Mrs. Harrington's.

Q You were called in in his last illness, were you? A I was called, but he was dead when I got there.

40 Q Oh, he was dead when you got there? A Yes.

Alexander McClees, for Proponents, direct.

Q Did you diagnose what he died of? A From attending him previously, myocarditis.

Q He died of heart disease? A Yes.

Q Found dead in bed, was he? A Yes, sir.

10

ALEXANDER McCLEES, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

Q Mr. McClees, where do you live? A Holmdel.

Q Do you hold any public office there? A Yes.

20

Q What office? A Assessor.

Q Did you know John Dolan in his lifetime? A Yes, sir.

Q How long had you known John Dolan? A About forty years.

Q Did you see him frequently? A Well, not so frequently, and quite frequently at that; when he came to the village quite often.

Q Speaking of Mr. Dolan's general condition, as you saw him in 1918, 1919 and 1920, did you have an opportunity of talking with him and discussing business affairs? A Yes, sir.

30

Q What kind of affairs did you talk about? A Well, in the fall, in October, when I went around assessing, he talked about the assessment on his farm, the values of the property in general; and when he came to my place of business he talked business with me in my line.

Q And what is your line? A A harness maker.

40

Alexander McClees, for Proponents, direct.

Q Did you have a sale for him in 1925? A I clerked the last sale when he sold out his stock in Everett there.

Q Did he have a talk with you about the sale of his personal property there? A Not until after the sale was over. His nephew made an arrangement with me to attend that sale.

Q Who was that nephew? A Michael Maloney, and his brother-in-law, Mr. Harrington.

Q Well, after the sale, did he talk with you about the results of the sale? A Yes.

Q Was his hearing good at the time you knew him, in the years 1918, 1919 and 1920?

Mr. Tansey: I object to that as leading.

The Court: How is it leading?

Mr. Tansey: Directing his attention to the answer that is expected.

The Court: What would you have him do?

Mr. Tansey: How was his hearing?

The Court: All right. Ask him how his hearing was.

A I would say practically normal, possibly a little hard of hearing, but very slight.

Q Could he hear me in an ordinary tone of voice? A Rather a little louder than the usual conversation; not hard to talk to by any means.

Q How was his eyesight, Mr. McClees? A Well, to the best of my memory, it was fair.

Q How did he pay you for his tax and for what you did for him usually? A I was not the collector of taxes, but the work that I did for him he usually paid me with check.

Q How were those checks drawn? A What do you mean by that?

Q By himself or someone else? A By himself.

Alexander McClees, for Proponents, cross.

Q What was his condition mentally as long as you knew him? A Good.

Cross examination by Mr. Tansey.

Q When did you first begin to notice his difficulty in hearing, Mr. McClees? A I couldn't just give you the date. 10

Q Well, about the year? A Well, I can't tell you what year it was.

Q Well, you have dealt with him a good many years, I think you said about forty, didn't you?

A Yes, sir.

Q And it was only the latter end of that period that you noticed he was hard of hearing, was it? A Well, it might have been the last ten years of his life, possibly. I wouldn't say exactly. 20

Q You think it was the last ten years of his life? A I don't think it was more than that.

Q And it was so it made you notice he was harder of hearing than he had been? A There was a slight deafness, very slight.

Q You have quite a loud voice, haven't you?

A Yes.

Q Naturally? A Naturally.

Q So that when you say an ordinary tone it means something, doesn't it? A Well, I generally say what I mean, or try to. 30

Q I say it means something when you say an ordinary tone, something fairly loud? A Not so much louder than the usual class of people, sir.

Q Still some? A You can have it that way, if you want to.

Q You say the sale arrangements were made by Michael Maloney? A And Mr. Harrington.

Q And Mr. Harrington? A Yes, sir. 40

Frank McMahon, for Proponents, direct.

Re-direct examination by Mr. Slocum.

Q Did you notice anything of the twisting of his face at any time, or a peculiarity in his left eye? A I never did.

10 Q Did you notice any twisting of his neck or head? A Always seems natural to me now, as I understand this—

Q Never mind. I am just asking you. A I never noticed anything particular in that line, no, sir.

Q And you had known him forty years intimately? A Well, did business with him about forty years.

By the Court.

20 Q Was he lame, Mr. McClees? A I don't think so.

Q Did he use a cane habitually? A No.

Q Was his left side twisted? A Not that I ever noticed.

By Mr. Tansey.

30 Q Did you see whether he held his head over or not? A I never noticed his holding his head in any way peculiar to me at all.

FRANK McMAHON, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

40 Q Mr. McMahon, where do you live? A Red Bank.

Frank McMahon, for Proponents, direct.

Q What is your business? A President of the Second National Bank & Trust Company.

Q And you have been a banker for how many years? A Thirteen or fourteen, I am not quite sure which, but I have been President, have held this position.

Q Did you know John Dolan in his lifetime? 10
A Yes, sir.

Q How long had you known him? A Well, I became acquainted with him shortly after I became President of the bank. I can't tell just the time, but I have known him for a number of years.

Q Did he have an account in your bank? A Yes, sir.

Q Did he often talk with you about his banking affairs? A Well, now, I don't just know what you mean. At times when he came in the bank I would shake hands with him and ask him how he was, and he might say something about his banking affairs, but nothing of any importance of that nature, I would say. 20

Q What kind of a business man was he? A Well, I would say a fairly good business man. He was a pretty careful man.

Q Did he do his own banking business? A Yes. 30

Q Did he ever discuss any business matters with you, talk them with you? A I can't recall any discussion of any business transactions, other than probably depositing some money, which was just an ordinary routine matter.

Q Did he come there with his own deposits and attend to those details himself? A I presume so. I can't say definitely, Judge. I am quite sure that he did. I had no particular reason for knowing just how that was done, but I thought that he always handled his own business. 40

Frank McMahon, for Proponents, cross.

Mr. Tansey: Now, if your Honor please, I think that answer ought to be stricken out.

The Court: Yes, if he doesn't know, I don't see—

Mr. Slocum: I will consent that it be stricken out.

10

A Well, I think I could say that he did attend to his own business. I think I could say that truthfully.

Q Well, how often did you see him in your bank attending to his own banking business? A Well, his account was comparatively inactive. Maybe two or three times a year he visited the bank, in a year. I didn't see him every time he came in. It is a pretty large institution, and a good many people, and I would not see him every time.

20

Q Did you ever notice any deafness on his part in your conversations with him? A Never apparent to me.

Q Did you ever notice any twist of the neck or the body? A No.

Q Did you see any evidence of a paralytic stroke? A No.

Q Did you ever see any evidence of weakness of mind on his part? A No.

30

Cross examination by Mr. Tansey.

Q Mr. McMahon, you mentioned that his account was an inactive account? A Well, comparatively, yes.

Q And that you would see him there maybe two or three times a year? A Well, I said I may not have seen him every time he came into the bank. I would see him occasionally during each year of say possibly for ten years.

40

Frank McMahon, for Proponents, cross.

Q And do you recall how often you saw him, say from 1920? A No.

Q You say about ten years? A Well, from the time that I became President of the bank, he opened a savings account shortly after that.

Q When was this? A Late in 1915.

Q 1915 he opened a savings account in your bank? A Yes, that is when we established a savings department. 10

Q And that is what his account was, a savings account? A Well, he had both a savings and checking.

Q Were they both inactive accounts? A Well, that is sort of a relative term.

Q Well, that is what I want to find out. A His savings account would be quite inactive. The character of that were principally deposits. The checking account was, of course, more active. That is how he handled his current business affairs, through checking account. 20

Q Was the transfer of his account from the Emigrants' Savings Bank in New York handled through your bank? A I don't know.

Q Would you be able to tell if you saw the bank book? A No.

Mr. Slocum: I object to it as immaterial. 30

A We have a great many such accounts and I would have no—

Q One minute.

The Court: I don't see the force of it. What are you going to prove by it?

Mr. Tansey: Well, we have here the savings bank account in the Emigrants' Savings Bank, which was opened in the name of Bridget Dolan, and son John, and that ac- 40

Frank McMahon, for Proponents, cross.

count was closed out, I think, in 1915 or 1916, about the time when Mr. McMahon speaks of his opening an account in the Second National Bank, and I would like to know whether he drew the funds through the bank.

10 The Court: What does it prove? There are two issues here. I suppose the issues are incapacity and undue influence.

 Mr. Tansey: We don't allege any incapacity at all.

 The Court: You don't?

 Mr. Tansey: No, we allege it but it is only a mere matter of form. We think the man had his good mind right up to the time he died, and we are not alleging any fault in his mind at all. He was a man of good mind
20 and good heart.

 The Court: Do you mean to say that when you abandon that, then you mean it be put in about the physical infirmities?

 Mr. Tansey: Well, that is on another feature of the case. We are not abandoning anything. I merely say that we are not accentuating.

30 The Court: How does this tend to prove that undue influence was exerted?

 Mr. Tansey: It would tend to show whether or not he did it of his own free will, or whether it was a settled policy, he acted under an influence, under one control.

 The Court: Settled policy of whom?

 Mr. Tansey: The persons whom we allege unduly influenced him.

40 The Court: Are you going to connect them up with the trust company?

Frank McMahon, for Proponents, cross.

Mr. Tansey: Possibly.

The Court: We cannot allow you to go on on a fishing expedition.

Mr. Tansey: We are not fishing.

The Court: If you are going to make proof, you must offer to prove and prove it.

Mr. Tansey: I have those books showing about the time this transfer of account was made and opened in Mr. McMahon's bank, that this account was transferred to this bank. I would like to know whether the transfer was done through his bank, and whether Mr. Dolan did it personally. If Mr. Dolan went there and did it personally himself, he drew the money from the Emigrants' Bank and brought it to their bank, it would mean one thing. If he merely put a check in and drew it through their bank, it might mean an entirely different thing, in being done by somebody else.

The Court: Are you prepared to prove that, that it was done by somebody else?

Mr. Tansey: We will do the best we can to prove it.

Mr. Slocum: But his case is in. He hasn't done anything like that. He rests.

The Court: Answer the question. I don't see that it does any harm, that it has any probative bearing at all. You asked Mr. McMahon if he knew whether the bank attended to the transfer of the account that was in the Emigrants' Savings Bank or not, whether his bank attended to the transfer.

A Well, we handled hundreds of such transactions. I am not expected to remember such things. I might remember it from the record.

Frank McMahon, for Proponents, cross.

By Mr. Tansey.

10 Q Would your records show? A I think so. It doesn't come under my direct supervision, and I can't say, but I daresay there are hundreds of such bankbooks handed to us for collection, and we can do it so much more promptly and without expense.

Q Mr. Dolan then may have handed you this bankbook and you collected that for him? A Yes, sir.

20 Q I show you bankbook No. 184913, of the Emigrants' Industrial Savings Bank of New York, in the name of Bridget Dolan or son John, in which the account appears to have been closed on June 22, 1916, and also bankbook of the Emigrants' Industrial Savings Bank in the name of John Dolan, No. 766391, in which the account appears to have been closed in January, 1917, and ask you whether that is the character of bankbook that you collect for depositors?

Mr. Slocum: I object to the question.

The Court: If that is the character of bankbook?

30 Mr. Tansey: If that is the bankbooks that you collect.

The Court: Your bankbooks?

Mr. Tansey: No, if that is the character of bankbooks that they collect for depositors.

The Court: Objection sustained. I don't see where you are getting. We are taking a lot of time. He says he doesn't know.

The Witness: He says his records will show, probably.

40 The Court: Probably, yes.

Frank McMahon, for Proponents, cross.

Mr. Tansey: And if I can produce his records they will probably show.

The Court: What is the use of asking that?

Mr. Tansey: I have a right to identify these bank accounts.

The Court: He can't identify them, he says. 10

Mr. Tansey: He can identify them as opening up an account in his bank.

The Court: He says he doesn't know anything about that. What is the use of asking a generality like that? We are taking too much time.

Q Do you remember an incident in the latter years of Mr. Dolan's life, when somebody forged a check in his name through your bank? A No. 20

Q And a young man who worked for him was accused of the crime and they stopped him in time before he was able to cash the check? A I don't recall it, no.

Q You don't know anything about that? Do your records show that? A Probably.

Q Would you make a record of any such thing as that in your bank? A Were we brought into the case in any way? 30

Q Well, I am asking you if you were. A I don't know.

Q I am asking you if you would be brought into the case, whether you would make a record of it?

Mr. Slocum: Objected to.

A I don't know. I can't give you any information, Mr. Tansey. 40

Patrick J. Devlin, for Proponents, direct.

PATRICK J. DEVLIN, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

- 10 Q Mr. Devlin, where do you live? A Matawan.
- Q And what is your business? A Why, we are in the lumber, grain and coal business.
- Q You were the postmaster there for many years, were you? A Yes, for eight years.
- Q Did you know John Dolan in his lifetime? A Oh, yes.
- Q Intimately, and have business dealings with him? A Oh, yes, yes.
- 20 Q How far back does your acquaintance with him go, Mr. Devlin? A Well, I can't fix any particular date, Judge, but I think—
- Q About how many years? A I have known him thirty years, I think, at least.
- Q And what kind of business have you done with Mr. Dolan in that thirty years? A Well, he would come to our place and buy material, and then he would sell us hay from his farm.
- Q What kind of a business man was he? A Very good, I thought.
- 30 Q Did he look after his own affairs pretty sharp? A Oh, yes, yes, indeed.
- Q Did you notice any deafness about Mr. John Dolan in any of your conversations with him? A Yes, in the last few years I did.
- Q What do you mean by few years? A Oh, perhaps eight or ten years.
- Q Before he died? A Yes.
- Q What did you notice? A Well, that was all; it was a little more difficult to converse with
- 40 him.

Patrick J. Devlin, for Proponents, cross.

Q Did you have to raise your voice higher? A Oh, yes.

Q Or would he hear you in an ordinary conversation? A No, he would not hear my voice in an ordinary conversation.

Q What would you have to do when you talked with him in order to make him hear? A 10 I just talked a little louder, that is all.

Q Did you notice anything about any deformity about his body, or his neck being twisted? A There was something peculiar about his carriage at the time, but I don't know whether it was in his neck or in his body.

Q Well, what struck you as unusual about it? A Well, he seems to lean a little to one side, I thought.

Q Did he use a cane? A No, I don't recall 20 that I ever saw him carry a cane.

Q And when he was talking business with you he could always hear what you were talking about? A Why, yes. I would make him hear, of course.

Q How about his eyesight? A That seemed to be all right.

Cross examination by Mr. Tansey.

Q Mr. Devlin, weren't you concerned with the 30 time when somebody tried to forge Mr. Dolan's name to a check or something? Didn't you make the identification on it, or something? A I believe there was something of that kind, but I can't recall the exact particulars, Mr. Tansey.

Q Wasn't it somebody presented a check claimed to be made by him to the Matawan bank?

Mr. Slocum: I object to it. The witness says he hasn't any definite recollection about 40 it.

Patrick J. Devlin, for Proponents, cross.

By the Court.

10 Q Can you recollect that that was so? A
There was a check presented to the Matawan
bank made by us in favor of John Dolan for a
bill of hay by a young man who had no right to
the check, as I understood it at that time; and
I was passing the bank shortly after the trans-
action, and the vice-president called me in and
told me the circumstances.

Mr. Slocum: I object to it unless John
Dolan was there and talked about it.

The Court: As to anything the vice-presi-
dent said.

20 Mr. Tansey: If you will listen a minute,
he will tell.

The Court: I don't know. He is talking
about some talk that he had with the vice-
president of the bank. That is not admis-
sible.

Mr. Tansey: That is out. I don't want
that in. We will leave it there.

By Mr. Tansey.

30 Q The young man had to be identified, and he
claimed to be a son of John Dolan, didn't he? A
No, I wouldn't say that.

Q What do you say about it?

Objected to.

The Court: Whatever he did with John
Dolan is proper.

Mr. Slocum: Yes, but he is not testify-
ing what he did with John Dolan.

40 The Court: We will confine him to that.

Patrick J. Devlin, for Proponents, cross.

Q What did you do with John Dolan about it?

A I had some correspondence with John Dolan directly afterwards about it, and the matter was eventually straightened out. I think the young man left the check at the bank and left hurriedly because he realized that something was going to happen.

10

Q The boy was? A Yes.

Q Left the check at the bank? A Yes.

Q When you were called in? A Yes.

Q And he disappeared?

Mr. Slocum: Now, if your Honor please, it has got right down to undue influence as the only charge here, and what this has to do with undue influence, I can't conceive.

Mr. Tansey: Here was an old man, if your Honor please, who claimed to be able to do business, and apparently he was under the influence or control of somebody who could take a check of his and go and present it at the bank and claim to be entitled to receive the money. A friend of his comes in at the opportune moment and proves himself a friend in that particular instance, and prevents the defalcation or the robbery. Now, it seems to me that that is a question showing what John Dolan—

20

30

The Court: It is an incident if you can show that John Dolan was influenced by somebody to do that, but you are not doing it.

Mr. Tansey: He was not influenced in that particular, but that he was not able to manage his business affairs as consistently as he might be. Here is one instance of it.

The Court: Why?

40

Patrick J. Devlin, for Proponents, cross.

Mr. Tansey: Why, because this boy or young man who worked for him apparently had an opportunity to rob him of a check.

The Court: We will have to use our imaginations a good deal to get that result proved as far as the testimony has gone now.

10 Mr. Tansey: Mr. Devlin had a check there which he was the one called upon to prevent the cashing of the check.

The Court: Well, then, what? What is the present question?

(Question repeated.)

20 Mr. Slocum: You see they are talking about a check, not John Dolan's check at all. It is some boy who brought a check in there that he was not entitled to, and then Mr. Devlin said he had some correspondence with him afterwards, and it was settled up.

The Court: But what has that got to do with this case?

Mr. Tansey: Certainly, it was his check. It was from Mr. Devlin to Mr. Dolan for some hay.

The Court: What are you going to prove by it?

30 Mr. Tansey: I am going to prove that persons had an opportunity to come in and take his property.

The Court: We have a good many of those in this room every week. I don't see how that tends to prove undue influence.

40 Mr. Tansey: It shows the situation that the man was left in at his age, and shows that he had nobody to protect him from the machinations of some robber or crook, or whoever he might be.

Patrick J. Devlin, for Proponents, re-direct.

The Court: What specific question do you desire to ask now?

Mr. Tansey: There isn't any that I know of, with Judge Slocum objecting so much.

By Mr. Tansey.

Q It was a check on your firm, was it? A **10**
Yes.

Q And you returned it to Mr. Dolan, didn't you? A I don't remember whether the identical check was returned to Mr. Dolan, or whether we issued another one, but I know it was settled satisfactorily.

Q It was sent to Mr. Dolan afterwards by you? A Yes.

Q About when was the first business transaction you had with Mr. Dolan? A **20**
In 1923. We bought his hay crop, and settled with him. There may have been some small items after that, but I can't recall.

Q Did you go to his farm, or did he come to your place? A I didn't go to his farm. I think we corresponded with him with reference to the last transaction.

Q And that had reference to selling and buying some hay? A **30**
Yes.

Re-direct examination by Mr. Slocum.

Q Did you ever see him at church on Sunday, Mr. Devlin? A Oh, yes.

Q Frequently? A Yes.

Q And over what term of years? A **40**
Well, maybe nine or ten years.

Patrick J. Devlin, for Proponents, re-direct.

By the Court.

Q And how near his death? A Perhaps a couple years previous to his death.

Q And how long had you done business with him prior to his death? A How long did we do business with him prior to his death?

10 Q Yes? A Oh, there was a barn built on his property for which he paid us \$3,000 in 1912, and prior to that and subsequent to that we have done business with him.

The Court: When did he die, Mr. Tansey?

Mr. Tansey: The 27th of July, 1927.

By the Court.

20 Q How long before that did you do business with him? A Well, probably a couple years.

Q When did you last see him, Mr. Devlin, do you recollect? A I think five or six months before he died, Judge.

Q Was there anything at that time different from— A I think he was an invalid at that time.

Q He was an invalid? A I think so.

30 Q In what way? A He was sitting on Mr. Harrington's porch when I last saw him. I think he appeared to be an invalid at that time.

The Court: What was the date of the will, Mr. Tansey?

Mr. Tansey: December 31, 1920.

Q Do you recollect him in that period, 1920? A Oh, yes.

40 Q Was he an attendant at church and upon business at that time? A Yes.

Mrs. Margaret R. Rider, for Proponents, direct.

Q And he was doing business with your firm at that time? A Yes, your Honor.

By Mr. Tansey.

Q He actually attended church up to the last week or so of his life, didn't he? A Yes. No, I beg your pardon. I couldn't answer that question. 10

Q Anyhow, up to the last few months of his life? A Well, I can't say that either.

Q Did you notice whether he was driven there by auto, or whether he drove himself?

Mr. Slocum: I object. He says he doesn't know.

Mr. Tansey: He didn't say anything yet.

Mr. Slocum: Yes, he has said. 20

A I don't know how he came there, Mr. Tansey.

Mr. Tansey: All right. That is all, Mr. Devlin.

MRS. MARGARET R. RIDER, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows: 30

Direct examination by Mr. Slocum.

Q Mrs. Rider, where do you live? A In Everett.

Q What is your husband's name? A Harry Rider.

Q How long have you been living there? A Six years. 40

Mrs. Margaret R. Rider, for Proponents, direct.

Q And what was your business before you were married? A Graduate nurse from the Newark City Hospital.

Q Do you still continue to do nursing? A Yes, I do.

10 Q Did you know John Dolan in his lifetime? A I have known John Dolan since I lived next door to him, which is six years.

Q Do you remember being at his home on Decoration Day, 1922? A I do.

Q How did you come to be there? A He came to my house at four o'clock in the morning, and called and said, "Mrs. Rider, this is John Dolan. I am sick." So I immediately came downstairs to Mr. Dolan.

20 Q Then what did you do? A I gave Mr. Dolan some soda. He said he had pain and I gave him some soda and water and went back and got my clothes on and my husband came down, and we brought Mr. Dolan back to his house in the car. He had a small slip of paper in his hand with a telephone number and he says, "I want you to get Dr. Palmer, Father O'Donnell and my niece at this number." So I didn't know who, I asked him her name; I didn't know who she was.

30 Q What name did he give you? A Mrs. Harrington. And my husband went to the telephone and called.

Q Never mind what your husband did, only what you did. A Then I stayed with him till they came back.

Q Did you go to the home of John Dolan early that morning? A I went right back with him.

40 Q And your husband? A No, my husband didn't.

Mrs. Margaret R. Rider, for Proponents, direct.

Q Oh, just you? A My husband took him back in the car and left me with him.

Q He didn't stay? A No, he went on an errand Mr. Dolan had sent him on.

Q What was he suffering with at that time? A Well, I didn't know what it was. It appeared to me as if he had had some gas around his heart, and after the soda took effect he had relief. 10

Q Did you send for Father O'Donnell? A Yes, I did.

Q What did you say to him, if anything, at that time? A He told me—I asked him if there were any legal affairs he wished to have attended to. He says, "I have it all attended to." He said, "I have left those that I want to have it share and share alike"; and he says, "The doctors and lawyers have enough." 20

Q Did you know who he referred to? A I did not. I was a perfect stranger to Mr. Dolan.

Q After that time did you see him frequently or not? A Yes, I did.

Q What doctor did you see at Mr. Dolan's home? A Dr. Ervin.

Q Any other doctor? A No.

Q How long did that illness last? A Why, I don't just remember the number of days. It was about seven or eight days. 30

Q Did you continue treating him? A Yes, I did.

Q Did you see any of his relatives about the house during that illness? A Why, the afternoon—

Q Well, first, did you see any there? A Yes.

Q What relatives did you see there? A I don't know who they were. They were his nieces and nephews, as I was informed. 40

Mrs. Margaret R. Rider, for Proponents, direct.

Q But you didn't know them? A No, I didn't know them.

Q Did you see Miss Maloney there? A Yes.

Q Do you know Mrs. Harrington? A Yes.

Q Did you see her there? A Yes.

Q Do you know Mrs. Wiggins? A Yes.

10 Q Did you see her there? A Yes.

Q Do you know Michael Maloney? A Yes.

Q Was he there? A Yes.

Q Do you remember seeing a nurse in attendance at that time, or in the house at that time?
A Yes.

Q Did you know who she was? A No.

Q Well, what about that nurse episode, what do you know about it? A Why, I know that I went there that morning and asked Miss Maloney if she wished to have me attend Mr. Dolan. She
20 said, "Why, yes." And I went upstairs, and gave him his bath and fixed him as usual. While I was up there Miss Maloney said, "There is a nurse downstairs." I said, "All right." And we were waiting for a Dr. Ervin to come in and attend Mr. Dolan. The doctor came up and he attended Mr. Dolan, examined his heart and the usual performance, and he said, "Well, pop, we have a nurse downstairs for you." And Mr.
30 Dolan said, "What for?" "Well," he said, "We want you to have the proper care." He said, "I don't think I need a nurse, and if I do we will get one." He said, "I think those that I took care of can take care of me." So I came downstairs, and was introduced to the nurse, but I didn't know her.

