# INDEX.


| | Page |
|---|---|
| Notice of Appeal | 1 |
| Petition of Appeal | 2 |
| Answer | 5 |
| Statements of Caveats | 6 |
| Decree | 7 |
| Statement of Probate | 9 |
| Statement of Filing Notice of Appeal, Petition of Appeal, and Answer thereto, on appeal to New Jersey Prerogative Court | 9 |
| Decree | 10 |
| Stipulation as to Exhibits | 455 |
| Opinion | 457 |


TESTIMONY IN PASSAIC COUNTY ORPHANS' COURT.

*For Proponents.*


| | |
|---|---|
| Harry J. Boyle: | |
| Direct | 12 |
| Cross | 13 |
| Edwin E. Dudley: | |
| Direct | 16 |
| Cross | 18 |
| Redirect | 32 |
| Marie Uhlig: | |
| Direct | 32 |
| Cross | 33 |
| Redirect | 41 |
| Recross | 42 |
| William Flitcroft: | |
| Direct | 43 |
| Cross | 47 |
| Dr. Francis Todd: | |
| Direct | 119 |
| Cross | 122 |
| Dr. David S. Hamilton: | |
| Direct | 130 |
| Cross | 131 |


New Jersey State Library

*For Caveators.*


Page

William H. Ashley:
- Direct ..... 48
- Cross ..... 54

Clara E. Bennett:
- Direct ..... 57

Charles Atkind:
- Direct ..... 59
- Cross ..... 62

Carrie Clark:
- Direct ..... 63
- Cross ..... 64

Irving D. Ashley:
- Direct ..... 66
- Cross ..... 83
- Redirect ..... 104, 113, 116
- Recross ..... 108, 115, 116
- Recalled—Direct ..... 117


TESTIMONY IN NEW JERSEY PREROGATIVE COURT.

*For Caveators-Appellants.*


Irving Ashley:
- Direct ..... 135
- Cross ..... 157
- Redirect ..... 172

William H. Ashley:
- Direct ..... 175
- Cross ..... 180

Whitfield Smith:
- Direct ..... 182

Wilfred Riley:
- Direct ..... 184




*For Proponents-Appellees.*


Page

Dwight Ashley, Jr.:
- Direct ..... 185
- Cross ..... 227
- Redirect ..... 348, 355
- Recross ..... 353, 356

George Gold:
- Direct