Q Did she stay there or not? A No, she didn't.

Q Did Mr. John Dolan have her wait on him?
A No.

40

Mrs. Margaret R. Rider, for Proponents, direct.

Q You don't remember how long that sickness lasted, do you? A No, I don't remember the exact number of days.

Q How soon was he out of bed? A Why, I think within seven or eight days he was out of bed.

Q Well, during this sickness was he able to read? A Yes, he asked for his papers and he read his papers. 10

Q Didn't you see him there reading his papers while you— A Yes, I did. Yes, I gave him his papers and he sat there and read.

Q Do you know whether or not Mr. Dolan was hard of hearing? A At times. At times he was hard of hearing; that is, you would have to speak a little louder.

Q To what extent? A Oh, not such extreme deafness that he couldn't understand you. 20

Q Well, when you talked with him, what did you have to do, if anything, to make him— A Just talk a little louder.

Q Much louder? A No, not very much.

Q Did you notice any evidence of a paralytic stroke? A No.

Q How close to Mr. Dolan's home did you live? A My farm joins his farm; it is about ten thousand feet. 30

Q Ten thousand feet? A No, ten hundred feet, across the field; ten hundred feet, approximately.

Q Now since your acquaintance with him in 1922 have you seen him in company with Miss Maloney? A Yes.

Q Quite frequently? A Yes.

Q Did you ever see him show any affection for her? A Yes, I did. 40

Mrs. Margaret R. Rider, for Proponents, direct.

Q How did he speak of her? A Why, on Friday night he looked forward to her coming home. He would have the gates open, and he would watch the gate coming in, and he was very fond of her.

10 Q Did you ever see any other demonstration of his affection for her? A Yes, he would kiss her when she came in, and he acted as if he was overjoyed to see her.

Q That was when she returned? A That was when she returned.

Q On Friday night? A On Friday night.

Q Did you ever see Mrs. Harrington there? A Yes.

Q Often? A Very often.

20 Q How about Mrs. Wiggins? A Yes, Mrs. Wiggins was there.

Q Did you at any time ever hear John Dolan complain about the treatment of Mary Wiggins, Ellen Maloney, or Mrs. Harrington, to you? A No.

30 Q Do you ever remember hearing him say anything about Michael Maloney, his nephew? A No. What he did say, that he made a man of Michael; that he was a boy that was foolish, and he made a man of him by his advice.

Q He told you that? A Yes, he did.

Q Well, did he ever tell you that Michael tried to borrow some money of him? A No.

Q Didn't tell you anything about that? A No.

Q Did John Dolan work in and about his farm? A Yes, always.

40 Q And did he personally superintend it and look after it? A He did.

Mrs. Margaret R. Rider, for Proponents, cross.

Q What kind of a business man was he? A
A very good business man. I did business with
him.

Recess to 1:30 P. M.

10

The trial of the cause was resumed at
1:30 P. M.

MRS. MARGARET R. RIDER, resumed.

Cross examination by Mr. Tansey.

Q The thousand feet that you mentioned was
the distance between your house and Mr. Dolan's?
A Mr. Dolan's, yes.

20

Q Was that straight as the crow flies across
the fields? A That is from my gate, my en-
trance to my house, to the end of Mr. Dolan's
lane.

Q That is the end out at the road? A Yes.

Q A thousand feet from your house down to
the end of his lane? A Yes.

Q And from his lane into his house is about
how much? A About 500 feet.

30

Q So that to go from his house to your house
he had to travel 1,500 feet? A Yes.

Q What time did he come to your house? A
Four o'clock in the morning.

Q And he appeared to be suffering pain? A
Yes.

Q And he told you to send for Dr. Palmer?
A He did.

Q And did you telephone for Dr. Palmer? A
My husband did.

40

Mrs. Margaret R. Rider, for Proponents, cross.

Q And did Dr. Palmer respond? A The answer was he was not there.

Q And he didn't respond to your call? A He didn't respond.

10 Q And when did you call Dr. Ervin? A My husband came back to Mr. Dolan and said in my presence that he couldn't get Dr. Palmer, so we called Mrs. Harrington, and Mrs. Harrington called Dr. Ervin.

Q Was it you who called up Dr. Tansey in Newark? A No.

Q Or your husband? A No.

Q How long did Mr. Dolan stay at your place that morning? A Well, he stayed long enough for me to put my clothes on, which would take about 15 or 20 minutes.

20 Q Then you took him back in your auto to his house? A Yes.

Q Was anybody there at his house when you got there? A No.

Q He had been all alone there, hadn't he? A Yes.

Q How long was it before anybody else besides you got there? A Why, about one hour.

Q Who got there first? A Why, Mrs. Harrington.

30 Q And later on Mrs. Wiggins came? A And Mr. Maloney.

Q And later on Mrs. Ella Maloney? A Yes.

Q And about when was it that Miss Ella Maloney got there? A I don't know the time. I don't remember the time.

Q Well, would you say ten or eleven o'clock in the morning? A I am not positive.

Q Was this nurse you speak of there before Miss Ella Maloney got there? A No.

40 Q Whom did she come there with? A Mrs. Harrington brought her there.

Mrs. Margaret R. Rider, for Proponents, cross.

Q You said Mrs. Harrington was the first one? A This was the next day she was there.

Q Oh, it was, the day after he was taken sick? A The day after he was taken sick.

Q Now Mr. Dolan knew you were a nurse, did he? A Yes, he did.

Q You—and he didn't object to your taking care of him, did he? A No, not at all. 10

Q He was perfectly satisfied to have you take care of him? A Perfectly satisfied.

Q You took care of him that morning? A I did.

Q And how long did you take care of him after that? A I took care of him until after he was out of bed.

Q And you were a trained nurse? A Yes, I was. 20

Q And when he was out of bed—about seven days, I think you said? A About seven, yes.

Q Now he had another nurse, didn't he? A No, he didn't.

Q He didn't? A No.

Q You stayed there, did you? A I stayed there as a neighborly act.

Q And while you were there you took all the care of him, didn't you? A I did.

Q Did you stay there nights? A No. 30

Q So you quit taking care of him at the end of about seven or eight days? A Yes.

Q Did you at any time after that take care of him? A Yes.

Q When did you take care of him after that? A Why, at different times he would have those attacks, and I went over there with him. I being a nurse he cared more to have somebody like me to take care of him than Miss Maloney.

Q And those attacks would come at night, wouldn't they? A Not always. 40

Mrs. Margaret R. Rider, for Proponents, cross.

Q Well quite often? A Not very often. They happened during the day as well as night.

Q They happened to him in the day time? A Yes.

Q And with those attacks you know that he would generally be alone? A Not always.

10 Q Well, I say generally? A They may have been once or twice Miss Maloney was away.

Q At her business, wasn't she? A Yes, during school days.

Q And he didn't have any help in the house, did he? A No.

Q And Mrs. Wiggins stayed elsewhere? A But she was there; she stayed there.

Q I say she lived elsewhere? A She lived elsewhere but spent a great deal of time there.

20 Q Well, on at least one or two other occasions you remember he was taken sick when he was alone there, don't you? A Well, I don't remember him being alone only one occasion.

Q After that? A After that.

Q And when was that? A Why, that was in September.

Q The same year? A No, it was in about 1924, two years.

Q What was the nature of that attack? A The same condition.

30 Q Was that in the middle of the night? A No.

Q And how were you summoned that time? A I was in the habit of going over there to see Mr. Dolan, to see how his condition was, and I went in there, and if it was not that I knew his way of telling it, I would not have known he was sick. So that is how I found out he didn't feel very well, and I just called and told Mr. Harrington that he was not very well, and I thought they had better come down.

40

Mrs. Margaret R. Rider, for Proponents, cross.

Q And he was not very well, was he? A Well, he said he was well, but I didn't feel satisfied.

Q You knew different? A I knew different about it.

Q So you didn't always take according to what he said? A I always took according to what he said. 10

Q But you knew he would say things, didn't you? A What do you mean?

Q If he told you that he was not sick you knew that he was, didn't you? A No, he never told me he was not sick. I said, "Mr. Dolan, you appear not to feel so well today." He said, "Well, I don't feel as well today as I did yesterday."

Q And he didn't look it? A Well, of course, if you know a patient's condition, you can tell. 20

Q Was there anybody with him there at that time but you? A No.

Q Were you there when he was dropped in the field with the sunstroke which they talked about? A No, I never knew of such a thing.

Q Now, this first time that you spoke about you sent for Father O'Donnell? A I did.

Q And in the meantime you talked to him about his will? A I did. 30

Q And you thought he was in a very serious illness, didn't you? A Yes, and he thought he was going to die himself, and it was I that approached him on that subject.

Q You approached him and asked him about his will? A I asked him if he had any legal affairs he wished to have attended to, and he said he had it fixed.

Q And you did that because you thought he was in danger of death, didn't you? A I did 40

Mrs. Margaret R. Rider, for Proponents, cross.

because the man told me himself he felt he was going to die.

Q And that was this particular time in 1922?

A Yes.

Q And he actually looked as if he was going to die, didn't he? A No, he didn't appear so to me at that time.

10 Q But he himself thought he was, didn't he?

A He thought he was.

Q Who called your attention to his business affairs? A Why nobody ever called me. I never knew of his business affairs.

Q You mentioned that if he had any affairs to settle; who called your attention to that, if anybody? A Nobody.

Q You did that just of your own free will? A I did of my own free will. I think it is 20 a nurse's place if he is in such a predicament, to do so.

Q How long experience did you have at the hospital? A I had three years in the City-Hospital, I had two years at the Board of Education, Newark.

Q And do you at different times ask patients to fix up their worldly affairs? A Never.

Q Didn't you sometimes think it necessary to fix up their worldly affairs, if they were going to die? A If occasion arose, but the occasion 30 never arose.

Q But on this particular occasion you thought it had arisen? A Yes, it was.

George Ogilvie, for Proponents, direct.

GEORGE OGILVIE, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

Q Where do you live, Mr. Ogilvie? A Red Bank. 10

Q How long have you lived there? A I live there about thirty years.

Q Did you know John Dolan in his lifetime?

A Yes, sir, I have known him for about fifteen or twenty years.

Q Fifteen or twenty years? A Yes.

Q And where was he living when you knew him? A He was living on the farm where he died.

Q Where? A Where he died. 20

Q At Everett? A At Everett.

Q Did you ever have any business dealings with him? A Well, not very much. I was in the implement business for twelve years, and I sold him a mowing machine in 1920.

Q Now, at that time, 1920, what business dealings did you have with him then? A I sold him a mowing machine.

Q How much did it cost? A \$85.

Q Did you have any talk with him about it? A 30

Nothing, only when I delivered it. It was ordered by telephone. I delivered it myself.

Q Did you have any talk with him at that time? A Yes, he was at the barn when I unloaded it.

Q Was he working on his farm? A He had been working. I came up and he saw me drive in with the machine, and helped us unload it.

Q He was superintendent of the work on his farm? A I presume he was, yes. 40

George Ogilvie, for Proponents, direct.

Q Didn't you see whether he was or not? A No, I didn't see it on the farm. He was out back of the barn. He saw us what we drove in the drive, and he came and helped us unload it.

Q And you saw the other men working on the farm at that time? A There was one young man there at work. He came there with him.

Q What kind of a business man was he? What kind of a business man was Mr. Dolan? A Why, I thought very good. He always paid promptly.

Q Was there any other evidence of good business about him except his prompt payment? A Well, I never knew him so very well, you know, just in a business way.

Q Well, after that did you do business, after 1920? A In 1924 I sold him a hay carrier.

Q And what was your experience with him then? A Well, when I took it over he was at the barn again, and he says, "Come up to the house and I will give you a check." So I went up to the house but didn't go in, but he went in and brought me out a check.

Q A check signed by him? A Yes, sir.

Q Now, what time in 1920, what time of the year was it? A It was on July 7th.

Q 1920? A Yes.

Q At that time did you notice any difficulty about his hearing? A I did not, no, sir.

Q Did you notice anything indicative of a paralytic stroke about him? A No, I didn't.

Q Nor at any subsequent time, did you? A I—

Mr. Tansey: If your Honor please, I suppose that is not evidence, but I am not objecting. It seems to me it is not evidence,

George Ogilvie, for Proponents, direct.

did he notice anything indicative of a paralytic stroke.

The Court: It is not unless this man qualifies as an expert.

Mr. Slocum: I disagree with your Honor and I will give my reasons.

The Court: He can describe any physical attributes he saw. 10

Mr. Slocum: But I want to submit to your Honor that if a paralytic comes in this room and I can tell by his movement or some mark on his body, I can testify to that without qualifying as an expert at any time. I can say, "John Smith was in the court room and he was a paralytic. I saw him there." If you want to know how, I can give my reasons for it. 20

The Court: I don't think so, Judge. I will sustain the objection.

Mr. Slocum: Allow me an exception, if your Honor please.

The Court: Yes.

Objection noted for Proponents as ground of appeal.

Q Did you notice anything about his bodily movements that were out of the ordinary? A Well, no, but he did always seem to be a little bit one shoulder higher than the other, but that was all I could ever notice that was different when I first knew him. 30

Q Did you notice anything about his hearing, and if so, what? A I didn't. I never noticed anything about his hearing.

No cross examination.

John N. Hillyer, for Proponents, direct.

JOHN N. HILLYER, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

10 Q Mr. Hillyer, where do you live? A Middletown.

Q How long have you lived there? A All my life.

Q You knew John Dolan in his lifetime? A Yes.

Q And how long had you known him? A I don't know. I have known him for a good while but I never did business with him until, as I recall, 1920.

20 Q You did business, however, in 1920? A Yes.

Q What kind of business did you do? A Well, I started in the hay and grain business at that time, that year at Middletown, and bought considerable stuff of him after that.

Q What time of the year 1920 did you do business with him? A As I recall, about June.

30 Q What did your business consist of? A Bought hay of him, the former crop of hay. That was before the new crop was harvested.

Q Do you know whether or not he attended to the supervision of his farm? A He is the only man I did business with.

Q Did you go out there at Everett? A Oh, yes.

Q And did you visit the farm frequently in 1920 and after? A Yes, sir.

40 Q Was he a good business man? A I thought so, exceptionally so.

James B. Carton, for Proponents, direct.

Cross examination by Mr. Tansey.

Q Did Mr. Dolan ever come to your place at Middletown? A Yes.

Q How did he get there? A Drove a horse and buggy, usually.

Q And how late a time did he drive that? 10
A How late?

Q I mean, what was the last time he did that? A What year? A I don't recall. In 1923 we bought considerable of him. He drove then.

Q Horse and wagon? A Yes, sir.

Q You did nothing only buy his hay from him, did you? A That is all.

Q Didn't sell him any? A Yes, I sold him seed from time to time.

20

JAMES B. CARTON, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

Q Mr. Carton, what is your business? A Farmer. 30

Q Did you know John Dolan in his lifetime? A Yes, sir.

Q How near is your farm to the Everett farm he died on? A About half a mile.

Q How long had you known him? A All my life.

Q Well, how many years? A Forty-one years ago.

Q What was Mr. Dolan's business during your acquaintance with him? A Why, a farmer. 40

James B. Carton, for Proponents, direct.

Q Did he work on his own farm and superintend the work there? A Yes, he always did.

Q You knew him quite intimately? A Yes, I knew him very well.

10 Q Did you notice any difficulty with his hearing? A Well, the last few years you had to speak a little louder than usual, but he could hear you all right.

Q What do you mean by the last few years? A Well, he was, I thought, just a little bit hard of hearing.

Q Well, how long before his death? A Well, I think he was that way for maybe the last few years, five or six years or so. I know the last time that I was talking to him you had to speak quite loud, but he could hear you all right.

20 Q And you would meet him and talk with him up until the time of his death? A Yes, whenever I met him. I didn't meet him very often in the last couple years.

Q Well, prior to two years, back in 1920, 1921 and 1922, around there? A Yes, I have talked with him during that time.

Q Did you ever visit his home there in Everett? A Yes, I have been over to Mr. Dolan's.

30 Q Whom did you see at the farm there, speaking now in the house and about the house? A Why, Miss Ella Maloney, the last time I was there.

Q Did you ever see any of her sisters there? A Well, yes, I saw Mrs. Wiggins and Mrs. Harrington.

Q You know those ladies? A Yes, sir.

Q And you have seen them there at the place? A Yes, I have seen them there at different times.

40 No cross examination.

Bernard Hickey, for Proponents, direct.

BERNARD HICKEY, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

Q Mr. Hickey, what is your business? A 10
Blacksmith.

Q And where do you live? A Everett.

Q Did you know John Dolan in his lifetime?

A I did, yes, sir.

Q How long did you know him? A Well, I can remember back about forty years, anyway.

Q Did you know him pretty intimately? A I did, yes, sir.

Q Did you talk with him frequently? A 20
Yes.

Q What would he come to see you about? A About his blacksmith work.

Q Did he have horses on the farm? A Yes, sir.

Q Who did the blacksmith work? Who attended to the shoeing of the horses? A I did his work for about twenty years.

Q Did you continue to do his work up until after his death, or shortly before his death? A 30
Up to the time of the sale.

Q That was in 1925? A Yes.

Q What kind of a business man was he? A Very good.

Q What do you mean by that? A I mean he was a right good business man.

Q Did he look after things, pay his bills?

A He certainly did, yes, sir.

Q What about his hearing? Did you notice anything about his hearing? A Well, the last two years or three that I was doing the work, 40

Bernard Hickey, for Proponents, cross.

I noticed that he was getting a little hard of hearing.

Q Before that was there any evidence of it?

A No, sir.

Q Did John Dolan ever talk to you about his nephew, Michael F. Maloney? A He did.

10 Q What did he talk about in that connection?

A Well, he told me the first time of a little incident about a horse, but he told me not to ever mention it to any one.

Q What was that? A So I didn't up to the time this case came up.

Q What did he say? A He told me that he gave Michael Maloney a horse, and he told me not to mention it to any one, that what the people didn't know wouldn't bother them.

20 Q What else, if anything, did he tell you of his relationship or business dealings with Michael Maloney? A Well, later he told me that Michael Maloney asked him to take a second mortgage on a farm that Michael Maloney bought, that he refused to do so because he told him that he would take the first mortgage if he bought it right, but he thought that he had paid too much money for it, and he refused to take the second mortgage.

30 Q When was that? A That was about 1920.

Q 1920? A About that.

Cross examination by Mr. Tansey.

Q Mr. Hickey, whom did he refer to as the people what they won't know wouldn't trouble them? A I couldn't tell you; I didn't know whom he meant.

40 Q Whom did he refer to when he said, "Don't tell anybody?" A I don't know. He didn't tell me. I didn't ask him. I didn't ask him about

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the horse. He told me that of his free will, and he told me not to mention it to anybody. He said "What the people won't know won't bother them," and stopped right there.

Q Do you know whether he meant either of his nieces? A I don't know, or nephews either. I don't know what he meant. 10

Q What he said was, "Don't tell anybody"?

A No, nor I didn't up to the time of his death.

Q "What they won't know won't trouble them"? A That is right. That is what he said.

Q Was that before 1920 or after? A That was about in 1918.

By Mr. Slocum.

20

Q But the conversation about loaning Michael money on a second mortgage was when? A That was about 1920.

MISS ELLA MALONEY, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

30

Q Miss Maloney, are you the Sara Ellen Maloney mentioned in the will? A Yes, sir.

Q What relation, if any, were you to the late John Dolan? A His niece.

Q Did you live with him? A Yes, sir.

Q When did you first go to live with him? A In May, 1888.

Q And how long did you continue to live with him? A Till the time of his death. 40

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Q Who else lived there with you? A My sister was there at the time I went there, and my brother and I went there at the same time.

10 Q Would you give me their names? A My sister Mary was there before I went there. My brother, Michael, and I went there at the same time, and my sister Margaret came a few years later.

Q How long did Mrs. Wiggins stay there? A Until her marriage in 1916.

Q And after her marriage did she continue to visit her uncle? A Well, for a time she made her home there.

20 Q After the marriage? A Not immediately after the marriage, but I think a little more than a year after. At one time he was alone and she came and made her home there for several months.

Q And how long did Mrs. Harrington remain at the homestead? A Until 1904, I think.

Q And then she married? A No, she left before she married.

Q When did she marry? A I don't remember the exact date.

Q After her marriage where did she go to live? A Morganville.

30 Q How near is that to Everett? A Well, I couldn't say exactly. It might be anywhere between six and nine miles.

Q Did she often visit your uncle while you were there? A Yes.

Q And how long did that continue. A Up till the time of his death.

Q What is your occupation? A I am a teacher.

40 Q And where do you teach? A Newark, N. J.

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Q And how long have you been a teacher?

A Since 1901.

Q How often did you visit the farm or did you visit the farm where your uncle was during that period? A Well, between 1901 and 1907 my visits were, except during the summer vacation, were not very frequent. I was in the northern part of the State, up in Bergen County, and it was not convenient to get home and get back again for just the week-end.

10

Q Were you there in the summer time? A Yes.

Q Now, the next period, when you came down to Newark, how often did you get home? A Well, the first two years, I think I came down perhaps once a month, and after that I came down every week-end.

20

Q What do you mean by week-end? What time did you arrive and when would you go? A Sometimes Friday, in the late afternoon or early evening on Friday, and go back on Sunday night or possibly on Monday morning, depending on circumstances.

Q And did that continue until your uncle died? A Yes.

Q What was the age of your uncle, John Dolan? A Well, I don't know that I ever heard him say exactly, but he did say that he was one year younger than my mother, and according to the age on my mother's headstone, he would have been eighty-two in 1927.

30

Q When was she born, according to the headstone? A May 10, 1845.

Q And your uncle was younger than your mother, is that right? A I understood from him that he was one year younger.

Q Well, he told you that? A Yes.

40

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Q That is where you got the information from? A Yes.

Q Do you remember the celebration of a birthday in 1927? A Yes.

10 Q What day was that on? A Well, the birthday was celebrated on the 25th, and his birthday was on—

Q The 25th of what? A Of June.

Q And what birthday was that he celebrated? A Well, we supposed it was his eighty-first.

Q Did he tell you it was his eighty-first? A We didn't ask him then, but the year before we had asked him how many candles we were to put on his cake, and he said eighty; so we didn't think it necessary to ask him the next year.

20 Q Well, is that what you and the guests were celebrating in June, 1927, his eighty-first birthday? A That is what I was celebrating.

Q Now, a number of nieces and nephews have testified here as to their presence. Who invited them there at that celebration? A I did.

Q Did you see any evidence of deafness in your uncle John Dolan? A He was rather hard of hearing.

30 Q When did you first notice that? A At the time of his illness on Decoration Day, 1922.

Q And what brought it to your attention then? Just describe his condition as you saw it? A Well, I noticed that I had to get up very close to him and speak very loudly to make him hear. I saw this later when I came back from Newark; I had been told that Dr. Ervin had syringed his ears and had removed large quantities of hardened wax, and his hearing was much improved, and it continued to improve as his health improved. But there were times when he was much

40

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harder of hearing than at other times. It seemed to be conditioned by the condition of his health.

Q But it changed from time to time? A Yes, it varied.

Q You never noticed any difficulty of that kind until 1922; is that right?

10

Mr. Tansey: I object. It seems to me to be leading—you never noticed.

Mr. Slocum: Well, that is what she testified to. Read the question and answer.

The Court: She said that on Decoration Day, 1922, she first noticed that he was hard of hearing. I think the question has already been answered.

Q Did you ever see any evidence of facial paralysis on John Dolan? A No, sir. 20

Q Did you ever know of his having been stricken with paralysis? A No, sir.

Q Did you and Mrs. Harrington and Mrs. Wiggins or any of them have quarrels with your uncle? A No, I wouldn't say so, not quarrels, not really quarrels.

Q Now wait till I turn to some page here—well, somewhere in Mrs. Toomey's testimony; I was trying to turn to the page. She testified that on one occasion while you were present that Mrs. Wiggins shook her fist and threatened your uncle while he was in bed. 30

Mr. Tansey: I don't think that is the testimony, if your Honor please, not by Mrs. Toomey.

Mr. Slocum: Well, who was it by, then?

Mr. Tansey: You will have to find that in the book, Judge. You made me find it this morning. 40

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Mr. Slocum: Well, you needn't be so crusty. I am trying to expedite matters.

Mr. Tansey: I am using Judge Slocum's methods.

By the Court.

10 Q Was Mrs. Wiggins Mary Maloney before her marriage. A Yes.

By Mr. Slocum.

Q Where is Mrs. Wiggins today? A At a hospital in New York.

Q In what hospital? A Post Graduate.

Q And how long has she been in the hospital? A A little more than two weeks.

20

Mr. Slocum: Now, I would rather not ask about her ailment if Mr. Tansey would like to—I would like to ask that it be not disclosed on the record.

Mr. Tansey: I am not going to ask your witness your case. You do it yourself.

Mr. Slocum: I am just suggesting that.

Mr. Tansey: It is a pregnant suggestion.

30 Q Well, did Mrs. Wiggins at any time threaten or shake her fist at your Uncle John Dolan in your presence? A Never.

Q Who arranged for the nurse's coming to the home of Mr. Dolan in 1922? A My sister, Mrs. Harrington, called up Dr. Ervin and asked him if he would recommend a nurse, and he said he couldn't think of anybody just then, but a little later I understood, a little later in the evening he called her up and said he had found just the one he wanted, and would she meet

40

Miss Ella Maloney, for Proponents, cross.

her at the Morganville station a certain time the next morning.

Q And was she brought to the house? A She was brought to the house by Mrs. Harrington.

Q Did you object to the nurse being brought there? A I did not. 10

Q Who did object to her attending Mr. Dolan? A Himself.

Q Anybody else? A Not to my knowledge.

Cross examination by Mr. Tansey.

Q Did Mr. Dolan ever tell you that he had given Michael Maloney a horse? A Yes.

Q How long after the transaction? A I don't know.

Q What other matters did he discuss with you in the line of his business? A That is rather a big question. I couldn't answer that. 20

Q Well, did he generally talk his business matters, as to what he did with horses or cattle, over with you? A He did sometimes. I don't know whether it was a general practice or not. There were some times that he did. I don't know whether he always did.

Q If he bought and sold did he always tell you about it? A Well, I usually knew without being told. 30

Q Oh, you knew? A I was there. I could tell if he bought horses or sold them.

Q And if he did anything else in a business line, like the sale of a horse or grain or hay, or anything else on that farm, you were there and knew it? A If I happened to be there of course I knew how things were being taken, and sometimes if he sold a large quantity, if he sold an entire crop to Mr. Hillyer, or Mr. Devlin, 40

Miss Ella Maloney, for Proponents, cross.

or someone of that kind, he mentioned it as something very important.

Q And did you make a note of it any time?

A No, but it doesn't take—it wasn't necessary for me to make a note.

10 Q You knew he had a book, didn't you? A Yes.

Q You had access to his book? A Well, it wasn't locked.

Q I say you could see any time you wanted to? A Yes.

Q And that was so with all of his business matters in connection with the farm, wasn't it? You knew what was going on? A I think I did in a general way.

20 Q And if there was any matter to consult about he talked to you about it, didn't he? A Well, he did in some cases. I don't know whether he always did or not.

Q Well, in the important matters he talked to you about it, didn't he? A Probably.

Q Like when he gave your brother a horse he discussed it with you? He talked about it to you, didn't he? A Yes, told me that he had done it.

30 Q Now how long did that—how many years was it that he discussed business matters with you? A Well, I can't remember when he didn't discuss business matters with me.

Q He did it always, didn't he? A I think so.

Q And you understood pretty thoroughly what was going on of his business affairs on the farm, didn't you? A Well, I thought I did.

40 Q Yes, you certainly did. Now, did you know when he made a will? A Yes.

Miss Ella Maloney, for Proponents, cross.

Q And it was when you were home from your Christmas vacation, wasn't it? A It was not.

Q Wasn't December 21st about the time you came home for your Christmas vacation? A It was not.

Q Well, how near was it? A December 21st, according to my school register— 10

Q 1920? A According to my school register for that year, December 21st was on Tuesday, and I came home on Friday.

Q Did you know when you came home that he had made his will? A I didn't know it when I first entered the house, but I knew it before I went to bed that night.

Q He told you, did he? A He did.

Q And did he show you the will? A He did. 20

Q And you read it? A I did.

Q Now, what happened to the will after that? A Well, I presume he put it where he kept his important papers.

Q Well, when did you see it the next time? A About—well, possibly two weeks after his death.

Q And do you know where it was in the meantime? A I do.

Q Where was it? A In a box where he kept his important papers. 30

Q And where was that box? A In his room.

Q At his home? A Yes.

Q You had access to that box all the time, didn't you? A I did not.

Q Was the box locked? A It was.

Q And you knew where the key was, didn't you? A Not exactly. I knew it was some place on his person or in his possession, I didn't know exactly where. 40

Miss Ella Maloney, for Proponents, cross.

Q Who found the key after he died? A I did.

Q You knew where it was, or you found out where— A Well, I looked for it till I did find it.

Q And then you opened the box, didn't you?

10 A I did.

Q And you took the will out? A Yes.

Q And it was the same will you had read in his presence? A I suppose it was.

Q Well, you could tell, couldn't you; you remembered the main details of it, didn't you? A Yes.

Q All these years you knew he had a will, didn't you? A Yes.

Q Now, on this occasion when you saw his will first— A Yes.

20 Q Who else was present besides you and him? A No one.

Q And who else was present at any conversations after that about the will? A There were never any conversations about the will, so far as I remember it.

Q Did any of your sisters or brothers hear from you that there was a will there, that he had a will? A I don't remember that I told any except my sister Mary.

30 Q When did you tell her? A I told her very soon after he made the will.

Q And was she there at your home when you told her that? A Yes.

Q And where was he? A He was some place there; he was not present when I told her about it.

Q And was the will produced? A At what time?

40 Q At the time you told her about it? A You mean did I produce it?

Miss Ella Maloney, for Proponents, cross.

Q No, I say was the will produced to her?

A No, my uncle was not then present.

Q Well, did he speak about it afterwards to you or her? A Well, I don't think he ever mentioned it to her, not as I know. I don't—

Q You were going to say something? A And I don't know if he ever referred to it directly to me. 10

Q Did she ever read the will after you told her there was a will, then? A She couldn't read it. He had the will.

Q Did you tell her the terms of the will? A Not entirely.

Q You told her enough to satisfy her, didn't you? A I probably told her enough to dissatisfy her.

Q And she was dissatisfied with it, was she? A Yes. 20

Q She was dissatisfied? A Yes.

Q What did she say?

Mr. Slocum: I object to it unless the testator was present.

Mr. Tansey: No, I think that is entirely competent, to show their attitude as to the will.

The Court: What has that got to do with undue influence, Mr. Tansey? 30

Mr. Tansey: The cases hold that if the parties in interest know there is any will and conceal such knowledge from other persons, that is one indication of their desire to take an unfair advantage.

The Court: You have got to go a good deal further than desiring it.

Mr. Tansey: Exactly. I think we will. But we have got to lay a foundation. 40

Miss Ella Maloney, for Proponents, cross.

The Court: You have closed your case. What are you laying a foundation for now?

10 Mr. Tansey: I understand that we have already said that Mrs. Wiggins took whatever means in her power to keep away from the testator other relatives of his and to put on their visits to him a false interpretation and to poison his mind against them; and also there is evidence in the case to show that she endeavored to bend him to her will. Now, there is knowledge of the will between them. Miss Ella Maloney tells Mary Maloney that there is a will, and she then says that Mary Maloney was dissatisfied with the will and expressed her dissatisfaction. You will remember that Mrs. 20 Toomey testified that Mary Maloney made a scene because she said she was entitled to a man's share. Here she didn't get a man's share, she only got a portion of it. And this is supplemental to that testimony.

The Court: Unless you connect it with some acts of undue influence, Mr. Tansey, I don't see how it is going to matter.

30 Mr. Tansey: I will take all that responsibility on my own shoulders, if your Honor please. If I can't make out my case—

The Court: You have closed your case.

Mr. Tansey: I don't think our case is finished.

The Court: Excepting this—

40 Mr. Tansey: Very well. That testimony bears on this entire case, and I will convince your Honor that I know what I am about.

Miss Ella Maloney, for Proponents, cross.

Mr. Slocum: That is all right, but it has been technically, to me, and I am not going to permit them—

Mr. Tansey: We have a right to show these mental reactions that the uncle showed about his will.

The Court: The mental reactions don't amount to a thing unless you connect them up with some action taken to influence the testator. 10

Mr. Tansey: I will take that as necessary for me all right. I can't do it all this minute. I have got to bring it in. If I can't do it, then it is for your Honor to take such action as you deem right. I don't expect you to give me a decision on this case unless you consider it proper. 20

The Court: What is the question?

Q (Question repeated.) What did she say?

Mr. Slocum: Now, this is conversation between the witness and Mrs. Wiggins. I think it is entirely incompetent.

The Court: Go on. Judge Slocum, you may take your objection. 30

Objection noted for proponents as ground of appeal.

Q (Question repeated.) What did she say?

A I don't remember her exact words.

Q What led you to think that she was dissatisfied? A Well, her manner and what she said.

Q What did she say? What was the substance of it? A Well, the substance of it was 40

Miss Ella Maloney, for Proponents, cross.

that she thought she should get as much as I got.

Q That is what she said? A Yes.

Q And did you speak about that to Mr. Dolan? A No.

10 Q Was there anything further said another time about the will by her? A I don't know.

Q Did she speak to Mr. Dolan about it?

Mr. Slocum: Objected to unless—

The Court: This was all after the will was made?

Mr. Tansey: It all indicates the action which was taken before the will was made. Here is a young lady comes in and says, "I am dissatisfied with that will."

20 The Court: But that will was never changed.

Mr. Tansey: It may be.

The Court: If it was not the will that she unduly influenced, what matter what was said about it afterwards?

Mr. Tansey: It shows her general mind, general intention.

30 The Court: I am afraid you are cumbering the record with a whole lot of matters which will not affect the will in any way. Anything you can show to influence the testator's mind to make that kind of will, that took place before the will, I will be very free to allow, and I think I have been. But when you come to some time after the will was made, and then say somebody is dissatisfied with it, I think it would be a far stretch to say that that dissatisfaction afterwards showed influence in making the very
40 will they were dissatisfied with.

Miss Ella Maloney, for Proponents, cross.

Mr. Tansey: But your idea, if your Honor please, if we showed this conversation ahead of the will it would show undue influence.

The Court: It might or it might not.

Mr. Tansey: And therefore if we connect this up with other acts showing a very lively interest in the young lady in making the will, it seems to me that it has pretty near as much significance, perhaps not so much, but certainly— 10

The Court: I yet cannot see how you can accuse Mrs. Wiggins of unduly influencing the testator to make a will that she did not want made. She says now she did not want it; she was dissatisfied with it.

Mr. Tansey: Our testimony is that he said he wouldn't make a will at all. Now, as against his former determination he produces this will, and these young women are supposed not to know a thing about the will or its existence. 20

The Court: How do you know they were not supposed to know about it?

Mr. Tansey: They would know about it.

The Court: Why?

Mr. Tansey: Fairness would presume that they would not know that. Now one lady comes forward and says, "I should have had more." The indication is that she must have discussed it with somebody and talked on these other occasions, and then viewed in that light— 30

The Court: I should say that is a non-sequitur.

Mr. Tansey: It may be a non-sequitur, but it is not covering the results, surely, 40

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your Honor, and it is not a non-sequitur. All of these matters have some relevancy.

The Court: If you do encumber the record, the only material thing will be where the expense of this matter lies.

10 Mr. Tansey: I presume we can stand the expense. We have so far. We are not worrying over the expense.

Mr. Slocum: I have made my objection.

The Court: Yes, you may have it.

Q (Question repeated.) Did she speak to Mr. Dolan about it? Answer the question? A No.

By the Court.

20 Q There was only one will, wasn't there? A Yes.

By Mr. Tansey.

Q When you made the party for Mr. Dolan the year before the last one, you say you made a cake for him that year? A I didn't make the cake for him. We had the baker make the birthday cake.

30 Q And the first year you put 80 candles on it? A Yes.

Q And the second year 81? A I don't know how many were the second year.

Q I mean you didn't ask him the second year; you inferred from what he said the first year?

A Yes.

Q Did you have a party for him the year before that? A Yes.

40 Q And whom did you invite? A My cousin, Margaret Griffin, and my brother and his family. The party was at my sister's house.

Miss Ella Maloney, for Proponents, cross.

Q The next year, the last party he had, you invited his nephews and nieces generally, didn't you? A Yes.

Q And that is the first time that you invited them, wasn't it? A Yes.

Q When you went away on Sunday afternoons to teach school, from 1916 until the time Mr. Dolan died, was anybody there to look after his household? A Sometimes my sister was there; sometimes there was nobody there. 10

Q And in the times when there was nobody there, how did you arrange about his meals? A He prepared his own meals very largely. I usually left things that would save for a day or two, puddings, and things of that kind.

Q You would cook enough to last him till you came again? A I would not. 20

Q Or you would cook something which would last for several days? A Not for several days; possibly two days; would give him a change of food from the kind that he prepared for himself.

Q And then one of your sisters would come in and replenish the supply, is that so? A Well, my sister came chiefly to see how he was, or if he needed anything; and she always brought him something, something that she knew he was fond of. It might be ice cream, or might be some kind of soup, or oysters—anything that she happened to have that he liked. 30

Q And she would bring him occasionally a can of soup? A I presume so.

Q And then he would be there alone at night? A Yes.

Q And what meals you didn't get for him he would have to get for himself? A Yes.

Q Now did that continue about the last ten years of his life? A Well, up to 1925, when he 40

Miss Ella Maloney, for Proponents, cross.

left the farm, for the rest of the year until my vacation began again.

Q So that for at least from 1916 to 1925, when he left the farm, that condition prevailed, didn't it? A No, not from 1916; probably from 1918.

10 Q For a matter of, say, seven years? A Yes.

Q And unless your sister, Mrs. Wiggins— A Yes.

Q —would be there occasionally he would be all alone? A Sometimes she was there for a month at a time.

Q And at other times in between he would be entirely alone, wouldn't he? A Very often.

Q And it was on one of those occasions that he got this sudden attack in the night, wasn't it? A Yes.

Q Now where was he the time the sunstroke happened? A I didn't know that he ever had a sunstroke.

Q Somebody mentioned about a sunstroke. A I didn't know of it.

Q You didn't mention to anybody beside Mrs. Wiggins or Mary Maloney that Mr. Dolan had a will, did you? A I don't think I did except to some people who were entirely disinterested, who had said to me, "Well, for all that you have sacrificed for your uncle"—

Q You don't need to tell me what they said. You said it was merely to some people who were disinterested? A Yes, who were entirely disinterested.

Q When did you mention that, after or before Mr. Dolan's death? A Before his death.

Q Now at his funeral you didn't mention to any of his relations that he had a will, did you?

40 A I did not.

Miss Ella Maloney, for Proponents, cross.

Q And you didn't mention to any of them that he had a will, until after the will was probated, did you? A No.

Q And the first information that anybody could get about a will was it being filed for probate or having been probated here in the county court, wasn't it? A Possibly. Nobody asked me about it. 10

Q So you never notified anybody about it, did you? A No, I didn't. I didn't think it was necessary.

Q The only ones who knew about his having a will besides these outside persons were yourself and Mrs. Mary Wiggins, is that so? A I think that is it.

Q Mrs. Harrington know he had a will? A I think perhaps she did. 20

Q And how did she find it out? A Well, I heard her tell somebody not long ago that he said, "Well, I have made two wills." She said somebody had made a good many wills, and he said, "Well, I have made two."

Q Did you ever find two? Did you ever find that he had made two wills? A I knew that he had.

Q Oh, did you? Had he made a former will? A He did. 30

Q Where is that? A He destroyed it.

Q And did you know he destroyed it? A I did.

Q And when was that destroyed? A I don't remember the exact date.

Q Before or after the new will was made? A After.

Q And was that the occasion of Mrs. Wiggins' dissatisfaction, that the second will was not as good to her as the first will? A Yes. 40

Miss Ella Maloney, for Proponents, cross.

Q Then she and you both knew about a former will which he had made? A Yes.

Q When was that made? A 1911.

Q And were you present at the time? A I was not.

Q Do you know who drew the will for him?

10 A Edmund Wilson of Red Bank.

Q Did he tell you after the will was drawn that he had a will? A He did.

Q Did you read it? A I don't know whether I read it, or whether he read it to me.

Q But you knew about its provisions? A I knew about the provisions.

Q Now, what was it that led him to change that will? A I don't know.

Q Did you and he ever discuss changing the will? A Never.

20 Q Didn't you know he was going to make a will, a new will? A I did not.

Q Did Mary Wiggins know it? A She did not.

Q Were you present when he destroyed the first will? A I was.

Q Where was it destroyed? A In one of the rear rooms in the Second National Bank at Red Bank.

30 Q You were down there with him? A I was.

Q And did you drive him down in your auto? A I think very likely I did.

Q You had been carrying him around for a number of years, hadn't you? A Well, I think almost since I have had a car. I think if he had any driving to do and I happened to be home, I think I took him rather than drive the horse.

40 Q How long did you have your car? A Since 1915.

Miss Ella Maloney, for Proponents, cross.

Q You didn't want him to be out alone, did you? A Well, I preferred to be with him if I were there.

Q What reason did you have for that? A It was very much quicker for him.

Q And wasn't it because he couldn't get around or go alone? A He had to get around alone when I was not there. 10

Q But not when you were there? A Well, I didn't think it was necessary when I was there. Sometimes he went around alone when I was there, but that happened to be at a time when I was in Red Bank as well as he was.

Q And it was very seldom that he was alone after 1915, was he? A Well, I don't remember about that. Very often when I was home I was busy and didn't feel that I could take the time to take him where he wanted to go. 20

Q This time in 1920 or 1921—was it 1920 or 1921? A I don't know. It might have been 1922 or 1923. It was before the Second National Bank moved over to the new building.

Q But it was after the making of the second will? A Yes.

Q Did he take you to the bank with him? A No, he told me he was going in to do some business there and he wanted me to look over his things and see if there were any things of mine in his safe deposit box, safe deposit vault, that he wanted me to take them out, that he didn't have room enough for himself. 30

Q Did you have some of your things in his safe deposit box? A Yes.

Q And when he was in there he found this will? A He took out my things and put them one side. I think he already had them selected when he went in. Then he took out the will and 40

Miss Ella Maloney, for Proponents, cross.

said, "There is no further use for this," and tore it up and threw it in the waste basket.

Q Now, you were at Dr. Palmer's testimony, were you? A Yes.

Q Did you ever mention anything to him about your uncle's affairs, to Dr. Palmer? A
10 About what kind of affairs, his financial affairs?

Q Yes, financial affairs? A Never.

Q Did you ever mention anything to him about your uncle taking care of you? A Never.

Q Or anything of that kind? A Never.

Q You heard Dr. Palmer testify that he spoke to Mr. Dolan about making provision for his nieces? A I didn't hear him testify that I was present at the time.

Q Well, you heard him testify that he did that thing, didn't you?
20

Mr. Slocum: I object to it. Here is the testimony. Let him find it.

Mr. Tansey: That is all right. We have already got it.

Q Did you speak to Dr. Palmer at any time about—

The Court: Who is Dr. Palmer?
30

Mr. Slocum: His testimony was taken de bene esse.

Q Did you speak to Dr. Palmer at any time previous to his conversation with Mr. Dolan at any time in 1916 about your uncle making provision for you? A I did not.

Q Did you ask Dr. Palmer to make suggestions to Mr. Dolan? A I did not.

Q Do you know whether Mrs. Wiggins did?
40 A Well, I am morally certain she didn't.

Ella Maloney, for Prop., re-direct—re-cross.

Q I asked you whether you knew whether she did. A I don't know that she did.

Re-direct examination by Mr. Slocum.

Q Miss Maloney, when did you first become acquainted with Mr. Hope, the gentleman sitting alongside of me here? A When I went to have —wanted to have my uncle's will probated. 10

Q Had you ever met him before that time? A I never did.

Q Did you ever discuss with your uncle the making of a will? A I never did.

Re-cross examination by Mr. Tansey.

Q Did you say it was 1892 when you met Dr. Palmer? A No, I didn't meet him in 1892. I never said when I met Dr. Palmer. Perhaps it might have been back of 1892. I don't remember the exact date. 20

Q When you did meet Dr. Palmer, he was not then Dr. Palmer, was he? A No, not when I first met him.

Q He was in the same class with you at Keyport High School, wasn't he? A He was not.

Q Or he was in the adjoining class? A He was in the postgraduate class when I was in the graduating class. 30

Q At any rate, you were both in school together? A Yes.

Michael Maloney, for Proponents, direct.

MICHAEL MALONEY, a witness produced on the part of the Proponents, being duly sworn according to law, testified as follows:

Direct examination by Mr. Slocum.

10 Q Where do you live, Mr. Maloney? A Marlboro.

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

Q What relation was John Dolan to you? A My uncle.

Q Did you ever live with him? A Yes.

Q Where? A On his farm at Everett.

Q What were your relations with your uncle?

A I helped him on the farm.

20 Q For how many years? A Seven years.

Q And then later did you acquire a farm of your own in that vicinity? A The farm where I live now.

Q How near is that? A About six miles.

Q After you acquired your farm, did you do any work or help your uncle at his place at Everett? A I did after 1922.

Q After 1922? A Yes.

30 Q What kind of work did you do? A I helped him with the general farm work.

Q And how often? A Well, in 1922 I was there about a week in the month of June, or in the early part of June; and that fall I helped him a little while in September, about two or three days, and then that fall I helped him harvest his corn crop.

Q Well, in the succeeding years did you continue to help him? A In 1923 I helped him during harvest, but I didn't help him with the farm work that year.

40

Michael Maloney, for Proponents, cross.

Q Did you try to borrow some money of him on mortgage? A Well, I asked him if he would help me out at the time I bought the place.

Q When did you buy that place? A The 20th day of September, 1919—of December, I should say. The 20th day of December, 1919.

Q What did he say about loaning you money on mortgage? A Well, he said the place needed a lot of repairs. I said that could be done all right; I said it could be fixed. He said, "Well, let them that owns it, let them fix it." 10

Q Well, would he let you have the money? A He would if he had his own say about it, but I told him I was buying the place and not him.

Q Well, what did he say about loaning the money? A He said I would have to help myself then; he wouldn't do it, have anything to do with it. 20

Q Well, did he want a first mortgage for the money? A He would take up the whole mortgage, he said, if I hadn't paid too much money for the place. He considered it was too much. He said farms would be cheaper later on.

Q He thought you had paid too high a price? A Yes, sir.

Q And he wouldn't loan you the money? A No. 30

Q That is right? A That is right.

Cross examination by Mr. Tansey.

Q Mr. Maloney, how old a boy were you when you went with Mr. John Dolan? A Nine years old.

Q And what year was that? A The 3rd day of May, 1888.

Q And you stayed then, I think, with him seven years, I think you said? A Yes. 40

Michael Maloney, for Proponents, cross.

Q It was from 1888 to 1895; 1895 you left him? A I left him on the 7th day of June, 1895.

Q And then you never went back to work for him, did you? A Not till he came after me again.

10 Q Well, then, I mean not until 1922? A Oh, yes, he came after me in 1916—no, 1917.

Q And from 1895 to 1917 you hadn't done anything with him or for him? A 1895 to 1917—no.

Q You and he parted unfriendly, did you? A What?

Q I say you were unfriendly when you parted, weren't you? I mean you and he had— A I don't know as we were exactly unfriendly.

20 Q You had a dispute when you left him, didn't you? A Oh, that is nothing.

Q I say, you had a dispute and on that account you left him, didn't you? You left him on account of a dispute between you, didn't you? A Yes.

Q When did you first know that Mr. Dolan had made a will? A In 1925.

Q And who told you then? A He told me himself.

30 Q He told you he had a will? A Yes.

Q And did he let you know the terms of the will? A He did not.

Q Where was he at the time he told you he had a will? A At Harrington.

Q At Harrington's? A Yes.

Q That was after he left his own farm? A Yes.

Q After the sale? A Before the sale, the night before the sale.

40 Q Well, then, he was living with Harrington's? A Yes.

Michael Maloney, for Proponents, re-direct.

Q And he had left his farm at Everett? A Yes.

Q When did you know that this will was to be probated? A I never bothered about the will.

Q I say did you know anything about it after what he told you? A I never bothered any more about it. 10

Q Well, did you see about it in the paper, about it having been probated? A Yes.

Q That is all.

Re-direct examination by Mr. Slocum.

Q Do you remember having a talk with your Uncle John Dolan on October 15, 1925, about the ownership of the farm? A On the 14th of October. 20

Q Where was that? A At Harrington's.

Q And what did he say at that time? A Well, do you want me to go over the conversation he had?

Q Yes, tell just what he said and what you said. A Well, I went down that night—it was the night previous to the sale—and I went for instructions. I asked him what he was going to do after he sold his stock with the farm; after he sold the stock I asked him what he was going to do with the farm. 30

Q What did he say? A He said, "You will have to deal with your sister hereafter about the farm."

Q What did you say? A I said, "Has she the deed?"

Q What did he say? A He said, "I have made my will and I am not going to change it." 40

Michael Maloney, for Proponents, re-cross.

Re-cross examination by Mr. Tansey.

Q Did he indicate which sister it was that you had to deal with? A No.

Q Well, did you know which sister it was? A Well, I didn't know, but I expected the one that ought to be. I knew who it ought to be.

Q Well, how did you find out who it was? A Well, I knew who paid the taxes on the place; I should think it was the one ought to own it who paid the expenses.

Q I say when did you find out definitely which sister it was? A Well, I was positive when I saw the will probated, saw it in the paper.

Q You didn't know then until after the will was probated which sister was meant? A Not positively.

Q You said that he would have loaned you the money if left to himself? A No, that is not what he said.

Mr. Slocum: No, that is not what he said, I submit.

Q What did you say? A I said he said I paid too much money for the farm.

Q No, what did you say, he wouldn't loan you the money if something— A Well, he wouldn't have paid so much for the farm.

Q He would have loaned you the money if you hadn't paid so much for the farm? A Yes, he said it would take so much money for to repair the buildings, that he would take that much off; but I told him I was buying the farm and not him.

Q You were both a little high tempered, weren't you? A About the same, I suppose.

Mr. Slocum: We rest.

Colloquy.

Mr. Tansey: If your Honor please, we have already rested.

The Court: You have both closed except this testimony you are to take out of the State?

Mr. Tansey: Yes, sir.

The Court: It won't be necessary for me, then, to take another day? 10

Mr. Tansey: I don't think so.

The Court: I suppose I can do that awaiting Judge Slocum's determination after the testimony is taken whether or not he desires to rebut it.

Mr. Slocum: That is the only thing that will be open.

The Court: There is no need, then, of my attending another day?

Mr. Tansey: No, the only thing Judge Slocum and I wanted to talk to you about now, if your Honor please, is this question— 20

The Court: I understand application for a commission has been waived, and it is brought up to me at a hearing to settle the interrogatories. Is that it?

Mr. Slocum: Yes. Oh, I have admitted, if your Honor please—of course, here is the testimony of Dr. Palmer taken *de bene esse*. 30

The Court: On whose behalf was that taken? On your behalf, your clients?

Mr. Slocum: Yes.

Mr. Tansey: And we have taken some cross examination.

The Court: And this may be read into the record?

Mr. Tansey: Yes.

The Court: All right. It may be made a part of the record. File it with the Surrogate. 40

CONCLUSIONS.

Filed February 11, 1929.

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|----|--|---|---|
| 10 | In the Matter of the Estate of JOHN DOLAN, deceased. | } | <i>On Appeal from Probate. Conclusions.</i> |
|----|--|---|---|

For proponents—John W. Slocum, Esq., and Frederick W. Hope, Esq.

For caveators—Michael J. Tansey, Esq., and Henry R. Dolan, Esq.

20 A paper writing, alleged to be the last will and testament of John Dolan, deceased, bearing date December 21, 1920 was admitted to probate by the Surrogate and an appeal filed within the statutory time by Michael J. Tansey, Esq.

The caveators have admitted, through their counsel, throughout the hearing, that the testator had full mental capacity to make a will at the time of the execution of the paper writing in question.

30 It is suggested in the brief of the caveators that the will was not properly executed, in that, it was not published. The attestation clause to the will is perfect. Frederick W. Hope, one of the witnesses to the will, states that he fixed up the will and put on the seal and asked the testator if he wanted to sign that now; that witness had read over the will and the attestation clause before and the testator said "Yes"; that the testator had previously given Mr. Hope instructions as to what he wanted put in the will—(page

Conclusions of Orphans' Court Judge.

5 of the testimony). Mr. Dolan signed the will and Mr. Hope read the attestation clause again to him and asked him whether that was his will and whether he wanted Miss Tilton and Mr. Hope to sign as witnesses, to which he said he did, and then they signed after his signing the will and both in his presence—(page 6 of the testimony). 10

Miss Tilton testified that Mr. Hope read the entire will over to Mr. Dolan and Mr. Dolan signed, and Mr. Hope again read the attestation clause and then "he asked if he wanted us to sign as witnesses" (page 17 of the testimony). Miss Tilton did not think that the testator said what it was after he had signed the document, but that he did say "It is just the way I want it" (Miss Tilton was the stenographer who wrote out the will). 20

It seems to me that this testimony coupled with the perfect attestation clause is sufficient to show that the will was duly executed.

There remains to be disposed of, the question as to whether or not there was undue influence.

The caveators have gone far back into the history of the relations of the testator with other members of his family. It seems that as far back as 1888 Ella Maloney went to live with her uncle; her sister, Mary Maloney was already living with her uncle. At the same time Ella went to live with her uncle, her brother, Michael went to live with him. A few years later, Margaret Maloney, another sister, went to live with them and her uncle. At that time, Bridget Dolan, the mother of the testator was alive and living in the same household. 30

The testator died July 12, 1927. He was never married. A great deal of testimony has been 40

Conclusions of Orphans' Court Judge.

offered as to the various family quarrels and differences of opinion. Many of them taking place many years ago, but running through the entire testimony, it seems clear that there has been some feeling between that branch of the family, the members of which were the beneficiaries under the will of the testator, and the other members of the family. Testimony has been offered to show that Ella Maloney and Mary Maloney dominated their uncle to the extent that they openly quarreled with him; that a serious quarrel once took place between Michael Maloney and his uncle, the testator, which resulted in Michael Maloney leaving the farm and never returning to live there and testimony has been offered to show that Mary Maloney and Ella Maloney both treated other members of the family at various times with decided coolness, when they came to the home of their uncle, the testator.

Testimony has also been offered to show that the conduct of those who were beneficiaries under the testator's will did not show them to be always as kindly and as thoughtful of their uncle as they might have been.

Some of the testimony offered on these various matters has been denied. It does appear that the testator operated his farm to the year 1925 when he sold the live stock and personal property and moved from the farm; that he conducted business up to this time with various persons who were not otherwise connected with his affairs and that he seemed to them to fully understand his business transactions and able to determine them according to his own wishes; that he went into the office of the lawyer who drew his will unaccompanied; that the lawyer did not have any personal acquaintance with any of the relatives

Conclusions of Orphans' Court Judge.

of the testator; that he took full directions for the drawing of the will and the names of the beneficiaries from the testator's own lips when he was alone with the testator; that after that, Ella Maloney was shown the will by the testator and she communicated some information as to its contents to her sister Mary, who was much displeased; that Michael, one of the beneficiaries, had become friendly again with his uncle and that his uncle had, on at least one occasion, that is, the request for the loan of money on a second mortgage to his nephew Michael, refused the same and refused to help Michael unless Michael would act in Michael's business transactions as his uncle suggested. Michael would not, and therefore, his uncle did not assist him. 10

It seems clear that there was not undue influence exercised by Michael and Mary. No specific acts are shown as to Mrs. Harrington, excepting the kindness to her uncle in his last years. Ella's acts toward her uncle in his last years seemed to have been those of kindness. Her duties as a school teacher kept her away from her uncle for periods throughout the week but she came to him even in the final years at week-ends. 20

Surely, those to whom he left his estate were the closest of his relatives in association with him. 30

I do not believe the record shows that there was any undue influence. There may have been opportunity for the use of undue influence, and there may have been an unfriendly feeling existing between the Maloney branch of the family and certain other members of the family, but all this time the testator seems to have been unrestrained in his connections and in his inclinations. 40

Conclusions of Orphans' Court Judge.

10 No direct undue influence has been shown. There does not seem to have been sufficient restraint put upon the testator to raise a presumption of undue influence on the part of anyone. Such acts as have shown the testator's regard for and an inclination to please certain persons during his lifetime were carried out by his will and may have been to some extent occasioned by the close relationship he maintained with them during his lifetime.

The testator had sufficient mental testamentary capacity, the will was formally and properly executed and no undue influence was used to obtain its execution.

The appeal is dismissed and the probate of the will affirmed.

20 An order may be settled upon notice in accordance with these findings, at which time application may be made for counsel fees and disbursements.

JACOB STEINBACH, JR.,
Judge.

30

40

**NOTICE OF APPLICATION FOR ORDER
AFFIRMING PROBATE OF WILL, ETC.**

Filed February 28, 1929.

MONMOUTH COUNTY ORPHANS' COURT.

In the Estate of JOHN
DOLAN, deceased, and
of the probate of the
last will and testa-
ment of John Dolan,
deceased heretofore
admitted to probate
by the Surrogate of
Monmouth County,
and the appeal there-
from.

Notice of Application
for an order affirming
the Surrogate's order
admitting to probate
said will, and for the
allowance of counsel
fees and disburse-
ments.

10

20

To Michael J. Tansey, Esquire,

Appellant and proctor, attorney and counsel
of all the parties who appealed from the probate
of the will of John Dolan, deceased admitted to
probate by an order of the Surrogate of Mon-
mouth County.

You are hereby notified that on Thursday
February 28, 1929 at ten o'clock in the fore-
noon at the Court House in Freehold application
will be made, in behalf of proponents of said
will, to the Monmouth County Orphans' Court
and to Honorable Jacob Steinbach, Jr., presiding
Judge, of said Court for an order affirming the
order made by Joseph L. Donahay, Esquire,
Surrogate of Monmouth County admitting to
probate the last will and testament of John
Dolan, deceased, and for such other order or de-

30

40

Notice of Application for Order Affirming, etc.

crec therein as may be proper in relation there-
to.

You are hereby further notified that at the
same time and place application will also be
made in behalf of the proponents of said will for
the allowance of counsel fees and disbursements
10 in this matter.

Dated Red Bank, New Jersey, February 20,
1929.

FREDERICK W. HOPE,
Proctor, Attorney and Counsellor Proponents.

Due service of the within notice is hereby ac-
knowledged February 21, 1929.

20 MICHAEL J. TANSEY,
Proctor for Appellants.

30

40

DECREE DISMISSING APPEAL.

Filed February 28, 1929.

MONMOUTH COUNTY ORPHANS' COURT.

In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Appeal
from Probate
of Will by
Surrogate.*

10

*Decree Dis-
missing
Appeal.*

This matter being opened to the Court by Frederick W. Hope, of counsel with the proponents, and the Court having taken testimony and heard the allegations of the parties herein and being satisfied that the instrument in writing, offered by the proponents and duly admitted to probate by the Surrogate of Monmouth County on the 27th day of July, 1927, as and for the last will and testament of John Dolan, deceased, was duly executed by the said John Dolan as and for his last will and testament, and that the said Dolan, at the time of executing the said instrument, was in all respects competent to execute the same and not under any restraint or undue influence.

20

30

It is thereupon on this twenty-eighth day of February, 1929, on motion of Frederick W. Hope, of counsel with proponents, ordered, adjudged and decreed that the appeal taken in the said matter be and the same is hereby dismissed and the probate of the said will is hereby affirmed.

JACOB STEINBACH, JR.,
Judge.

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**ORDER FOR PAYMENT OF COSTS AND
COUNSEL FEES.**

Filed March 7, 1929.

MONMOUTH COUNTY ORPHANS' COURT.

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In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Appeal
from Probate
of Will by
Surrogate.*

*Order for
Payment of
Costs and
Counsel Fees.*

20

This matter being opened to the Court by Frederick W. Hope, of counsel with the proponents, and Michael Tansey, of counsel with the appellants:

It is on this seventh day of March, 1929, ORDERED that the cost and expenses of the proponents for the taking and furnishing of a transcript of the testimony for the Court and a copy thereof for their counsel be paid by the executrix of the estate of John Dolan, deceased

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And it is further ordered that a counsel fee of \$1,200 be allowed Frederick W. Hope and John W. Slocum, as counsel for the proponents, and a counsel fee of \$500 be allowed Michael Tansey as counsel for appellants, and that the said counsel fees together with the taxed costs, witness fees and disbursements of the executrix in the hearing of the present appeal, be paid by the said executrix from the estate aforesaid.

JACOB STEINBACH, JR.,

Judge.

40

NOTICE OF APPEAL.

Filed March 28, 1929.

MONMOUTH COUNTY ORPHANS' COURT.

| | | | |
|--|---|------------------------------|----|
| In the Matter of the Estate of JOHN DOLAN, deceased. | } | <i>On Appeal.</i> | 10 |
| | | <i>Notice of Appeal.</i> | |

PLEASE TAKE NOTICE that the caveators hereby appeal from the whole of the order dismissing the appeal from the Surrogate's Court and affirming the probate of the will in the above-entitled matter, to the Prerogative Court of the State of New Jersey.

20

Dated March 27th, 1929.

MICHAEL J. TANSEY,
 Attorneys for Caveators.

To John W. Slocum, Esqs., and Frederick W. Hope, Esq., attorneys for proponents, or whom it may concern.

Sat below: 30

JACOB STEINBACH, JR.,
 Judge.

Service of the within notice of appeal is hereby acknowledged this 2nd day of April, 1929.

FRED W. HOPE,
 Proctor and Attorney for Proponents.

JOHN W. SLOCUM,
 Attorneys for Proponents. 40

*Certificate of Surrogate.*MONMOUTH COUNTY SURROGATE'S
OFFICE.STATE OF NEW JERSEY, }
MONMOUTH COUNTY. } ss.

10 I, JOSEPH L. DONAHAY, Surrogate of said
County, do certify the foregoing to be a true
copy of the petition of appeal, order extending
time, order setting time for hearing, amended
petition of appeal, citation on appeal, eighteen
appointments of proctor, acknowledgment of
service, deposition *de bene esse* of Charles A.
Palmer, order for Commission to examine
Charles E. Fitzgerald, on interrogatories, certi-
fied copy of order for Commission, stipulation,
20 notice for application for decree affirming order
of Surrogate to probate will, testimony, con-
clusions, notice of application for an order affirm-
ing probate of will by Surrogate and appeal
therefrom, also for allowance of counsel fees
and disbursements, decree dismissing appeal,
brief for appellants, brief for proponents, order
for payment of costs and counsel fees, notice of
appeal, acknowledgment of service of notice of
appeal, as the same remain of record in my office.

30 IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office, at Freehold,
the nineteenth day of November, in the year of
our Lord one thousand nine hundred and twenty-
nine.

JOSEPH L. DONAHAY,
Surrogate.

(SEAL)

**PETITION OF APPEAL TO PREROGATIVE
COURT.**

Filed June 5, 1929.

NEW JERSEY PREROGATIVE COURT.

| | | | |
|---|---|---|-----------|
| <p>In the Matter of the Estate of JOHN DOLAN, deceased.</p> | } | <p><i>On Appeal from Mon- mouth Orphans' Court. Petition of Appeal.</i></p> | <p>10</p> |
|---|---|---|-----------|

To Honorable Edwin Robert Walker, Ordinary:

Your petitioners, Margaret Tansey, Annie A. Tansey, Ella Tansey, Sara E. Tansey, Cassie J. Tansey, Michael J. Tansey, William A. Tansey, Charles E. Fitzgerald, Bernard Fitzgerald, Julia Gibbons Cornwall, James H. Griffin, and Bernard Griffin feel themselves aggrieved by an order or decree of the Monmouth County Orphans' Court sustaining the probate by the Surrogate of the alleged last will and testament of John Dolan, late of the County of Monmouth, State of New Jersey, deceased, and dismissing the appeal from said probate; and say that said order or decree of said Orphans' Court is contrary to law and null and void in the whole and every part hereof. And they pray that said order or decree may be examined by this Court and the same reversed and said alleged last will and testament be denied probate, as having been procured by the undue influence of Sara Ella Maloney, the proponent, and the other proponent and beneficiaries of and in said alleged will, and also for

Petition of Appeal to Prerogative Court.

that said alleged will was not properly and legally executed and published by the testator.

And that your petitioners may have such other and further relief as may be according to law and the power and authority of this Court in the premises.

10 And your petitioners will ever pray etc.

MICHAEL J. TANSEY,
Proctor and Petitioner.

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

20 MICHAEL J. TANSEY, of full age, being duly sworn according to law, on his oath says that he is one of the petitioners in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

MICHAEL J. TANSEY.

Sworn and subscribed before me
at Newark, N. J., this 3rd day of
June, 1929.

30 JOSEPH L. FOERST,
Attorney at Law of New Jersey.

Service of a certified copy of the within petition of appeal is hereby acknowledged this 12th day of June, 1929.

JOHN W. SLOCUM,
Proctor for Respondents.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the
Estate of
JOHN DOLAN, deceased.

*On Petition
for Appeal.*

10

Answer.

The answer of Sarah Ellen Maloney, Margaret Harrington and Michael Francis Maloney, respondents, to the petition of appeal of Margaret Tansey, *et al*, appellants.

These respondents say and admit that on the 28th day of February, 1929, a decree was made and entered in the Orphans' Court of the County of Monmouth in this state, dismissing the appeal taken from the order or decree of the Surrogate of said Monmouth County on July 27, 1927, admitting to probate the last will and testament of John Dolan, deceased, and that the said order of the Orphans' Court aforesaid did by its decree affirm the probate of the said will of John Dolan, deceased, as having been duly admitted to probate.

20

And these respondents are advised and believe that the said decree dismissing the appeal from the probate of said will by the Surrogate aforesaid and the affirming of the said decree or order by the said Monmouth County Orphans' Court on February 28, 1929, is correct, proper and legal, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

30

JOHN W. SLOCUM,
Proctor and of Counsel with Respondents.

40

OCT. 1930

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RECORDS OF THE
UNITED STATES DEPARTMENT OF JUSTICE

IN THE
MATTER OF
THE
ESTATE OF

JOHN D. ...
DECEASED
BY ...
ADMINISTRATOR

IN WITNESS WHEREOF

COURT OF CHANCERY OF NEW JERSEY.

Chambers of
MAJA LEON BERRY
Vice Chancellor
Toms River, N. J.

10

March 1, 1930.

Michael J. Tansey, Esq.
164 Market Street
Newark, N. J.

Hon. John W. Slocum
192 Broadway
Long Branch, N. J.

Dear Sirs:

In the matter of the Estate of John Dolan, I
20 have examined and considered the state of the
case and all of the papers submitted to me in
this matter, including the briefs of counsel and
have reached the conclusion that the appeal from
the decision of the Monmouth County Orphans'
Court should be dismissed, for reasons expressed
by Judge Steinbach in his opinion filed in the
court below. Judge Steinbach has covered the
matter very thoroughly and I do not intend to
write any opinion at all. I shall adopt the
30 opinion of Judge Steinbach as the opinion of this
court.

Very truly yours,

MAJA LEON BERRY.

THE NEW YORK STATE OF NEW YORK

In SENATE,
January 1, 1887.

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1886

ALBANY: PUBLISHED BY THE STATE OF NEW YORK, 1887.

W. H. BURNETT, STATE PRINTER.

ALBANY: BURNETT, 1887.

**DECREE DISMISSING APPEAL AND
AFFIRMING DECREE OF THE MON-
MOUTH COUNTY ORPHANS' COURT.**

Filed March 11, 1930.

NEW JERSEY PREROGATIVE COURT. 10

IN THE MATTER OF THE

ESTATE OF

JOHN DOLAN,

Deceased.

On Appeal.

Decree Dis-
missing

Appeal and
Affirming

Decree of the
Monmouth

Orphans'
Court.

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This matter coming on to be heard in the presence of Michael J. Tansey, proctor for appellants, and John W. Slocum, of counsel with the respondents, and the Ordinary having considered the testimony and heard the respective counsel aforesaid:

It is on this Sixth day of March, 1930, ORDERED, ADJUDGED and DECREED that the appeal from the decree of the Orphans' Court of the County of Monmouth, entered February 28, 1929, dismissing the appeal from the order of the Surrogate of Monmouth County admitting to probate as and for the Last Will and Testament of John Dolan, deceased, the paperwriting bearing date December 21, 1920, be and the same is hereby dismissed

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Decree Dismissing Appeal, etc.

with costs, and the probate of the said will of
John Dolan, deceased, is hereby affirmed.

E. R. WALKER,
Ordinary.

Respectfully advised,

10 MAJA LEON BERRY,
V.-O.

Endorsed:

Filed March 11, 1930.

Joseph F. S. Fitzpatrick,
Register.

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NOTICE OF APPEAL.

Filed May 26, 1930.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER OF THE

ESTATE OF

JOHN DOLAN,

Deceased.

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*Notice
of Appeal.*

SIR: TAKE NOTICE

Petitioners, Margaret Tansey, Annie A. Tansey, Ella Tansey, Sara E. Tansey, Cassie J. Tansey, Michael J. Tansey, William A. Tansey, Charles E. Fitzgerald, Bernard Fitzgerald, Julia Gibbons Cornwall, James H. Griffin and Bernard Griffin, hereby appeal to the Court of Errors and Appeals from the decree of the Ordinary on the advice of Vice-Ordinary Berry, dismissing the appeal from the decree of the Orphans' Court of the County of Monmouth, and affirming the decree of the Orphans' Court of the County of Monmouth, dismissing the appeal from the order of the Surrogate of Monmouth County admitting to probate as and for the Last Will and Testament of John Dolan, deceased, the paperwriting bearing date December 21, 1920.

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To John W. Slocum, Esq.,

Proctor and Counsel for Respondents.

Dated May 22, 1930.

MICHAEL J. TANSEY,

Proctor and Counsel for Appellants.

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Notice of Appeal.

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

MICHAEL J. TANSEY,
Proctor and Counsel for Appellants.

10 Service of a true copy of the within notice of appeal is hereby acknowledged as of time this 23rd day of May, 1930.

JOHN W. SLOCUM,
Proctor and Counsel for Respondents.

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PETITION OF APPEAL.

Filed June 13, 1930.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

IN THE MATTER OF THE
ESTATE OF
JOHN DOLAN,

Deceased.

*On Appeal
from New
Jersey Pre-
rogative
Court.
Petition
of Appeal.*

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To the Honorable the Court of Errors and Appeals in the last resort in all causes.

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The petition of Margaret Tansey, Annie A. Tansey, Ella Tansey, Sara E. Tansey, Cassie J. Tansey, Michael J. Tansey, William A. Tansey, Charles E. Fitzgerald, Bernard Fitzgerald, Julia Gibbons Cornwall, James H. Griffin and Bernard Griffin, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final order made in the New Jersey Prerogative Court by his Honor Edwin Robert Walker, Ordinary, on the advice of his Honor Maja Leon Berry, Vice-Ordinary, bearing date the sixth day of March, 1930, in a certain cause in said New Jersey Prerogative Court wherein the said Margaret Tansey, Annie A. Tansey, Ella Tansey, Sara E. Tansey, Cassie J. Tansey, Michael J. Tansey, William A. Tansey, Charles E. Fitzgerald, Bernard Fitzgerald, Julia Gibbons Cornwall, James H. Griffin, and Bernard Griffin were petitioners and Sarah Ellen Maloney, Margaret

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Petition of Appeal.

Harrington and Michael Francis Maloney were respondents, in this respect to wit that the said order adjudges that the appeal from the decree of the Orphans' Court of the County of Monmouth be dismissed and the decree of said Orphans' Court dismissing the appeal from the order of the Surrogate of Monmouth County admitting to probate as and for the Last Will and Testament of John Dolan, deceased, the paper-writing bearing date December 21, 1920, be affirmed.

And petitioners appeal from the order of the Ordinary on the advice of Vice-Ordinary Berry which decrees as aforesaid upon the ground that the same is contrary to law and null and void in the whole and every part thereof. And they pray that said order and decree may be examined by this Court and the same reversed and said alleged last will and testament be denied probate, as having been procured by the undue influence of Sara Ella Maloney, the proponent, and the other proponent and beneficiaries of and in said alleged will, and also for that said alleged will was not properly and legally executed and published by the testator.

And that your petitioners may have such other and further relief as may be according to law and the power and authority of this Court in the premises.

And your petitioners will ever pray, &c.

MICHAEL J. TANSEY,
Proctor and Petitioner.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

In the matter of the estate of
JOHN DOLAN, deceased.

*Answer to
Petition of
Appeal.*

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The answer of Sarah Ellen Maloney, Margaret Harrington and Michael Francis Maloney, respondents to the petition of appeal of Margaret Tansey, Annie A. Tansey, Ella Tansey, Sarah E. Tansey, Cassie J. Tansey, Michael J. Tansey, William A. Tansey, Charles E. Fitzgerald, Bernard Fitzgerald, Julia Gibbons Cornwall, James M. Griffin and Bernard Griffin, appellants.

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These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that, on the 6th day of March, 1930, a final order and decree was made by the Ordinary in the Prerogative Court dismissing the appeal and affirming the decree of the Monmouth County Orphans Court, and which said order, by its terms, affirmed the probate of the said last will and testament of John Dolan, deceased; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced.

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These respondents deny (1) that the last will and testament of the said John Dolan, deceased, was procured by the undue influence of Sarah Ellen Maloney, or any other person or persons; and (2) that the said will of John Dolan,

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Answer to Petition of Appeal.

deceased, was not properly and legally executed and published by the testator.

And these respondents are advised and believe that the said final order and decree is in accordance with law, and they pray that the same may be affirmed, with costs to be adjudged to these

10 respondents.

JOHN W. SLOCUM,
Proctor and of Counsel for the
Respondents.

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NOTICE OF ARGUMENT.

Filed September 30, 1930.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

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|---|---|--|-----------|
| <p>IN THE MATTER OF THE ESTATE OF JOHN DOLAN, Deceased.</p> | } | <p><i>On Appeal from New Jersey Prerogative Court. Notice of Argument.</i></p> | <p>10</p> |
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SIR:

TAKE NOTICE, that the argument of the appeal
in this cause will be moved before the New Jersey
Court of Errors and Appeals on the third Tues-
day of October, 1930, at Trenton, New Jersey, at
ten o'clock in the forenoon, or as soon thereafter
as the said Court can attend to the same.

To John W. Slocum, Esq.,
Proctor and Counsel for respondents, or to
whom it may concern.

Dated September 25, 1930.

MICHAEL J. TANSEY,
Proctor and Counsel for Appellants.

Service of a true copy of the within notice of
argument is hereby acknowledged this 27th day
of September, 1930.

JOHN W. SLOCUM,
Proctor and Counsel for Respondents.

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New Jersey Court of Errors and Appeals.

IN THE MATTER OF THE ESTATE

of

JOHN DOLAN, Deceased.

On Appeal From
New Jersey Pre-
rogative Court.

BRIEF OF RESPONDENTS.

Preliminary Statement.

The paper writing purporting to be the Last Will and Testament of John Dolan, deceased, was duly admitted to probate by the Surrogate of Monmouth County, July 27, 1927. An appeal was taken from the probate of said Will by the Surrogate to the Monmouth County Orphans Court. After the taking of testimony and hearings thereon, the appeal was dismissed (see conclusion of Orphans Court Judge page 232). The decree dismissing the appeal and affirming the probate of the said Will was entered February 28, 1929 (page 239). The appellants on June 5, 1929, filed their petition of appeal to the Prerogative Court (page 243), and on March 6, 1930, the Prerogative Court made a decree dismissing the appeal and affirming the decree of the Monmouth County Orphans Court (pages 247 and 248). The appellants are now in this court on said last mentioned appeal and claim that the decree of the Ordinary, sustaining the Will and affirming the action of the court below, should be reversed, because they allege:

(1) The said Will was procured by the undue influence of Sarah Ellen Maloney and other beneficiaries;

and

(2) That the same was not properly and legally executed and published by the testator (page 252).

The charge of mental incapacity of the testator, alleged in the original appeal, was abandoned.

STATEMENT OF FACTS

John Dolan died July 12, 1927, at the age of 80 years. His Will was dated December 21, 1920, and at that time the testator was 73 years of age. (See letter dated May 23, 1924, Dolan to Fitzgerald (page 47); also letter Dolan to Fitzgerald, dated June 24, 1925, page 48.)

Mr. Dolan went to the office of Frederick W. Hope, a lawyer practicing in Red Bank, N. J., December 21, 1920. He was alone. He told Mr. Hope he wanted to make his will and the manner he desired his property disposed of by his Will. He gave the names of the relatives he desired to give his property to and the interest each was to have in it. Mr. Hope did not know any of the beneficiaries. He had neither talked with nor seen any of them until after Mr. Dolan's death, seven years later. Mr. Hope testifies (page 54) "and he (Dolan) gave me the names and told me what he wanted to do, how he wanted it made. I made a memorandum of it and then I asked him if he had other relatives. 'Oh yes,' he said, 'a great many of them.' And I asked him if he wanted to name anybody else in his will, any other nephews or nieces, and he said 'No.' I said it would be nice to give them a hundred dollars, a little remembrance. He said 'No, this is my will, my property. I want it made just the way I told you, if you will do it.' And I said, 'Yes, just exactly.'"

The Will was drawn with care. It was read over to the testator at length. He again declared it was in the manner he desired it, and he then and there executed the same with all the statutory formalities in the presence of Frederick W. Hope and Blanche L. Tilton, who signed as subscribing witnesses. At the time of executing the will, it was read over to him in the pres-

ence of Mr. Hope and Miss Tilton. Dolan said "'That is right, that is the way I want my will,' and I (Hope) said, 'You are sure about it, you don't want to put in anybody else? Think them over and be sure about it,' and he (Dolan) said, 'I am sure.'" (Page 55). Mr. Dolan was a very positive man and used to having his own way. He told Mr. Hope that Sarah Ellen Maloney lived with him and he wanted to leave it (his property) to some children of his sister, Ella. Mr. Hope asked him if he had any other relatives and he answered, "Plenty of them." He said they were scattered all around the country (page 59).

Miss Tilton, the other subscribing witness, tells of the details at the time of the execution of the Will. She heard Mr. Dolan say after he had signed the Will, "It is just the way I want it," (page 63) and he thanked her for being a witness to his Will (page 65).

The testimony shows that John Dolan was a bachelor. His mother, Bridget Dolan, lived with him until 1911 when she died. His sister, Ellen, had four children who lived with him. They are the beneficiaries named in his will. Sarah Ellen, a niece, and Michael, a nephew, went to live with him in May 1888, and Sarah continued to live with him until the time of his death. Mary C. Wiggins went to live with her uncle before Sarah and remained until her marriage in 1916. After her marriage she lived with her uncle and made her home with him part of the time. Margaret Maloney Harrington came to live with her uncle a few years after 1888. When she married she moved to Morganville, a few miles from Everett, and continued her visits frequently until his death. She prepared food for him during the week while Sarah was teaching school and he lived in her home in the winter of 1925. Both Mrs. Wiggins and Miss Sarah Ellen Maloney were school teachers employed in the northern part of the state. They would return home week-ends. From 1907, Miss Maloney has been a teacher in Newark and for more than twenty years she has lived with her uncle on the farm at Everett during the summer months. During the school year she would return to his home Friday afternoon or night and stay the week-

end. The testator brought up these four children as his own. He was particular that Sarah and Mary should be well educated and prepared them to be teachers. It is this group (children of his sister Ellen) that he favored all through his life and made them his legatees and devisees. He had been very kind to them, and the testimony shows that these three girls, Sarah, Mary and Margaret, were kind, considerate and thoughtful of him. They were the only relatives that ever did anything substantial for him during his whole life.

At the time of making his will (December 1920) and previous thereto, Mr. Dolan had enjoyed unusually good health; worked his own farm and looked after the raising and selling of his crops. Dr. Palmer was his family physician from 1908 to 1921. During these thirteen years his only attacks of sickness were: An attack of gall bladder trouble; an attack of grippe in the winter of 1916 or previous; and he was treated for sciatica trouble, lumbago, in the spring of 1921. (pages 22 and 23).

POINT NUMBER ONE

Charge of Undue Influence.

There is not a word in the testimony which shows the testator was incapable of disposing of his property at any time, prior or subsequent, to the making of the will on December 21, 1920. The allegation of incapacity was abandoned by counsel. At page 137, Mr. Tansey says in answer to a question by the presiding judge, "we are alleging undue influence I say now, we are not attempting to show a want of mental capacity." At page 172, the court asks: "What does it prove? There are two issues here. I suppose the issues are incapacity and undue influence.

Mr. Tansey: We don't allege any incapacity at all.
The Court: You don't?

Mr. Tansey: No, we allege it but it is only a mere matter of form. We think the man had his good mind right up to the time he died, and we are not alleging

any fault in his mind at all. He was a man of good mind and good heart."

The next allegation to be met is: Did Sarah Ellen Maloney, Mary C. Wiggins, Margaret Harrington and Michael Francis Maloney, or either of them, unduly influence the testator in the making of his will?

Michael Maloney went to live with his uncle May 3, 1888 (page 227). He was then nine years of age and lived on the farm until June 7, 1895 (page 228). He was away from there until 1917, and after that year worked only occasionally for his uncle. John Dolan was at the home of his niece, Mrs. Harrington, during the winter of 1925. He made his Will Dec. 21, 1920. The night before the sale of the personal property, he told Michael that he had made his will and said, "You will have to deal with your sister hereafter about the farm.

Q. What did you say? A. I said, has she the deed?

Q. What did he say? A. He said I have made my will and I am not going to change it." (Page 229)

On cross examination this witness was asked:

"Well, did you know which sister it was? A. Well, I didn't know, but I expected the one that ought to be. I knew who it ought to be." (page 230).

Michael tried to borrow money from his uncle John on bond and mortgage about December 20, 1919. The following testimony on page 227 shows what little influence Michael had with his uncle:

"Q. What did he say about loaning you money on mortgage?

A. Well, he said the place needed a lot of repairs. I said that could be done all right; I said it could be fixed. He said, well let them that owns it, let them fix it.

Q. Well, would he let you have the money? A. He would if he had his own say about it, but I told him I was buying the place and not him.

Q. Well, what did he say about loaning the money?

A. He said I would have to help myself then; he wouldn't do it, have anything to do with it.

Q. Well, did he want a first mortgage for the money?

A. He would take up the whole mortgage, he said,

if I hadn't paid too much money for the place. He considered it was too much. He said farms would be cheaper later on.

Q. He thought you had paid too high a price?

A. Yes, sir.

Q. And he would not loan you the money? A. No.

Q. That is right? A. That is right."

There is not even a whisper by any witness against the kind and considerate acts of Margaret Harrington and her conduct toward her uncle. Two witnesses tried to make a target of Mrs. Mary C. Wiggins, who at the time they were traducing her, was fatally ill in a New York hospital and has since died.

The witness Mary Toomey was housekeeper for John Dolan from December 1909 to December 5, 1916. During this time, the grandmother Bridget Dolan (who died in 1911) was on the farm. Mrs. Toomey had married and left the Dolan homestead more than **four years** before the making of the will. This witness testifies that one of the Maloney girls (without stating which one) remarked at one time when the Tanseys were coming, "Here they come again. Why don't they stay home, we don't want them here. This is our home" (page 91); and yet the same witness says that when any of them (nieces or nephews) entered the house the Maloneys would "be polite to them. They were kind of nice to them after they got there. These were outside sayings," (page 91).

Mary Toomey says at page 91 she heard Mary Maloney say at one time that she should get the lion's share. The fact remains she did not get the lion's share; that the remark, if ever made, must have been at least five years before John Dolan made his will, and if Mary Maloney did expect a lion's share, she did not receive it. It cannot be successfully argued that a person who is dissatisfied with the terms of a will had a strong and dominating influence over the person who made it. She, Mrs. Wiggins, was clearly disappointed with the provisions of the will (page 213).

There remains Sarah Ellen Maloney. She had lived with her uncle from childhood to the day of his death.

The testimony shows her care and devotion to him all those years. When his last illness came, seven years after the making of the will, we find her, with Mrs. Wiggins and Mrs. Harrington the only relatives at his home.

When he (Dolan) was previously ill they secured the services of a nurse for him, and he alone prevented her remaining (pages 157-158).

The testimony of Dr. Millard B. Ervin reads:

Q Now, when you attended him in 1922, did you request that he have a nurse in attendance? A No.

Q Who did? A Some other physician, some relative of his.

Q Did you bring a nurse there? A I had a nurse brought there, yes, sir.

Q And did you talk with John Dolan about the nurse?

A Yes, sir.

Q What did he say? A Refused to have the nurse come in his room to take care of him.

Q Now, you tell us the whole conversation on that subject between you and Mr. Dolan. A I was instructed to inform Mr. Dolan that a nurse was downstairs to take charge of him. I went upstairs and told Mr. Dolan that I had a nurse downstairs to take care of him, and he said that he didn't see that it was necessary to have a nurse, and that if the people that he was going to take care of couldn't take care of him, that he would have to see about it - words to that effect. I don't remember the exact phrasing.

Q Was Miss Maloney, the lady who stood up in the court room, there at that time? A I couldn't vouch for it. I know one of the girls spoke to me downstairs, and they were afraid to take the nurse upstairs.

Q Which one of the girls was afraid to take her up?

A The whole bunch.

Further on (page 163) Dr. Ervin was asked:

Q When did the nurse get there that day? A I couldn't vouch. She was there when I came in the morning.

Q And who was the nurse? A At that time it was a girl named Miss Vigne. She is married now.

Q Was she one that you brought? A I instructed somebody where to locate her, and they got her and brought her there.

Q You didn't bring her yourself? A No, sir. She went away with me.

Mrs. Rider, who was the closest neighbor to the Dolan farm, tells of the affection Mr. Dolan displayed toward his niece Sarah Ellen. "Why, on Friday night he looked forward to her coming home. He would have the gates open, and he would watch the gate coming in, and he was very fond of her. He would kiss her when she came in and he acted as if he was overjoyed to see her" (page -88).

Sarah Ellen Maloney was teaching school in Newark when Dolan made his will. It was made on Tuesday, December 21, 1920. She knew nothing about it (page 211); had never discussed the making of a will with him (page 211-212). When she returned home the following Friday, her uncle showed her the will; she read it, and returned it to him. He kept it until his death in a box where he kept his important papers. She did not have access to the box and never had the key for it until after his death.

Testator had Mr. Hope prepare his will in the manner he desired it. He named as the beneficiaries the four relatives he had brought up as if they were his own children. If he ever told any one that he did not intend to make a will, he had a right to change his mind.

The charge of undue influence has absolutely failed. At the time of the making of his will, Mr. Dolan was alert, strong in mind and body, conducting his own farm and attending to all business relating to it; had his own bank accounts, paid his own bills, signed his own checks. Miss Maloney at this time was only with her uncle week-ends. The other beneficiaries were living in their own homes separate from the testator. Not a word in the testimony shows that any beneficiary in any way tried to influence the testator to make a will in their favor. Is it possible to believe from anything in the testimony that the will is the product of undue influence? There were more than seven years

elapsed between the date of its execution and his death. He was going about the country unattended to Red Bank, Matawan, Keyport and other places. None of the beneficiaries were near him. If the will was not as he wanted it, he had the opportunity for seven years of changing it. Instead of changing it he told Michael five years after the making of the will that he had made his will and was not going to change it. He told Mrs. Rider, on Decoration Day 1922, when he called at her house ill late at night, "I want you to get Dr. Palmer, Father O'Donnell and my niece at this number," (page 184). At the same time witness says, "He told me - - I asked him if there were any legal affairs he wished to have attended to. He says, 'I have it all attended to.' He said, 'I left those that I want to have it share and share alike,' and he says, 'the doctors and lawyers have enough,' " (page 185).

The two outstanding disgruntled and disappointed nephews are Charles E. Fitzgerald and Henry R. Dolan. Fitzgerald says in his answers to interrogatories (page 41) that he visited his uncle four times prior to the date of the will, namely: In 1888, in 1906, 1909 and 1915. It is evident by his answers to interrogatories 18 (page 42) and 30 (page 43) that the conversations there referred to, if true, were before the death of Bridget Dolan, who died in 1911. His nearest visit was therefore 1909. What did this "favorite" nephew ever do for the uncle he thought so much of? Certainly, nothing appears in the testimony. The other disappointed nephew, Henry R. Dolan, lived with his uncle about two months in the winter of 1904. He was then 12 or 13 years of age (page 73). This was during the lifetime of Bridget Dolan, the grandmother. At page 75, he says: "I remember his (John Dolan) having said he would not make any Will and all the sisters and brothers would come in for the homestead."

All of the sisters and brothers of John Dolan were dead when he made his Will December 21, 1920. Testator devised and bequeathed his property to three daughters and one son of his sister Ellen. Mr. Hope

testified:

Q. He specified in the will it was to go to Sarah Ellen Maloney who lived with him? A. Yes.

Q. Did he say "who lives with me"? A. Yes, he told me that. I never was acquainted with the family, any of them.

Q. You were never acquainted with them? It was only that he told you she lived with him and you put it in the will that way? A. That is what he said.

Q. You said he told you that he wanted to leave it to some children of his sister? A. I think Sister Ellen, he called her.

Q. He said these persons he was mentioning in the will were children of his sister Ellen? A. I believe so.

Q. When you asked him whether he had any other relatives, he answered generally, "plenty of them"?

A. I asked him if he had any nephews and nieces, no brothers and sisters, and he had plenty of nieces and nephews.

Q. He didn't name them? A. No, he said they were scattered all around the country. (Bottom of page 58 and top of page 59.)

The nieces and nephews, grandnephews and grandnieces claiming an interest are: Charles E. Fitzgerald, St. Paul, Minnesota; Alice McMillan, Minneapolis, Minnesota; Julia Gibbons, formerly Julia Fitzgerald, Chicago, Illinois; Bernard Fitzgerald, Fort Worth, Texas; Mary O'Hara, Jamesville, Wisconsin; Margaret Tansey, Keyport, New Jersey; Delia Tansey, Keyport, New Jersey; Anna A. Tansey, Newark, New Jersey; Sarah E. Tansey, Newark, New Jersey; William A. Tansey, Newark, New Jersey; Ella Tansey, Newark, New Jersey; James H. Griffin, New York City; Bernard Griffin, New York City; Margaret Griffin, Newark, New Jersey; William B. Dolan, Newark, New Jersey; Henry R. Dolan, Newark, New Jersey; Michael F. Dolan, Matawan, New Jersey; Charles E. Dolan, Matawan, New Jersey; Anna Wenzel, Freneau, New Jersey; Mary C. Wiggins, Morganville, New Jersey; Sarah E. Maloney, Everett, New Jersey; Margaret Harrington, Morganville, New Jersey; Michael Francis Ma-

loney, Bradevelt, New Jersey; Catherine J. Tansey, Newark, New Jersey; all being nephews and nieces of the said John Dolan, deceased, and Francis J. Tansey, Newark, New Jersey; Mary E. Tansey, Newark, New Jersey; Dorothea K. Tansey, Newark, New Jersey; and Maria F. Hennessey, Newark, New Jersey; grand-nephews and grandnieces of the said John Dolan, deceased.

(Amended petition of appeal page 11.)

The testimony and exhibits in this cause do not contain a single word or show an act on the part of Sarah Ellen Maloney, or of any other beneficiaries under the Will, which can possibly be construed as exerting any undue or improper influence upon the decedent. The allegation has completely failed for lack of any supporting facts.

LAW POINTS

The burden of establishing the influence which is "undue" rests on those who assert it. Mere possession of influence and opportunity and motive to exert it, will not suffice: It must appear, either directly or by justifiable inference from facts proved, that the influence was exerted and operated to dominate testator and coerce him to make a disposition of his property which he would not otherwise have made. *Schuchhardt v. Schuchhardt*, 62 N. J. Eq. page 710.

When undue influence is claimed to be established by inference from certain facts proved and upon all the facts proved, an equally justifiable inference may be drawn that the will executed was what testator would have made under the circumstances. The burden on contestants is not supported. *Schuchhardt v. Schuchhardt*, *ibid*.

Undue influence consists in the exercise of sufficient control over the person, the validity of whose act is brought in question, to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised. *Bennett v. Bennett*, 50 N. J. Eq. page 440.

Inference that a will is the product of undue

influence will not be drawn from circumstances which are shown to have occurred naturally and harmlessly. *Fritz v. Turner*, 46 N. J. Eq. page 515.

Influence acquired over testator by kind offices unconnected with fraud and contrivance, is lawful and proper. In *re Gleespin's Will*, 26 N. J. Eq. page 523. In *re Mannion's Estate*, 95 Atl. Rep. at page 991.

Chief Justice Whelpley said in *Boylan ads Meeker*, which is quoted with approval in *Smith v. Smith*, 48 N. J. Eq. at page 591:

"That the will to others, not having the means of knowing what the testator knows, not occupying his standpoint, not having lived his life, not having his secret affections and hates, may seem unreasonable, injudicious and even unjust, is no reason why it should be declared the product of a diseased mind. A testator has a right to make an unreasonable, unjust and injudicious will and his neighbors have no right, sitting as a jury, to alter the disposition of his property simply because they think the testator did not do justice to his family connections."

Undue influence has been defined to be such influence as dominates the will of the testator, and produces a testamentary disposition which the testator would not have made if not coerced by such influence. *Byrnes v. Gibson*, 68 Atl. Rep. page 756.

It must be such as to destroy the free agency of the testator and amount to moral or physical coercion. It must be proved, moreover, that the act done was the result of coercion. There must be a control exercised over the mind of the testator or an importunity practiced which he could not resist or to which he yielded for the sake of peace. In *re Tunison's Will*, 90 Atl. page 695; affirmed 93 Atl. page 1087.

It is well settled that the influence of affection and kind offices, unconnected with fraud or contrivance, though it induces gratitude and testamentary recompense, is not undue. In *re Eat-*

ley's Will, 89 Atl. page 776.

It is settled that the legal presumption is always in favor of a will, and one who contests its validity on the ground that it was the product of undue influence, must primarily establish that such influence existed as is called undue. In re Craft's Estate, 94 Atl. page 606.

The mere possession of influence and opportunity and motive to exercise it, affords no presumption of undue influence. It must appear either directly, or be justified from facts proven, that the influence was exerted and operated to dominate the testatrix and to coerce her to make a disposition of her property which she would not otherwise have made. In re Anastasia Davis, 68 Atl. page 756 (Byrnes v. Gibson). in re Hop's Will, 141 Atl. page 771.

The burden is upon the party claiming the will to have been the result of undue influence, to establish, not only that such influence existed, but that it produced a testamentary disposition which the testatrix would not have made had she not been coerced. In re Merkel's Will, 134 Atl. page 340.

In the Methot Will case, 98 Atl. Rep. at page 844, Stevens, V. O., says:

"He had the same right to discriminate between his relations that every testator has. Prejudice and partiality are not, under our system of jurisprudence, grounds for setting aside a testament."

Where testimony as to testamentary capacity and undue influence is voluminous, wide and extensive in range, and conflicting in purport, trial court's impressions and views are entitled to great weight on appeal. In re Hops' Will, 141 Atl. page 771.

POINT NUMBER TWO.

Allegation That The Will Was Not Properly and Legally Executed and Published By The Testator.

Every statutory requirement was met in the execution of the Dolan Will. Frederick W. Hope, one of the subscribing witnesses, testifies (page 53, 54 and 55).

Q. How long have you been a member of the Bar of New Jersey? A. Since eighteen hundred and eighty-two.

Q. I show you a paper dated December twenty-first, nineteen hundred and twenty and ask you if you know whose signature that is opposite the seal? A. That is the signature of John Dolan, formerly of Everitt, New Jersey.

Q. How do you know that is his signature? A. I saw him sign it.

Q. Whose signature is that below? A. My signature is there as one of the witnesses, Mr. Dolan's signature, and Miss Blanche L. Tilton is the other witness.

Q. Was this paper signed in your presence? A. It was.

Q. Where? A. In my law offices in Red Bank, New Jersey.

Q. And when? A. On the date of the paper, December twenty-first, I think, nineteen hundred and twenty.

Q. Where was it signed? A. In my office, one of my offices there, my private office.

Q. Who was present at the signing? A. Mr. Dolan, the testator, Miss Blanche L. Tilton and myself.

Q. Won't you tell us who prepared this paper? A. Mr. Dolan came in the office inquiring for me and was shown in and he told me he wanted to make his will. I told him "all right, it was part of my business." I had become acquainted with him by two or three visits to the office by other people who brought him there, not any of his family. I am not acquainted with any of them or was not until after he died, but I

talked with him and found he wanted to make a will in favor of the children of one of his sister's.

Q. What did he tell you? A. And he gave me the names and told me what he wanted to do, how he wanted it made. I made a memorandum of it and then I asked him if he had other relatives "Oh, yes," he said, "a great many," and I asked him if he wanted to name anybody else in his will, any other nephews or nieces and he said, "no." I said, "it would be nice to give them one hundred dollars as a little remembrance."

Q. What did he say? A. He said, "no, this is my will, my property, I want it made, just the way I told you, if you will do it," and I said, "yes, just exactly," and I read over my memorandum to him and so on and he said, "that is right, when that is made up like that is, it will be just the way I want it." Then I called my stenographer and dictated the will in the presence of Mr. Dolan from my memorandum there, and that was Miss Blanche L. Tilton, and she transcribed the paper, wrote it as a will on the typewriter.

Q. And then what was done? A. And then a duplicate was made of it then, and then I read it over to Mr. Dolan.

Q. Who were present when you read it to Mr. Dolan? A. Mr. John Dolan, Blanche L. Tilton and myself.

Q. All right. What did he say then? A. He said, "that is right, that is the way I want my will," and I said, "you are sure about it, you don't want to put in anybody else?" I asked him again because I was impressed with it. I knew sometimes members of a family feel hurt if they are not named and I wanted to avoid anything of that character. I said, "think them over and be sure about it," and he said "I am sure." He was a very positive man in his speech and in his way, a man used apparently to having his own way. I fixed it up and put on the seal and asked him if he wanted to sign that now, **I had read over the will and the attestation clause before**, and he said, "**yes.**"

Q. Did he sit in your office while the will was being prepared? A. Oh, yes. He came in late noon-

time apparently.

Q. Did anyone come with him? A. No.

Q. He was all alone? A. He was all alone, he came there all alone.

Q. This is the paper I have shown you that you prepared at that time? A. Yes, I looked it over just now.

On page 56, Mr. Hope testified:

"Mr. Dolan then signed the will and I read that attestation clause again to him and asked him whether that was his will and whether he wanted the other witness and myself, Miss Tilton, to sign as witnesses. He said he did.

Q. And then you and Miss Tilton subscribed as witnesses.

A. We did.

Q. After he had signed it? A. We did. There in his presence. We both signed in his presence.

On page 58, he says:

Q. He specified in the will it was to go to Sarah Ellen Maloney who lived with him? A. Yes.

Q. Did he say who lived with me? A. Yes, he told me that. I never was acquainted with the family, any of them.

Q. You were never acquainted with them, it was only that he told you she lived with him and you put it in the will that way? A. That is what he said.

Q. You said he told you to leave it to some children of his sister's? A. I think sister Ellen he called it.

The other subscribing witness to the will, Blanche L. Tilton, testified: (page 61 and page 62).

Q. Whose signature is it? A. John Dolan's.

Q. How do you know it is his signature? A. I saw him sign it.

Q. Who are the other signatures below on the same page? A. Frederick W. Hope and myself.

Q. Where did you see Mr. Dolan sign that paper?

A. In Mr. Hope's office.

Q. And when? A. The date of the will.

Q. Who were present at the time he signed?

A. Mr. Hope, Mr. Dolan and myself.

Q. Who typewrote this paper? A. I did.

Q. What do you know about the execution of the paper, the details of it, after you had typewritten it?

A. I brought it back into the inner office and Mr. Hope read the will with the attestation clause and then asked Mr. Dolan to sign, which he did. He said at the time, "It was just the way I want it," and then Mr. Hope asked if he wanted us to sign as witnesses and he said, "yes."

Q. And then you and Mr. Hope signed? A. We signed as witnesses.

Q. Were you all present at the same time? A. Yes sir.

Q. Where? A. In Mr. Hope's inner office.

Q. Did Mr. Dolan ask you to sign this as a witness to his will? A. He did.

By the Court: Did you hear him ask Mr. Hope to sign it?

The Witness: I did.

"There must be some declaration by the testator that it is his will, and the communication by him to the witnesses that he desires them to attest it as such. But this need not be by word: Any act or sign by which the communication can be made is enough." *Mundy v. Mundy*, 15 N. J. Eq., page 290.

"The statute requires that the will should be published in the presence of the witnesses, either wholly by the testator, or by the scrivener, or other agent asking questions, and the testator expressing his assent in words or by signs, which plainly indicate his understanding of and acquiescence in such publication."
Compton v. Mitton, 12 N. J. L., page 70.

"If one witness testifies expressly to the fulfillment of every ceremony required by the statute, it will be sufficient."
Compton v. Mitton, *ibid.*

"The witnesses must attest the will at the request of the testator, but it is not necessary that the testator should openly make the request. His acquiescence when the witnesses are called in by another for that purpose is sufficient."

Whitenack v. Stryker, 2 N. J. Eq., page 9.
Combs v. Jolly, 3 N. J. Eq., page 625, 628.
Mundy v. Mundy, 15 N. J. Eq., page 290.

"If the attestation clause is perfect and shows on its face that all the forms required by the statute have been complied with and the subscribing witnesses, when called, admit their signatures, but through defect of memory or for any other reason, fail to testify to the due execution of the will, it may be established on the presumption arising from the form of the attesting clause, unless there be affirmative evidence given to disprove its statements."

Allaire v. Allaire, 37 N. J. L. page 312, affirmed
39 N. J. L., page 113.

Time limited for filing brief being short and not having received the brief of the appellants prevents any direct reply to particular statements of counsel.

It is respectfully submitted that the decree of the Prerogative Court affirming the probate of the will be affirmed with costs and the present appeal dismissed.

JOHN W. SLOCUM,
Counsel for Respondents.

Monmouth County Orphans' Court

In re:

JOHN DOLAN'S Will.

BRIEF FOR APPELLANTS.

The testator was a single man who for many years lived on a farm of about 97 acres at Everett, Holmdel, Monmouth County, New Jersey. This farm was originally his mother's, Bridget Dolan's, and he had also another farm, of about 43 acres, derived from her in Beacon Hill, Marlboro Township, Monmouth County, and a 12-acre piece at Everett, purchased by himself. The value of the 97 acres has been placed by the executrix at \$10,500, although it is in the testimony that the testator stated he had refused \$35,000 for it, and the 43-acre farm has been likewise appraised at \$250, which is so absurd on the face of it as to need no comment. I think it is entirely safe to say that the real estate is worth \$35,000, personal property, exclusive of cash, \$5,000, and cash about \$14,700, making the estate of a value of approximately \$55,000. He died on July 12, 1927, aged about 83 years (born in 1844), apparently of heart disease, being found dead in his bed.

He left him surviving nephews and nieces, descendants of deceased brothers and sisters, and no nearer relations. His mother predeceased him in 1911, aged 93 years.

Since the year 1886 Mary C. Maloney and Sarah Ellen Maloney, children of his deceased sister Ellen, had made their home with him, and a few years later a nephew, Michael Maloney

(Michael Francis), and Margaret Maloney, a niece, brother and sister to the former, came and made their home with him likewise. They continued thus during their childhood. Michael left him or was put out by him after a dispute or quarrel when he was 14 years old, about 1897, and thereafter lived elsewhere; Margaret was married to John Harrington in 1906 and lived after that at Morganville. Mary was married to Gerald Wiggins in 1916 and from then lived either in Paterson or Morganville, where she lived at the time of his death, and Ella Maloney (Sarah Ellen) remained unmarried and continued to make her home with testator up to the time of his death. Mary Maloney taught school in various places, finally in Paterson from up to her marriage in 1916, and Ella Maloney has taught school in Newark from about 1905 down to the present time.

The other surviving nephews and nieces are: Charles E. Fitzgerald of St. Paul, Minnesota; Bernard Fitzgerald of Fort Worth, Texas; Mary O'Hara of Jamesville, Wisconsin; Alice McMillan of Minneapolis, Minnesota, and Julia Gibbons of Chicago, children of his deceased sister Mary; Margaret Tansey, Annie A. Tansey, Ella Tansey, Sarah E. Tansey, Delia Tansey, Catharine Tansey, Michael J. Tansey and William A. Tansey of Keyport and Newark, children of his deceased sister Anne; James H. Griffin and Bernard Griffin of New York and Margaret Griffin of Newark, children of his deceased sister Margaret, and William B. Dolan and Henry R. Dolan of Newark and Michael Dolan and Charles E. Dolan of Matawan, and Anna Wenzel of Freneau, children of his deceased brother Michael. Former Judge Patrick J. Dolan of the Essex County Juvenile Court, who died in 1924, was also a nephew.

While the Maloneys were children and when his mother, Bridget Dolan, was in charge of the household before the close of the last century, all the nephews and nieces and various relations were frequent and welcome visitors to the homestead, but with the passing of the years the infirmities of age forced her to give up her headship of the household and the sway of family affairs was claimed and exercised by Mary Maloney in general and Ella Maloney in particular. That this sway was actual and powerful can be easily realized when we consider the unmarried testator, ailing in health himself, with the sick, aged and feeble mother to care for, besides the natural affection which he undoubtedly held for the orphaned children to whom he had given a home and parental care.

They made use of their assumed authority to change family relations somewhat; where, before, all the nephews and nieces had been welcome, now it was made plain that their comings would not be encouraged nor their stay made comfortable; if they came to see their grandma or their uncle, their reasons for coming were said to be for their money; they were fought with and scolded, even cursed, as "the damned Tanseys," "Mike Dolan is drunk; he's in the kitchen hugging the wench"; "What right has he here; tell him to get out and go home," and this although such visits were being made on the testator's invitation and to care for him and his mother and the livestock during his and her severe illness.

To every branch of the family was this maltreatment accorded, and in Grandma Dolan's case culminated in Mary Maloney brutally striking and knocking her down and taking from her a dollar which she had in a purse about her neck.

The testator submitted to this because, as he said on more than one occasion, anything for peace. Mary shook her fist in his face and dared him to open his mouth, either to say he had sent Uncle Mike for the groceries, or that he paid his own bills, and on another occasion she dared him to say the property was his and he would do as he pleased with it. Ella Maloney while not so vociferous, nevertheless fell in with the general policy and partook of the benefits of the plan. She refused to speak to Bernard Griffin's wife when they made a short visit there. She refused to speak to Charles Fitzgerald, who visited the testator for a week in 1922; she said, "Here are the damned Tanseys," when they came to see him in his illness, and when Mary laid down the edict that Ella was boss of the place, she acted accordingly. It may be said that nevertheless the nephews and nieces were not excluded, and could come on visits, yet there is something to the desire to be received with a welcome by the household when calling rather than in enmity and surly dislike.

Of course, the testator did not countenance such conduct, and endeavored to make excuse for it when called to his attention, and he was uniformly loving to and delighted in the presence of his kindred. He cried with joy at his birthday celebration June 24, 1927, which was the only time in over twenty years that the family in general had come together at his home by invitation to show him respect.

The testator was a sickly man; he was suffering from gall bladder trouble and suffered periodical attacks from 1908 to about 1916, from one to three a year, when he was attended by Dr. Charles A. Palmer, then of Holmdel, later of

Keansburg, and in 1921 he had sciatica and lumbago. The gallstone attacks would come on very suddenly and the doctor was called several times in the night to give him hypodermic injections, which would quiet him and relieve his suffering, which would be very painful during those attacks, and he would be obliged to remain in the house for several days thereafter. During these attacks he would be confined to his home, and as he lived two miles from the doctor's house and had no telephone, it would be necessary to send a messenger either for the doctor or to one of the neighbors who had a telephone.

The grippe attack was in 1920, and the sciatica and lumbago attack was in 1921, but the gallstones had cleared up two or three years previous to 1921. One of the gallstone attacks had been so severe that Dr. Field was called in consultation as to whether an operation was advisable; that was about 1911. No operation was had, however, as the patient improved. If the attacks lasted long enough, according to the opinion of the doctor, they would weaken him, and he was given hypodermic injections and internal medicines to remedy the condition.

In 1908 the testator was about 65 years old and in 1921 his age was about 78, and the testimony of the medical man is that during all these years he was subject to the various attacks of gall bladder trouble and in the later period to lumbago, sciatica and a severe attack of grippe in 1920.

From the time that Mrs. Mary Toomey left his employ, December, 1916, until the time of his death he was without any help in his household and lived alone. When these attacks occurred he had no one to send for the doctor, no tele-

phone, and on one occasion, he was himself obliged to crawl on his hands and knees to the next farm, a quarter to a half mile away, in the middle of the night to get assistance.

The Maloney girls objected to the presence of a housekeeper and would not permit, after the withdrawal of Mrs. Toomey, any other person to be hired. They constantly fought with Mrs. Toomey, and if any person among the relations would come they would make it so unpleasant that the party would soon want to leave or be compelled to. They kept a constant supervision over him. Instead of giving him that companionship and home which he was entitled to expect, their whole desire was to keep him from meeting or associating with any of his other relations and from having any assistance in his household or any companions in his loneliness.

Miss Margaret Tansey went to see him one time with Dr. William A. Tansey and found him alone in the house in bed. He answered to a question, "Uncle Johnny, are you all alone?" "Me and the cat." She said, "You should have a dog," and he said, "The hunters took and killed my dog, so I haven't any." She said, "Uncle Johnny, you shouldn't be here all alone; why don't you get a housekeeper?" He said, "Oh, well, they wouldn't let me have a housekeeper; you know they wouldn't." She said, "Who are they?" He said, "The girls, Mary and Ella. Ella told me she would leave the minute I got a housekeeper, she would leave, bag and baggage, and I don't want to be fighting with them all the time; I like peace, but then I have good neighbors and they come across the field to me, and I have a neighbor next door (a quarter to a half mile away on the next farm) that comes in, and

they do for me." She said, "Ella is away all week; how do you manage?" and he said, "She cooks enough on Sunday night to last until she comes again, but Margaret Harrington comes up with a kettle of hot soup for me," he said; "that is the way I get along; I don't want to be fighting." The testator was in bed sick at this time.

Dr. William A. Tansey, a nephew of the testator, testified that in the summer of 1921, he visited the testator and found him in bed in the room off the kitchen, he was suffering from an acute attack of neuritis. Mrs. Mary Wiggins and her son were there, he was unable to get out of bed and had been suffering pain for six weeks. Dr. Tansey had heard of his illness from some member of his own family and drove from Newark to see him. Mrs. Wiggins said, "Hello Will, I was thinking about you," and Dr. Tansey said, "How long has Uncle Johnny been sick?" she said, "Six weeks," the doctor said, "You had a long time to think about me." He then examined the patient and found he had a very bad attack of neuritis on the back and right thigh and he treated him then and there and relieved him so that he was able to get out of bed and gradually improved. Mrs. Wiggins said that she was not there with him all the time, that she had her own work to take care of. Dr. Tansey said, "This man should not stay alone, he is a very sick man, how does he arrange for his meals?" Mrs. Wiggins said, "Ella (Maloney) comes home on Friday and cooks his meals to last him from Monday to Friday night." Dr. Tansey said, "That is no way for a sick man." Mrs. Wiggins said, "He is satisfied, that is all there is to it."

Two years later he got word from some outside source that the testator was sick again and he drove down to see him. The way the word

got to Dr. Tansey, Mary Wiggins called his office in Newark to locate her sister Ella, who was teaching school in Newark. She said that Uncle John was sick and she wanted Ella to come home. Mary Wiggins did not suggest that Dr. Tansey should go to see him, he went, however, to Everett and found him very sick, there were indications that he had hemorrhage of the brain, that he had a slight facial paralysis, his heart action was very bad and his general condition was very feeble, he had chronic miocarditis which is a dangerous form of heart disease, the patient needs constant care and attention. Examination showed high blood pressure very dangerous.

Mary Wiggins arrived afterward and Dr. Tansey remarked that he needed a nurse and Mary said as she came upstairs, "I called up my sister, Ella, and the whole damned Tansey family are here." He made further reference to a nurse being necessary and Mary said, "The boss will take care of that," and he said, "Who is the boss around here?" and she said, "My sister Ella is the boss around here, she will take care of that." So Dr. Tansey said he would "go down and see the boss." He thereupon spoke to Ella Maloney who told him that the nurse had been there but she knew Uncle Johnny would not have a nurse she did not go up to see Uncle Johnny, and the nurse did not go upstairs she turned round and left the house. Dr. Tansey said it was very necessary that a nurse should remain. He stayed about two hours and left some orders for him and some prescriptions to be made up, whether they were made up or not he did not know. At this time Charles E. Fitzgerald also was there, he having come from Avon, New Jersey, with Michael J. Tansey upon the informa-

tion of Uncle Johnny's illness. Mr. Fitzgerald stayed with his uncle about a week during all that time Ella Maloney did not speak to him.

Many years before this the testator had suffered a stroke of paralysis. In 1885 he fell unconscious at the end of his lane, and was carried into his house and was put to bed. Dr. Cook of Holmdel attended. This is testified to by W. B. Dolan, his nephew, and Anna A. Tansey, a niece, who were there at the time, they thought he was dying, and Dr. Cook said he had a stroke, and he was sick all that summer. It affected his left side so that he was twisted and his head bent over, it affected his left eye also, he was in that condition until the day of his death. Before the death of his mother his brother, Michael Dolan (Uncle Mike), took care of him and her during one winter as well as looking after the cattle and horses. He was subject to illness all through the period from 1900 until the time of his death and was entitled to and should have received the most loving care possible as he was in every respect a most worthy man.

It is a very painful task for me now to review these conditions, but during his lifetime he preserved silence upon them as much as possible as he would say "to have peace" and he suffered many things for peace which it is now heart rending in the extreme to remember. If the Court can picture the condition of a man of his age, subject to the illnesses which have been detailed, liable to be seized at any time in the night without any means of calling for help he can in some measure prepare himself for the further punishment of helplessness, namely, the cooking of sufficient food on Friday to last him until the following week when the young lady,

who was closest in his confidence, could return from her employment in a distant city to meet the tired, worn old man and perhaps cook another week's supply before her departure. The ready answer to this was housekeeper, servant, assistant overseer or what not. Those things were suggested and were met by the statements from the young lady that if a housekeeper was brought in or a servant, she would immediately pack her trunk and leave for good and all. I suppose that an independent man of some strength and determination would have told her to go that he would get someone to take care of his own interests, but the testator was not a strong or independent man. At his time of life he was looking for peace and not warfare, and he submitted, as many old people do, to injustice and cruelty for the sake of quietness.

A case in point is *Sickle's Will*, 63 Eq. 233, affirmed 64 Eq. 791, for reasons given in the Prerogative Court. In that case it was held that where a son and wife who lived with the testator, a widower, 80 years old and bed-ridden with paralysis, threatened to leave him unless certain provisions were made in a will such threats were held to be undue influence invalidating the will the Court said:

“It is true that there is no direct testimony that any such threats of removal were made at the time the will was executed, but undue influence can seldom be proved by direct testimony and such influences are usually covert and can only be proved by circumstances. The question, is whether the proof of the conduct of Fred at other times during his father's sickness is sufficient to raise the inference that such conduct induced the execution of this will; for if this will was executed because Fred had threatened that unless it was made he would

leave, I cannot conceive of a more glaring instance of undue influence. The testator shattered in mind and body, lying helpless, his other children scattered in their own homes and he depending upon the care of these two was at their mercy. To him, the idea of being deserted by them was the last disaster, to avert which he would be likely to make any concession; and a will made for the purpose of preventing it would be manifestly fraudulent.

“But while the existence of undue influence at the time of the intended revocation of the will may be insufficient to defeat the probate of the instrument, it may tend strongly to the conclusion that the same influence which prevented its revocation induced its execution. The opportunity for the exercise of this influence at both periods was exactly the same, and was at both periods practically unlimited. While it was natural that Fred should attend to the business of the testator, it exhibits the scope of his opportunity when it is observed that Fred saw Mr. Johnson about drawing the will, was present at its execution, and it was executed without the knowledge of the other children, and its existence was accidentally discovered by them by reason of a remark of the testator. * * * If it be true, therefore, that Fred, during his father’s sickness, at the time or previous to the execution of this will, had for the purpose of inducing his father to make it, intimated that otherwise he would leave, such an act coupled with the considerations already mentioned, the provisions of the will itself, the condition of the father, present a case of undue influence.” * * * It is quite natural that the testator surrounded by the vigilance of Fred’s family, upon whom he depended for care and nursing, should have desired to please them and secure peace and quiet in his last days. It is not unnatural that he should praise them and reiterate his content with the provisions of the will he

had made. Taking the testimony altogether, I am of the opinion that the will was made because of the undue pressure exerted upon him by Fred, and that it was not the voluntary act of the testator, induced by gratitude and affection for Fred and his wife's family.

"It should not be admitted to probate."

There is no testimony of course that threats were made to leave if a will were not made in favor of the Maloney nieces, but the atmosphere created by the threats was that the testator was willing to do anything for peace. They had in mind some result from the studied mistreatment of the other relatives; and this mistreatment has been held in similar circumstances to show undue influence.

In re Morrissey, 111 Atl. 26, the testatrix was held competent to make a will but on the question of undue influence the Court said:

"There is no direct evidence of undue influence. After the Flemmings were installed, they took complete charge of Mrs. Morrissey's household, her person and her property. Blind in one eye and nearly sightless in the other, hard of hearing and enfeebled by age and sickness, she was unable to give her estate the attention it required, and they managed it for her; and so with the household. Personally, Mrs. Morrissey was ever under the watchful eye and constant supervision of Mrs. Flemming, comprehensively speaking the Flemmings were in control, not of their own choosing perhaps, but because of the exigency; and agreeably so to Mrs. Morrissey, who was happy and contented and appreciative. * * * It was Mr. Flemming who called in Dr. Prout to make the first examination of Mrs. Morrissey, but whether he did it of his own initiative or at the direction of Mr. McAdams (the lawyer) is not clear. Mr. Flemming also selected Mr. Corby as one of the witnesses to

the will. Whether the requests of Mrs. Morrissey to Mr. McAdams for a will in favor of the O'Briens were spontaneous or unlawfully procured is conjectural. There was abundance of opportunity and a susceptible and pliant and fruitful subject for exploitation, but that advantage was taken rests in surmise. Mrs. Morrissey had not been on friendly terms with Mrs. Flemming and her mother for many years not since the separation in 1915. Leonard and Frank O'Brien visited their grand aunt occasionally, about once a year and for them she had little concern, it is said. Why this abrupt face-about in sentiment and the selection of her custodians as the object of her bounty to the exclusion of those nearer in kinship, and for whom she had affection? It may have been that the re-union awakened a slumbering love she once bore the O'Brien children (children of a deceased nephew) when they were members of her household, but this is mere speculation.

“Then again the nephews and nieces—the contestants—always had free access to their aunt and they were welcome. After the Flemmings became interested, though they were not exactly excluded from intercourse, private interview was not admitted, and it would appear that Mrs. Flemming was at pains to make their visits uncomfortable and their return unlikely. She also failed to notify them of Mrs. Morrissey's death and burial. While the history of the case does not warrant a finding of actual imposition the confidential relation of Mrs. Flemming to the testatrix and the circumstances that have been related and the denial of (knowledge of what became of \$3,000.00 which had been in Mrs. Morrissey's possession) raise the presumption that undue influence had been exerted by her, which unless countervailed by satisfactory evidence controls as a conclusion of fact. The presumption may be overcome by the denial of those implicated but to have that weight

the testimony must be impeccable and convincing. Mrs. Flemming denied the legal imputation but her testimony does not measure up to the required standard, because of (her denial of knowledge of what became of the \$3,000 mentioned). Her disingenuous disavowal of knowledge concerning the disappearance of the money impeaches her testimony as a whole, and renders her denial of unlawful complicity in the making of the will untrustworthy and undependable. The burden cast upon the proponents of neutralizing the presumption of undue influence by believable evidence has not been met and probate must therefore be denied.

A confidential relation or dominant position to or over a testator by a beneficiary under a will coupled with the fact that the beneficiary made an effort to exclude the natural objects of testator's bounty from his society or to conceal the making of the will, or to conceal the fact that the will had been made raises the presumption of undue influence, and the burden is cast upon the beneficiary to rebut it."

Ib. also *Spark's case*, 63 Eq. 242-247;

Wheeler v. Whipple, 17 Stew. Eq. 141.

So if the will is one which the testator could not make consistently with the claims of duty or affection.

Spark's case, supra.

In the *Spark's case*, there was no testimony that the beneficiary directly or indirectly used his influence to embitter the testator against his children or grandchildren, nor that he used his influence to prevent the children from visiting their father, or to exclude them from personal interviews with him. Indeed the children say the beneficiary advised them to visit their father, the testator.

In re Brengel's Will, 85 Eq. 487, affd. 85 Eq. 599, it appeared that the household of the testatrix for over twenty-five years consisted of the testatrix, her son Andrew and her daughters Elizabeth and Mary; Jacob, Adam and Annie were married and lived away from the home of the testatrix. The evidence showed that Mary and Andrew desired that Annie and Jacob should not visit their mother, and when they did call either Andrew or Mary stayed in the room; thus neither could talk privately with her. There was also evidence that the mother had a natural affection for all her children. When she met the caveators in the street alone she was very pleasant, but when the proponents Andrew and Mary were present she was rather distant and anxious to have the caveators depart.

This was such conduct as raised the presumption of undue influence, throwing the burden upon the beneficiaries to show there was no such influence. Following *Fritz v. Turner*, 46 Eq. 516; reversed and remanded for full cross examination of proponent and further testimony on the whole case with privilege of examination and cross examination, 49 Eq. 343.

In the case of *Fritz v. Turner* it was said that undue influence was such as so far to destroy the free agency of testator as to constrain him to that which is against his will, or that which he would not have done if left to himself. It must be some species of *moral* or physical coercion, which under the conditions in which he was placed he was unable to resist—no matter from what source it comes, or in what character it appears, whether in the shape of physical force, threats, importunity, or other species of domination. It need not be proved directly. It may be

established by inference from circumstances attending the preparation and execution of the will, such as that the testator was in an enfeebled condition of mind; that he was under the dominating influence of the favored legatees; that such legatees prepared the will and superintended its execution, and about the time of the execution excluded natural objects of the testator's bounty from his society and kept secret the fact of the existence of the instrument from those who would naturally be interested in it, and the like. Combinations of such indicia of undue influence may throw upon those who offer the will for probate the burden of showing that it was the spontaneous act of the testator.

It may appear that their occurrence was both natural and harmless. Each case must depend upon and be judged by its own surroundings.

It was said that in the *Fritz v. Turner* case there was no evidence that the testator was in fear of or otherwise controlled by the favored beneficiary.

The case sustaining the will was, nevertheless, reversed and sent back for further hearing.

In the *Brengel* case it was said:

Where one possessed of a large estate disposes of it by will favoring children forming part of his household to the exclusion of other children equally the objects of his bounty, without any reason appearing for such discrimination, and his condition is such that he is susceptible of coercion, and is under the influence of the favored children, the inference of undue influence is much stronger than in a case where at the time of making the will the estate is so meagre as to hardly warrant a division. The value of the estate in question at the time of making the will was only \$100.00.

The Dolan estate consisted of about 150 acres of land, about \$15,000 in cash and other personal property certainly altogether of the value of \$50,000.

In the Brengel case it was further determined that the testatrix, 70 years of age, and of condition of health shown and power of resistance under coercion, was so situated as to yield to the pressure of proponents if exerted.

In re Benson's Will, 92 Eq. 618-622, affd. 93 Eq. 671, where the beneficiary was a daughter, who lived with the testator from 1911 and kept his household until his death in 1920, and was of a dominant disposition and strong personality. In this situation, with this strong woman in the prime of life living with this old gentleman from 73 to 77 years of age, in complete contact, freed from the influence of the other children, the presumption of undue influence arises and casts the burden upon the proponent to prove the negative.

In that case it was held that the evidence that the beneficiary was trying to poison the mind of the testator against his other children, so that he would disinherit them was pertinent but not convincing, since the testator had some cause to be displeased with his other children, and was a man of strong will and dominant disposition himself.

Said Ella Maloney, beneficiary, testifies that she went to live with testator in May, 1888, and lived with him until his death, July 12, 1927. Mary was there before her and she and Michael went there together. Margaret came a few years later. Mrs. Wiggins stayed until her marriage in 1916, and after that remained with him several months when he was alone. Margaret left

in 1904, before she was married, and thereafter occasionally visited him. Ella after 1907 visited him about once a month from Friday till Sunday or Monday, depending on circumstances. Testator was 81 in 1927; born June 24, 1846. He said the year before that that he was 80. She invited the nephews and nieces that time; he was a little hard of hearing; she first noticed it at the time of his illness Decoration Day, 1922; she had to get up very close and speak very loud to make him hear. This was after Dr. Erwin had syringed his ears; his hearing seemed to vary with his condition of health.

Would not say that she or Mrs. Harrington or Mrs. Wiggins had really quarrels with testator; Mrs. Wiggins never in her presence threatened or shook her fist at testator.

March 23, 1928, Mrs. Wiggins had been in Post Graduate Hospital two weeks, suffering from an undisclosed complaint.

Must have gone there the first week of March.

Mrs. Harrington phoned Dr. Erwin to send a nurse; he couldn't think of one just then; later in evening he called up and asked her to meet her at Morganville station in the morning. Mrs. Harrington brought her to testator's house. Sarah Ella did not object but Mr. Dolan did object.

Told her he had given Michael a horse. He sometimes talked over his business with her. She usually knew of his buying and selling without being told, and if he made an important sale he told her. She had access to his book; she could see it any time she wanted to. She knew in a general way all his business matters in connection with the farm; he probably consulted

with her in all important matters; thinks he always discussed business matters with her. She understood pretty thoroughly all that was going on about the farm.

She knew when he made the will, December 21, 1920, when the will was made, was on Tuesday, and she came home for Christmas vacation on Friday. She knew he had made a will before she went to bed that night. He told her; he showed her the will and she read it, thinks he put it where he kept his important papers. The next time she saw it was about two weeks after his death. In the meantime she knew it was kept in the box where he kept his important papers; that box was in his room at home. The box was locked and the key was in his possession, and she looked for it till she found it, and unlocked the box and took out the will; she knew all these years that he had a will. She told her sister Mary (Mrs. Wiggins) very soon after he made the will; it was at testator's home that she told her; he was at home but not present. She told her the substance of the will, and she was dissatisfied and showed it by her manner as well as what she said. She said in substance that she thought she should get as much as Sarah Ella got.

To the party in 1926 she only invited her cousin, Margaret Griffin, and Michael and his family.

The party in 1927 was the first time she invited the nephews and nieces generally.

From 1916 until testator died when she went away no one was there with him except sometimes her sister. He prepared his own meals largely; she usually left things that would save a day or two, puddings and things of that kind,

which would give him a change of food from the kind prepared by himself. Her sister would bring him soup or ice cream or oysters and he would be there alone at night. What meals she didn't get him he would have to get for himself. That continued up to 1925, when he left the farm. For about seven years from 1918, sometimes Mrs. Wiggins was there a month at a time. Very often he would be entirely alone, and it was on one of these occasions that he got the sudden attack in the night.

She told about the will to some disinterested people besides Mary Wiggins, who said, "Well, for all you have sacrificed for your uncle"—it was before his death.

She never at the funeral nor afterwards mentioned to his other relatives that he had a will until after it was probated. Nobody asked her about it; did not think it was necessary to mention it. Thinks she told her sister Margaret about it; she said somebody had made a good many wills, and he said, "Well, I have made two." She knew he had made two wills. The first one was destroyed after the second one was made; and that was the occasion of Mrs. Wiggins' dissatisfaction; the second will was not as good to her as the first will. They both knew of the former will drawn in 1911 by Edmund Wilson. He told her that he had the will; she knew its provisions either by reading it herself or his reading it to her. Said he never discussed with her making a new will; she did not know he was going to. She was present when he destroyed the first will, which was done in one of the rear rooms in the Second National Bank, Red Bank; thinks she drove him down in her auto; thinks she mostly took him, since she had

a car, rather than drive the horse. Since 1915 she preferred to be with him. It was much quicker for him. He had to get around alone when she was not there. He wanted her to look over his things and see if there was anything of hers in his safe deposit box; he wanted her to take them out, as he did not have room for himself. Her things were in the box; then he found the will. He took it out, saying, "There is no further use for this," and tore it up and threw it in the wastebasket.

Never spoke to Dr. Palmer about her uncle making provision for her; is morally certain Mary did not. Doesn't know that she did.

First met Mr. Hope when she went to have the will probated. Never met him before then. Never discussed with testator the making of a will. She and Dr. Palmer were both in Keyport school together.

He told Michael in 1925 at Harringtons' he had made a will; that was the night before the sale.

It will be seen from this testimony that Sarah Ella Maloney and Mary Wiggins, and perhaps to a less extent Margaret Harrington and Michael Maloney, had full information as to the will and its contents, as soon as it was made, and that instead of being placed in his safe deposit box, where his first will was, this was left in his box in his room, readily accessible to them or either of them. They were very much interested. Mary Wiggins was angry when she learned of its provisions and said she should have had as much as Sara Ella, to whom the farm was given; she had previously battled over the first will, according to Mrs. Toomey's testimony, saying, "she should have the lion's share." Dr. Palmer as

early as 1915 brought up the subject about the two Maloney girls having been good to him, and he (testator) said:

“They seem to be the only ones that had much interest in him, and that he would take care of them for their services; and that he had to look after them; that he was going to look after them.”

This is significant, because although it leaves out Margaret Harrington and Michael Maloney as having been good to him, yet he remembered them in his will. It is moreover indicative of a movement even at that time to urge on testator through close friends of the Maloney girls, their claims to his estate. Dr. Palmer was a school friend of the two Maloney girls, and says he supposed they were the only nieces he had.

The conversation further shows that testator was expressing the very opinion which the Maloney girls had sought to imbue him with, namely: “They seem to be the only ones that had much interest in him.” Would not this account for their efforts to prevent his other nephews and nieces from coming in close contact with him during the years when he was most dependent, namely from 1916 until 1927, when he died?

Again, one of their friends, Mrs. Margaret Rider, who tells of a severe attack of his illness when he came to her house at 4 o'clock one morning, saying, “Mrs. Rider, this is John Dolan; I am sick.” He was in pain and she gave him some soda and water and her husband took him back home in his car. He had a small slip of paper in his hand with a telephone number and he said, “I want you to get Dr. Palmer, Father O'Donnell and my niece at this number,” he said Mrs. Harrington. After telephoning, she asked him if there were any legal affairs he wished to

have attended to. He said he had it all attended to. He said, "I have left those I wanted to have it share and share alike," and he says, "The doctors and lawyers have enough." She was a perfect stranger she said to Mr. Dolan. He thought he was going to die.

He was sick about 8 days and was attended by Dr. Erwin and she approached him on the subject of a will, it was in 1922. She hadn't done this before with anyone else.

He was glad to see Ella return on Friday nights, would kiss her and show great fondness for her: Mrs. Rider was there not for the lawyers and doctors but to see that the Maloney girls were provided for if possible.

Now as bearing on the real conduct of the Maloney girls to testator the evidence of Charles E. Fitzgerald (by deposition) is important: He says that his mother a daughter of Bridget Dolan and a sister of John Dolan was sent for by them to care for himself and his mother, both being ill at the time. Mary Maloney and Ella Maloney objected to her being there, and made it so disagreeable for her, snubbing her, ignoring her, refusing to eat at the same table with her, that she could not remain. When Mr. Fitzgerald himself visited testator in his grandmother's lifetime, he found the two Maloney girls very disagreeable to and quarrelsome with her, and bossing her, also the same with John Dolan. He asked John Dolan why he permitted such conduct from those girls to him and his mother as he was supposed to be boss of the house and the head there, and he said, "Charlie I cannot help or correct this treatment because I am trying to keep peace here in the house by reason of our old age and my mother's infirmity. I try to get

along the best I can with them, which if I do concede to their demands, makes it more easy for me to keep peace in the house." He said further that he could not bring in outsiders into the house to care for him for the reason that Mary and Ella would drive them out in a very short time, that he would have to put up with it as long as they stayed and remained in the house. In 1922, when he was taken ill in the nighttime, and Fitzgerald visited him, he told him that he was taken sick at 2 or 3 o'clock in the morning; that by a great effort he crawled out of bed, then out of his house and crawled on his hands and knees to a neighbor's house (Rider's) a distance of about half a mile; that he thought he would die before he reached the house. He was all alone in his house no one to give him any assistance. The neighbor took him home and relieved him some until the doctor and priest came. He said it was pretty tough to be left alone in the house at his advanced age and feeble condition with nobody to assist him. He had, he said raised the Maloneys from their infancy, clothed them and given them an education so they might go out into the world and be able to do for themselves, they all practically left him all alone, and that he had been left alone several years before this time.

While statements by testator are not evidential of the happening of the fact stated in relation to the conduct of the beneficiaries yet such statements are evidential of his mental attitude producing the action complained of. His mental attitude was the desire for peace.

Rusling v. Rusling, 36 Eq. 603-608;

Middleditch v. Williams, 45 Eq. 726-736;

In re Anastasia Davis, 73 Eq. 617-620.

The caveators do not depend on statements of the testator regarding the conduct of the beneficiaries complained of. There is ample evidence from outside sources as to this. But his statements are admissible to show his mental reaction to such conduct.

In re Anastasia Davis.

He did not want Michael Maloney on the farm because he was very disagreeable and would not do as he wanted him. Michael says they were both high tempered and he left because of a dispute.

His desire for peace is shown in his letters to Fitzgerald, Ex. 1 and Ex. 2.

“I am an old man 78 years old, I live all alone, Ella comes home Friday nights. I am better alone, I have no *one to fight with.*”

In that condition of mind, it is not strange that he should make a will which left out all his nieces and nephews except the four Maloneys and included in them the one whom he had previously parted with in anger, because he knew he could have no peace at home if he did otherwise.

It may be said that he had the will prepared and executed in their absence, but almost as soon as executed, it was shown to Ella by him, and a little later she either produced it to or explained its contents to Mary, who did not hesitate to show her dissatisfaction because she did not get as much as Ella received, to whom the 97-acre farm was given besides an equal share of the residue. They treated the will as if it were already in effect; they had full access to it and discussed it with persons not in the family (disinterested). It was kept in his box in his room to which Ella had the key, or knew where it could

be found. It was not kept in his safe deposit box like the first will, which he destroyed in Ella's presence a few days after she saw the will in question, Ella treated the farm as hers according to Michael's testimony, even paying the taxes and the like and being referred to as the boss of it. Now, having the will all safe, the nephews and nieces were invited to his birthday celebration, June 24, 1927, about 18 days before he died in his bed, alone.

For the first time in twenty years the relations were invited by the Maloneys to rejoice with him on his anniversary, and they all attended and he was so glad to see them that he wept his thorough joy in their presence. Why were they not invited the year before when a celebration was held, and the year before that and other years? The answer is plain, they were not wanted, while there was a chance of his being moved to show his undoubted affection for his other kin in his will, but now he being so near death and the will under their control, they felt safe to make the concession to decency that they had rejected for more than twenty years before.

Ella Maloney and Mary Wiggins concealed from the nephews and nieces outside their family all information about the will. When testator lay dead, they never mentioned that there was a will; after the funeral, they remained silent about it although all his nephews and nieces attended except those in Western states, and the first intimation they received of the existence of a will was the newspaper notice that it had been probated at Freehold. Why this concealment during his life and particularly why conceal the fact of the will, after his death? They apparently thought that after probate, the will would be safe from any possible contest. Whatever their

reasons may have been, it brings the matter within that condition where besides the confidential relation shown in this case, the beneficiaries have made efforts to exclude the natural objects of testator's bounty from his society, or to conceal the making of a will or the instrument itself after it has been made.

Wheeler v. Whipple, 17 Stew. 141-145;

Sparks case, 63 Eq. 242-247;

In re Morrissey, 111 Atl. Rep. 26.

Now if the testator had kept his will or its contents concealed from Ella Maloney and Mary Maloney Wiggins, if for instance it had remained in his deposit box in the bank until after his death, and had then been produced, perhaps there could have been no inference drawn against them in regard to having procured it to be made; but if he had concealed it, and they were uncertain of its contents doubtless he would have had no peace from any of them, whereas with Ella satisfied with its provisions he was reasonably sure of some care such as it was, and was not obliged to battle constantly with all for peace.

Now what made him change his former will, to make provision for Ella which gave her the farm besides an equal share of the residue and with which provision Mary was displeased? Was Ella urging on his consideration her alleged sacrifices for him as she testified disinterested persons mentioned? Did she in fact procure the will to be made? Did she cause the destruction of the other will? Since 1915 she had taken him about in her car for reasons of care and speed. He makes two trips to Red Bank alone in Christmas week 1920, which are timed so as to have everything finished when she reached home on Friday. He went to a lawyer who had never done any business for him before instead of his

regular lawyer, Mr. Edmund Wilson. He does everything apparently without her say-so or knowledge, but she knows about the will and its contents before she goes to bed on Friday night; the most important bit of information, which could not be put off until the next day—no casualness about this; it was something he had to report on and inform her about at once. Mary knew about it almost immediately thereafter. She did not rest on the case however until the other will was destroyed, and this was done in her presence, and the later will instead of being in his safe deposit box was left in easy reach in his box at home; later he was to say "I have made my will and I will not change it." There does not seem to have been any occasion for this remark, unless it was a lesson he had learned by heart and repeated it mechanically, "I have made my will and I am not going to change it."

The first statement in answer to Michael's question as to what he was going to do with the farm when the stock was sold was, "You will have to deal with your sister hereafter about the farm."

Michael said, "Has she the deed?" and then came the above remark about the will.

Of course Mr. Dolan could have gone to his regular lawyer to draw this will, but some inference might arise from that that it was arranged by Miss Maloney; it was better for the project that he go to an entirely strange lawyer who could not be thought in anyway to favor the Maloney heirs; he should go alone and in her absence from home, and should have the whole transaction completed on her return.

Her innocence however is contradicted by the facts: The will was changed to favor her more

than the others, she knew of it and its provisions immediately; it was kept within her easy reach, she had it under her virtual control and acted upon its provisions, to the extent of bossing the farm, paying the taxes and the like. This makes it very unlikely that she did not know that it was to be made and arranged all the details except taking testator to the lawyer's office.

How otherwise did he remember the names of the beneficiaries; he told the lawyer, according to the testimony, the names which appear in the will Sarah Ellen Maloney, Marie C. Wiggins, Michael Francis Maloney and Margaret Maloney Harrington. He had never called them thus, and it is quite clear that though he might have said Ella Maloney, Michael Maloney, Mary Wiggins, or Margaret Harrington he would not of himself put on the other names. He must have been coached by Ella or one of them before he went to the lawyer's office. This of course bears upon her statement that she had no knowledge of his intention to make a will.

Now as to the actual making of the will, Mr. Dolan was very deaf and Mr. Hope testifies that he only talked to him in an ordinary tone of voice.

Mr. McClees says, p. 156, that he was deaf the last ten years of his life; McClees had naturally a loud voice and had to raise it to make him hear.

Mr. McMahon said he visited the Second National Bank two or three times a year, his account was inactive. He opened a savings account in 1915. He had a savings and a checking account in 1916 and 1917, transferred his savings account from Emigrants Savings Bank and the

Greenwich Bank their two accounts in the names of Bridget Dolan or son John.

Mr. Patrick Devlin says he was deaf the last 8 or 10 years of his life; it was more difficult to converse with him; you had to raise your voice higher; he would not hear his voice in ordinary conversation. There was something peculiar in his carriage, he seemed to lean to one side.

A young man who worked for Mr. Dolan tried to cash a check given by Mr. Devlin to Mr. Dolan for hay, but Mr. Devlin stopped him in time.

Attended church up to the last few weeks before his death.

Saw him 5-6 months before he died; he was then an invalid.

Mrs. Margaret Rider says in 1922, he was hard of hearing, not of such extreme deafness he could not understand you, you had to talk just a little louder.

Said he made a man of Michael Maloney, that he was a boy who was foolish, and he made a man of him by his advice.

Why at different times he had those attacks, and she went over there with him, she being a nurse, he cared more to have somebody like her with him than Miss Maloney. Those attacks would come on him by day or by night; they may have been once or twice when Miss Maloney was away.

He was attacked the same way in September, 1924. I was in the habit of going in there to see Mr. Dolan to see how his condition was, and I went in there and if it was not that I knew his way of telling it I would not have known he was

sick, so that is how she found out he did not feel very well; she called Mrs. Harrington and told her he was not well and they had better come down. He said he was well, but I did not feel satisfied. There was nobody with him that time but her.

In 1922, when she first attended him, he told her he thought he was going to die. She thought he should settle his affairs then and make his will.

George Ogilvie sold him a mowing machine in 1920, for \$85.00, helped them unload it; sold him a hay carrier in 1924; paid by check for machine July 7, 1920. Did not notice any difficulty about his hearing. Always seemed to have one shoulder a bit higher than the other.

Never noticed anything about his hearing. John W. Hillyer.

Drove horse and buggy in 1920-1923. James B. Carton.

Last few years you had to speak a little louder than usual, but he could hear you all right. He was, I thought, just a little bit hard of hearing; that was the last few years, five or six; you had to speak quite loud, but he could hear all right.

BERNARD HICKEY:

The last two or three years noticed he was getting hard of hearing told him about giving horse to Michael but warned him not to mention it to anyone; that what the people did not know would not bother them; about 1920 told him of refusing the mortgage to Michael. It was about 1918, when he spoke about the horse.

MISS ELLA MALONEY:

He was rather hard of hearing, noticed it first at the time of his illness Decoration Day, 1922. Noticed I had to get up very close to him and speak very loudly to make him hear. Had been told that Dr. Ervin had syringed his ears and removed large quantities of hardened wax, and his hearing was much improved and it continued to improve as his health improved. But there were times when he was much harder of hearing than at other times. It seemed to be conditioned by the condition of his health; it varied.

Would not say they had quarrels, not really quarrels with him.

Mrs. Wiggins never threatened or shook her fist at Uncle John in her presence.

Dr. Millard Ervin, his doctor from 1921 to his death. He had bronchitis in 1922; he had also chronic miocarditis; he had a rupture; complained of being dizzy and was at times somewhat hard of hearing.

He had wax in his ears; first attendance, he syringed his ears and took out the wax, and improved his hearing quite some. As a result of his heart condition he had more or less stomach trouble which as it became worse would cause congestion of his throat and close off his ears and make him hard of hearing at that time.

At times he could hear talk in ordinary voice and at times he could not.

Attended him first on Decoration Day in 1921; it was in 1922. Said he didn't see that it was necessary to have a nurse, and that if the people that he was going to take care of couldn't take care of him that he would have to see about it.

For his age he was a very active man and a very determined man. He appeared to be a man past middle life 50 or 60.

He must have been active when they got him into the field and he fell down in a sunstroke; fainted out in the field the year before he went to Mrs. Harrington's (1924); doctor saw him the following day.

He had attacks of the same old trouble up to the time he died.

Doctor was called but he was dead when he got there.

He died of the miocarditis.

W. B. DOLAN:

Uncle was nearly 90, he was 80 years old in 1918. He was a very deaf man, and had been deaf for forty years. If you asked him one thing, he would answer something else. He was very sickly and in bad shape for 15 or 20 years before he died.

MRS. TOOMEY:

They objected to his going out because the man was very deaf.

Well, Mr. Dolan was getting ready to go to the fair at Red Bank and he was in a hurry to get out and he says to me "Put my dinner on the kitchen table and I will eat and go," so I did, and he sat my little boy which was small at the time, at the other end of the table and gave him a piece of the chicken, and the girls said they would not use it after that or eat it after that. Mary Maloney it was.

MARGARET TANSEY:

His hearing in 1923 was very poor. With great effort; when I spoke right in his face, it was difficult for him to hear me. He was very deaf and had been that way four or five years.

DR. W. A. TANSEY:

In 1922 his hearing was almost entirely gone. He could hear with a great deal of difficulty, if you spoke loudly directly into his ear; noticed this condition at least 10 years back. He was very hard of hearing.

A. A. TANSEY:

He was deaf so she, Mary Maloney, had to speak in a stage whisper, "They are after your money."

S. E. TANSEY:

He was very deaf toward the end of his days so that it was very hard for anyone to make him understand.

H. R. DOLAN:

Stayed with him winter of 1904. He was quite ill and was there alone and he was sent over by his father and stayed a good part of the winter until right after a bad snowstorm, when testator became very ill and Henry went home and got his father (Uncle Michael); he remained with testator the rest of the winter. He was a very sick man. He was always very glad to see Henry, very friendly and very solicitous.

The Maloneys had had some sort of a dispute with him, testator said, and they had walked out and left him all alone, and he said he was glad

they had gone. At different times he told him certain personal things; showed him the clothes-line once on which was a line of clothes, he said, "that is what they do for me, it is their own apparel, nothing of mine on that line." He meant Ella and Mary Maloney. He always called them Ella and Mary; he called Margaret Harrington "Maggie."

He said he would not make a will; heard him say it three or four times. He was always very friendly to Henry. He said he would not make a will; and they could fight over his property like they were fighting over the Kaiser's. He said, "You boys will be better off by my having saved and my having done this and that; these conversations continued off and on during his life. At the time he was with him in 1904, there was no one else there with testator but his aged mother. None of the Maloneys were there while he was there, about two months. Saw him after that four or five times a year until 1920, sometimes at his home in Everett and sometimes at witness' mother's home on Lloyd Road, Matawan; saw him at Harrington's after 1920. Told witness at his father's funeral November 11, 1918, that he would never make a will. He said the farm that my father worked on so hard and that he had labored on would some day go to all the heirs that had helped to build up that fortune and he said, "I have been—I have thought the matter over and I am not going to draw any wills." His statement about letting them fight over his property was made about 1916, in his father's home, testator and Uncle Michael were talking about certain properties they had owned in the past. Remembers he said he would not make a will and all the sisters and brothers would come in for the homestead.

The grandmother had had all the property for which they had jointly worked in her own name.

They had always remained friendly. His father remained with testator in winter of 1904 and 1905, after he left. The grandmother and testator were both sick, and his father took care of the sick and also the live stock and things.

W. B. DOLAN:

Testator, his godfather. They were always very friendly. He was sick at Harrington's in 1924. They were laying out Marlboro Gardens, near testator's Beacon Hill Farm. Testator said, "This property that I have in the rear of that will be all taken in by those people," and he says, "You will benefit by it but not me. I won't live to see it."

He said he would never make a will. He said as related by H. R. Dolan, they would fight over his estate like they did over the Kaiser's.

Uncle Michael was taking care of the sick and also 5 or 6 horses and 10—12 head of cattle.

The Maloneys always tried to keep them away from testator. They acted as though they did not want to see anybody there. The last time about 1912 when he went there the Maloneys were there and they would not let him in.

He went there on a Sunday, and he could see he wasn't wanted in. Other times he tried to get there when they were not at home. Testator asked him to come oftener, and offered to meet him at the station and bring him in. Witness said, "That won't do; I would like to be received by the people there. I see you four or five times a year at other places and that is sufficient." Testator was always glad to see him,

was at the birthday party in 1927. Testator was so glad to see him he cried. He took witness out to see his farm and orchards and witness told him he should not be walking around so much for a man of his age. He said, "Oh no, oh no, he was happy."

Did not know at that time a will had been made; knew nothing of it until after it was probated.

Called on Mr. Dolan many times between 1912 and his death. Generally called on him the first or second week after school started when he knew testator would be alone; then besides would see him frequently at church or funerals and different places.

Ella Maloney and Mary were the persons who refused to let witness see testator at his own home. They did not exactly tell him to get out, but he knew he was not wanted.

Testator never called Maloneys as they are named in the will.

Mr. Dolan was very sickly five or six years before he died. He had doctors all the time. He was much older than was said. He was nearer 90 than 81 at the time of the birthday party. His father died in 1918 at 83 years and was three years older than testator. (That would make him 80 in 1918 and 89 in 1927, instead of 81.) He was a very deaf man and had been deaf for 40 years.

If you asked him one thing he would answer something else. He was in bad physical condition for the past fifteen or twenty years. He was all alone the last time he called at the farm to see him. He wanted witness to come in and have something to eat with him. Witness de-

clined and offered to take him in his car to get something to eat, and he said, "No, I will go in and eat a little milk and bread." No one was there to get him his milk and bread. That was the year 1922.

Maloneys were all away.

Michael had left when he was about 14 years old after a dispute with testator. Testator told witness that Michael was going to lick him and he told Michael, "I have raised you big enough for you to think you can lick me; I have packed your clothes and left them outside the gate." This was about seven years before 1904 (1897).

Witness was never invited by Maloneys to come to testators home except on the occasion of the birthday party.

MARY TOOMEY:

Housekeeper for testator from 1909 to 1916, December.

Ella and Mary were school teachers in Newark and Paterson, Margaret Harrington was in Morganville and Michael was in New York.

Mr. Toomey did the farm work, she did the house work.

Mrs. Dolan was sick and died about 1911. John Dolan was sick several times while she was there.

He told her the first week she was there that his nieces were school teachers and that they were very domineering and not to take any notice of them, to go on and mind her own business, which she did. Saw samples of their domineering conduct at times. They had a heavy influence over testator all through her life there. They

just seemed to want to be alone with him all the time and did not want the rest of the family to come there; the rest of his relatives. When they were coming they would say, "Here they come again why don't they stay home; we don't want them here, this is our home." It referred particularly to the Tansey family. They said it about the Dolans, too. When they came, they would be polite.

Mary Maloney made the statement in her presence and Ella Maloney's that she should get the lion's share of testator's property. Mr. Dolan turned over to her his ten shares of the Freehold B. & L. Association. He paid off the mortgage, and the farm was free and clear when he died. Every time Mary Maloney came home they had a regular ring fight in the house. She would fight with him and make trouble over trifles. He was taking a basket of eggs to the store and she tried to stop him. He turned the basket upside down and broke them all.

Another time there was a dispute between them about a chicken. Mr. Dolan was going to Red Bank to the fair, and there was a chicken, cooked and he said, "Let me have my dinner first; I will eat my dinner and get away early." My boy Joe sat with him and he gave him a piece of the chicken. Some of the Tansey family were there the same day. The Maloney girls said they would not eat it or use it after that, because he gave a piece to the boy. Testator tried to keep peace and said nothing.

Mrs. Bridget Dolan had a dollar and Mary Maloney wanted to take it away from her, and she knocked her down on the floor and took it away from her.

They did not want testator to go out alone because he was very deaf; they quarreled constantly. This was before Mary was married.

MARGARET TANSEY:

They didn't seem to want Uncle Michael Dolan there.

John Dolan was sick in bed and his mother, Bridget Dolan, was sick on a couch in his room. Margaret Tansey heard they were sick and needed help and went there to be of assistance. Found Uncle Michael Dolan there. Testator sent him to the store for some groceries which was about two miles away. He was doing the outside work. There was a colored woman in the kitchen. The Maloney girls were not there until later in the day. Mary came home from school. When Uncle Mike came back with the groceries, she upbraided him for going. He said he was sent, Uncle John sent him, the woman needed groceries in the kitchen, Uncle John said, "Yes, I sent him." She walked over and shook her fist in Uncle John's face and said, "You have no business to send anybody to the store from here," and she ordered Uncle Mike home, and said, "Who sent for you?" (and he stood nonplussed looking at her, while she scolded away at a great rate for about half an hour, and she said everything to him, and he concluded he would go home, but I persuaded him to remain until next morning. Ella came home by some conveyance from Middletown. She had not heard about Uncle John being sick. Then Uncle Michael and witness were ready to go home. She was not needed as the Maloneys informed her they would stay until the sick people got well. Ella Maloney took her and Uncle Michael to Matawan where she got the trolley to

Keyport. Ella Maloney said she would not stand in front of the hotel (his brother-in-law's) and wait for him, and she drove on.

Mary said to John Dolan, "You must not run up bills at that store that we have to pay," and he said, "Mary, I pay my own bills, I don't need anybody to pay my bills," and she ran over to him and shook her fist in his face, although he was sick in bed, and she said, "Don't you dare open your mouth."

Uncle Mike went out to the kitchen to tell the colored woman he would take back the groceries and she said, "Why?" Mary ran out and engaged in an altercation with the colored woman who threatened to give her a thrashing. Mary said Uncle Mike was drunk and was "out there in the kitchen hugging the wench!"

Uncle Mike was not drunk and was not a drinking man.

This happened about 1909, two years before grandma died.

About 1923, Margaret Tansey and Dr. W. A. Tansey called on testator and found him alone in his house and sick in bed. She said, "Uncle Johnny, are you all alone?" and he said, "Me and the cat!" I said, "You should have a dog," and he said, "The hunters took and killed my dog, so I haven't any." I said, "Uncle Johnny, you shouldn't be here all alone, why don't you get a housekeeper?" He said, "Oh, well, they wouldn't let me have a housekeeper, you know they wouldn't." I said, "Who are they?" He said, "The girls, Mary and Ella, Ella told me plainly she would leave the minute I got a housekeeper, she would leave bag and baggage" and he said, "I don't want to be fighting with

them all the time, I like peace. But then I have good neighbors and they come across the field to me and I have a neighbor next door (half a mile away) that comes in and they do for me." I said "Ella is away all week, how do you manage?" and he said, "She cooks enough on Sunday night to last until she comes again, but Margaret Harrington comes up during the week with a kettle of hot soup for me. That is the way I get along, I don't want to be fighting."

He had been very deaf for four or five years. With great difficulty she could make him hear by talking right into his face.

DR. W. A. TANSEY:

In 1921, testator had been suffering with a severe attack of neuritis for six weeks. He found him in bed unable to move. Mary Wiggins and her little boy were there. She said, "Hello, Will, I was thinking of you." He said, "You had a long time to think of me." He asked Mary if she was with him all the time and she said no, she had her own work to take care of. Dr. Tansey said, "This man ought not to stay alone, he is a very sick man; how does he arrange for his meals?" She said, "Ella comes home on Friday and cooks his meals to last him from Monday to Friday night." Dr. Tansey said, "That is no way for a sick man." She said, "He is satisfied and that is all there is to it."

In 1922 he called on him again. He had had a brain hemorrhage. Dr. Tansey had not been sent for, but he heard he was sick and went. He was very weak and had chronic miocarditis and high blood pressure, both very dangerous.

Mary Maloney came rushing in, Ella was there before he came. Mary said "I called up my sister

Ella, and the whole damn Tansey family are here." Doctor said he needed a nurse, she said, "The boss will take care of that." Doctor said, "Who is the boss around here?" She said, "My sister Ella is the boss around here, she will take care of that."

Ella said the nurse had been there, but she knew Uncle Johnny would not have a nurse, she didn't go up to see Uncle Johnny, the nurse didn't go up the stairs, she turned and left the house.

The doctor said a nurse was necessary as testator needed expert care. Testator carried his head to one side. He had been very deaf for ten years back.

Mary, when grandma was dead, took off the nightcap which Mrs. Dr. Tansey had made for deceased and showed it to Uncle John, saying, "Look what I made for grandma!"

JAMES H. GRIFFIN:

Visited testator in 1914 to tell him of the potato situation for the year, thinks Ella Maloney was there. Saw him in the field and asked him what he was working so hard for; that he was foolish, he should spend some of his money and enjoy it, and he said, "that is all right, you will all have all the more when I am gone by my hard work."

Didn't hear about this will until the September after he died.

BERNARD GRIFFIN:

About sixteen years ago (1911), took his wife to visit testator. Went Wednesday, testator asked him to wait until Ella came. She came

home Friday. He stayed. When Ella came she was very cool. There was no conversation from the time she came until they went home. After the introduction to his wife, Ella went to the attic and stayed there the rest of the time. At the meals she pulled out a chair for his wife and said, "Sit down" they felt they were not wanted.

Uncle John entertained him in his usual friendly way.

ANNA TANSEY:

Visited John Dolan frequently in his lifetime. Many times Mary and Ella Maloney were there. They always assumed the attitude of dominance to her.

She would say about house changes, "How does grandma tolerate this," they would say, "Oh, grandma, she is old fashioned." And when she spoke to Uncle Johnny about it, he would say, "Anything for peace."

When she was talking to Uncle John the night of grandma's death, it was Mary's custom to take him away from the one he was talking to or else to step in, she tried to attract her attention and soon she sent Anna's brother Frank to call her and when she came away, Mary said Uncle Johnny was recently out of his mind and was not accountable for what he said. When she stepped back Mary had Uncle Johnny safely off to bed. The Maloney girls' father at the funeral held him talking and saw that his girls walked first behind the hearse. He was the only one who ever referred to Ella as Sarah Ellen.

In 1917, after Mrs. Toomey left, Anna went to Everett to see about potatoes. Mary Wig-

gins was there with her baby, Uncle Johnny came in and was very nice to her. Mary had been quite nice to her, too. When he came in Mary called him aside, and made a stage whisper because he was deaf. Anna heard her say, "Folks are here because they think you have money." He turned his head a little and posed and said, "I haven't any money; some people have an idea I have money, but I haven't any money."

Next day they were talking about improvements that had been made. Mary said it cost \$400 to put the door in, and it cost Ella and me so much money lately. Anna said, "How it is you are spending money on another man's house?" She started to scream and said, "My grandmother died a pauper; she had signed everything over to Uncle Johnny, and that she (Mary) would have everything eventually. That night he told her how much he missed Mrs. Toomey. Anna said he should have a housekeeper. Mary said, we don't want any trollops; we were glad to get rid of Mary Finnerty (Toomey), she was a nuisance. We don't want her here." The next night Uncle Johnny was telling Anna about having Mary Toomey. Mary Wiggins ran in and shook her fist in his face and told him not to speak another word or he would have to get out of her house. Uncle Johnny said it was his house. Mary said to Anna, "What have you got to say?" I said "Nothing only I don't get easily frightened, when I feel like saying it, I will say it."

In 1922, when she went there to see her uncle, Mary never spoke to her or to Charles E. Fitzgerald who was on from Minnesota.

The night grandma died Anna or her family were not notified. Somebody outside told them about it.

At the time of the Toomey incident, he did not have any help in the house. Mary said during the fuss, "We are boss here." Anna said, "Uncle Johnny, do you pay the help or do the Maloney girls?" He said, "I do all the paying here and they say it is a mutual affair."

In 1907 or 1908, Anna said to Ella Maloney when Uncle Johnny was sick, "That man should get married and have someone to look after his house." Ella said, "Under the existing circumstances that could not happen."

Conditions for visiting were not comfortable, you couldn't be at rest, there was a fight picked or something. If you wanted to be peaceful you had to be a mummy. Ella was rather conservative, but Mary was never peaceful. Things would be misconstrued. Mary told me we were glad to come to get something to eat. She said at different times that everything belonged to the Maloneys, that everything in that house was theirs.

Mr. John Dolan always received her pleasantly.

SARA TANSEY:

Went to see John Dolan very often. He was always very cordial to her. He had very severe illnesses, sometimes they would last a long time. Toward the end of his days he was very deaf, so that it was very hard for anyone to make him understand. Always glad to see her; loaned her his watch one time. For a long while did not come to her house. She wondered why; but later he brought her brother Frank home, and he seemed greatly relieved to be with us. It was wartime between 1916 and 1918. Always maintained friendly relations with him. While the Maloneys were friendly to her at their house,

once when she met Mary at her brother Frank's home she asked about potatoes. Mary said, "I beg you not to go down to Everett." I said, "Why not?" She said, "There has not been any potato crop at all." Afterwards it appeared from a newspaper article that John Dolan had sold 300 barrels of potatoes.

When grandma died, Ella was teaching in Newark within six blocks of Sara, she saw her quite often and didn't tell her that grandma was sick or that she had died. A day or so after she died some person outside the family notified the Tanseys.

DR. TANSEY:

Treated John Dolan at Harrington's about a year before he died. Some member of the doctor's family notified him and asked him to go down and see Uncle Johnny. He was very low. Bronchitis and miocarditis. Hollered close to his ear. Before this had mentioned ear phones to Ella Maloney for him that would help him a little, and she told him it would cost \$40 to get ear phones and she did not think it would be beneficial enough to get it. He was in very bad condition and should not have been left alone. A physician was not in regular attendance then or any time. He would be sent for at periodical attacks.

His heart condition extended back at least 15 years. He had a cerebral hemorrhage in 1922.

He told testator he should have some place with a housekeeper looking after his clothing and meals and taking care of him when sick; he should have somebody with him all the time. He said he had been doing for himself so long that he was used to it.

Mr. Hope produced memo, talked with Mr. Dolan, learned particulars and full name. He called them by their first names as you do in families, but Mr. Hope got the exact names, as written in the will, wrote down what disposition he wished made of his property including their names.

Had no trouble in making Mr. Dolan hear; didn't have to talk loud to him, you had to talk a little slower and a little more distinct. He seemed to be a little dull of hearing. If you talked plain to him he would understand you. Also read the memorandum himself! Then asked Mr. Hope to read it to him. He looked it over and read it himself and then said, "Now read it to me again, read it to me."

BLANCHE TILTON:

Found no difficulty in making him hear; Mr. Hope did not have to raise his voice.

The extensive review of the evidence is believed proper in view of the number of years during which testator was subjected to the influence of the Maloney nieces, and to call the Court's attention to the points it emphasizes, namely:

The testator's weakened condition.

His dependence upon the Maloneys.

Their policy of excluding other relatives.

Their desire to obtain his property.

Their expressed intention.

Their exclusion of household help.

Their knowledge of the will.

Their concealment of its existence.

Dr. Ervin, who attended him first in 1921, testified that Mr. Dolan had hardened wax in his ears which he syringed. This condition had never been treated before and it is safe to assume that it had been existent for many years. Besides this, as a result of his heart trouble, he had stomach trouble which as it became worse would cause congestion of his throat and close off his ears and make him hard of hearing at the time. The stomach and heart condition had existed for many years (his sick spells).

This makes it plain that certainly as far back as 1920 when the will was made he was deaf and more than "dull of hearing," and he could not hear understandingly the reading of the will as testified by Miss Tilton in ordinary tone, or even a louder tone.

There is a contradiction in Mr. Hope's testimony as to the testator reading the will, he first said, p. 4:

Q What did he say? A He said, "No, this is my will, my property, I want it made just the way I told you, if you will do it" and I said, "Yes, just exactly, and I read over my memorandum to him and so on, and he said, "That is right, when that is made up like that is, it will be just the way I want it." Then I called my stenographer and dictated the will in the presence of Mr. Dolan from my memorandum there, and that was Miss Blanche L. Tilton and she transcribed the paper, wrote it as a will on the typewriter.

Q And then what was done? A And then a duplicate was made of it then, and then I read it over to Mr. Dolan.

Q Who were present when you read it to Mr. Dolan? A Mr. John Dolan, Blanche L. Tilton and myself.

Q All right, what did he say then? A He said "that is right that is the way I

want my will" and I said "you are sure about it, you don't want to put in anybody else?" I asked him again because I was impressed with it. I knew sometimes members of a family feel hurt if they are not named, and I wanted to avoid anything of that character. I said "think them over and be sure about it," and he said, "I am sure." He was a very positive man in his speech and in his way, a man used apparently to having his own way. *I fixed it up and put on the seal and asked him if he wanted to sign that now, I had read over the will and the attestation clause before, and he said, "yes."*

THE WILL WAS NOT LEGALLY PUBLISHED.

"There must be some declaration by the testator that it was his will, and a communication by him to the witnesses that he desires them to attest it as such. * * * The witnesses must know it is the will of the testator they are witnessing, and they must witness it at his request."

Mundy v. Mundy, 15 Eq. (2 McCar.) 290-294.

Miss Blanche Tilton says, p. 16:

Q After Mr. Dolan signed this document did he say what it was? A I knew what it was.

Q Did he say what it was? A I don't think he did.

Q You didn't hear him say anything after he signed the paper? A He said, "it is just the way I want it."

Q That is all he said? A That is just what he said.

At a later part of the examination, Miss Tilton testified:

Q And then was when the signatures were appended? A No, Mr. Hope read the entire will over to Mr. Dolan and Mr. Dolan

signed, and Mr. Hope again read the attestation clause, and then he asked if he wanted us to sign as witnesses.

And again, p. 19, re-direct examination by Mr. Slocum:

Q Who were present when that was read over? A Mr. Dolan, Mr. Hope and myself.

Q Did Mr. Dolan ask you to witness it?

A He did and on his way out—

Q One minute, did he ask Mr. Hope to witness it? A He did.

Q What were you going to say? A On his way out, he stopped at the desk and thanked me for being a witness.

In the first part of her direct examination, p. 14, she said:

Q What do you know about the execution of the paper, the details of it, after you had typewritten it? A I brought it back into the inner office and Mr. Hope read the will with the attestation clause and then asked Mr. Dolan to sign, which he did. He said at the time, "It was just the way I want it" and then Mr. Hope asked if he wanted us to *sign as witnesses* and he said "yes."

And then after a little a leading question seeking to supply the apparent deficiency.

Q Did Mr. Dolan ask you to sign this as a witness to his will? A He did.

It will be perceived, however, that according to her other testimony which has been quoted, Mr. Dolan said nothing about its being his will, but only that it was just as he wanted it, and moreover he did not ask the witnesses to act as witnesses *to his will*, but merely acquiesced in Mr. Hope's suggestion that he and Miss Tilton act as witnesses.

It will be noticed that after reading the paper, there was considerable discussion as to whether he wished to include any other provisions; it

was not understood as the permanent draft, but a memorandum and the reading of it would not comply with the statute.

The only other pertinent testimony as to the execution of the will is by Mr. Hope on direct examination, p. 6.

Q Can you recall any other details that took place at the time of the execution of this paper, Mr. Hope? A Mr. Dolan then signed the will and I read that attestation clause again to him and asked him whether that was his will and whether he wanted the other witness and myself to sign it as witnesses.

Q What did he say? A He said he did.

The evidence is not that he said it was his will, but that he answered the question as to whether he wanted Miss Tilton and Mr. Hope to sign as witnesses, that he did.

“The writing must be declared by testator to be his last will; that declaration must be in the presence of two witnesses present at the same time; these witnesses must subscribe their names as witnesses to the will in the presence of testator. *No court has power to declare that anyone of these statutory requirements can be dispensed with.*”

In re Sutterlin's Will, 128 At. 623-625, Prerog. Ct.

In a case where the witnesses when they entered the room in which the testatrix sat, met the scrivener who drew the will and requested them to come in the house and witness its execution, and he thereupon said the testatrix had made her will and wanted them to witness it, and they thought he had spoken in a voice loud enough to be heard by the testatrix who sat some eight or ten feet distant in the room, but that she made no sign of assent, it was held that the publication was insufficient to comply with the

statute, even in the face of a perfect attestation clause.

Manners v. Manners, Prerog. Ct., 66 Atl. 583.

Even if testatrix had signified her assent to the statement of the scrivener made in her presence, "this is her name," it would not be sufficient as it would not be an acknowledgment that it had been made by her. *Ib.*

The statute requires that the signature of a will "shall be made by the testator, or the making thereof acknowledged by him and such *writing declared to be his last will* in the presence of two witnesses, present at the same time, who shall subscribe their names thereto as witnesses, in the presence of testator."

It is essential to the validity of a will that everything required to be done by the testator, shall precede in point of time the subscription of the witnesses. *And of course in any case the paper must be declared as a will.*

In re Sutterlin's Will, 132 Atl. 115.

In the Ludlow case, the Ordinary further said:

"There is no proof here of any acknowledgment either by word or in fact. The testator did not make the request to the witnesses, but his brother did it speaking in the first person. I want you, &c."

Ludlow v. Ludlow, 35 Eq. at 489-490.

To sum up *See esp. same case on app 36 Eq 577-601-602* The will as made was in favor of the Maloneys to the exclusion of all the other nephews and nieces.

It was against the expressed intention of testator that he "would make no will, but all his relations would profit by his labors; they would fight over his estate as they were fighting over the Kaiser's."

It was contrary to his general feeling of affection for all his nephews and nieces.

It was in line with the Maloneys' general policy to get everything for themselves, and excluded his other relations. Mary Maloney said she should have the lion's share, and both she and Ella claimed ownership and exercised acts of ownership of the property in testator's lifetime.

They knew the will was made, but concealed the fact from the other relatives.

The will was kept where they could easily reach it.

Their position with testator was undoubtedly the dominant one, and he had for many years given them complete sway for the sake of peace.

Ella Maloney's simple denial of influencing the testator is not sufficient to carry the burden.

If Mary Maloney was sick at the time of the hearing, her deposition could have been had. No denial at all was made on her behalf.

Evidence of the situation of affairs covering many years before and after the making of the will was admissible.

Dale v. Dale, 38 Eq. 274-277;

Barkman v. Richards, 63 Eq. 211;

Edwards v. Edwards, 63 Eq. 224;

In re Sickles, 63 Eq. 233;

Claffey v. Ledwith, 56 Eq. 333-353.

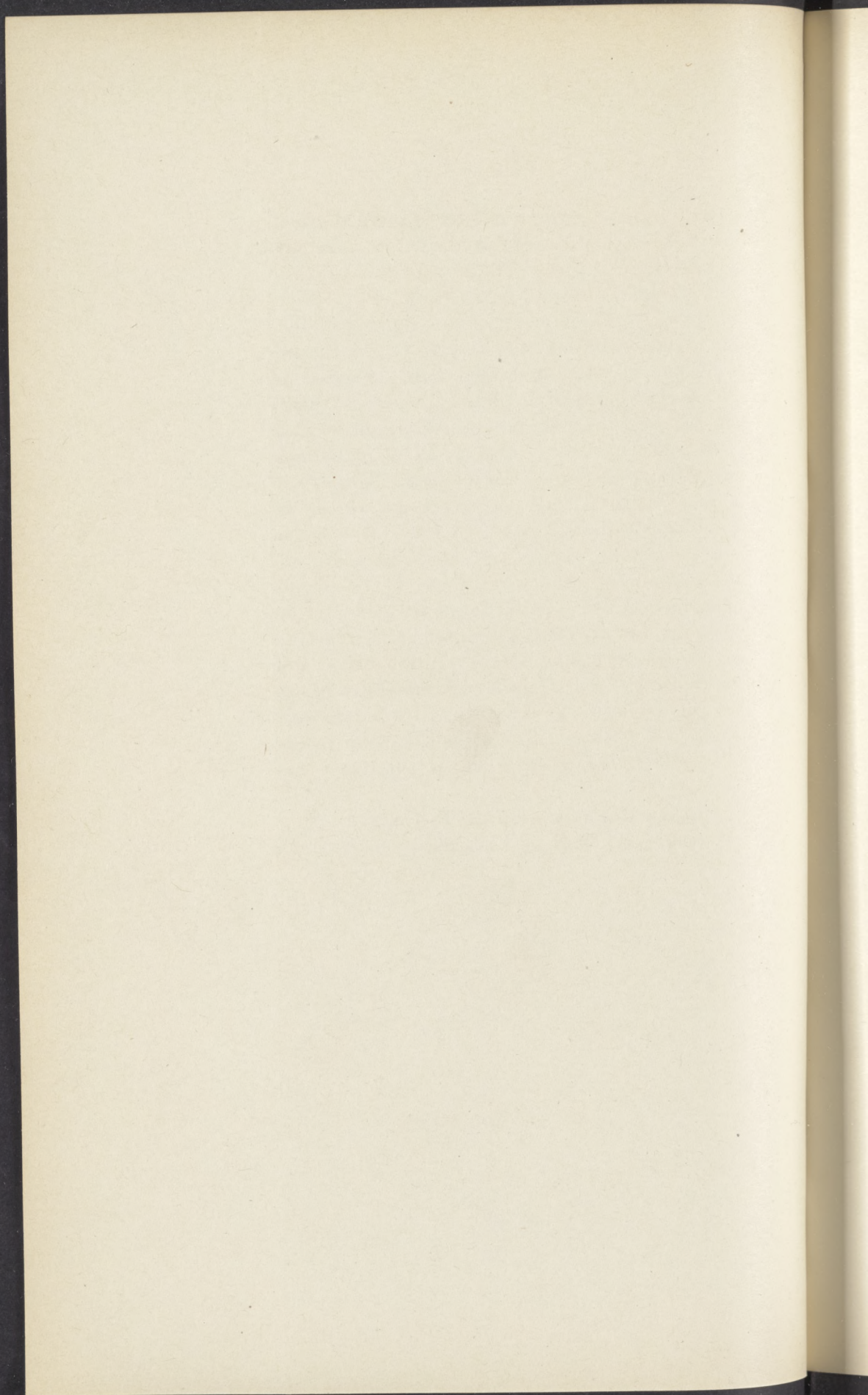
See particularly—

Ely's Will, 139 At. Rep. 808-811;

In re Barnett, 2 N. J. Misc. 135.

It was, of course, not kindness to the testator in his enfeebled condition to prevent him from having household help, which he was well able to pay for, and to compel him to live alone, as he said for the sake of peace, under the threat that they would leave him entirely if he got household help. It was not kindness to endeavor to keep his brother and nephews and nieces away from him, but was all a studied design to rule the disposal of his estate. It is no argument against this that one of the planners (Mary) did not fully realize on her design openly stated "to get the lion's share," the property all went to her branch of the family, and the shares did not matter—the main plan was successful. Testator was in fear that he would not have peace if he displeased them. They kept him in fear not in love and comfort; and such condition arises not from kind offices but from fraud and contrivance, compelling testator to give them the advantage over others of his blood, with equal claim to his bounty and standing at least as solidly in his affection.

In re: Mannion's Estate, 86 Eq. 232;
Gleespin's Will, 26 Eq. 523.



It is respectfully submitted that the probate of the will should be overruled on the grounds of Undue Influence and lack of publication.

MICHAEL J. TANSEY,
Of Counsel with Appellants.



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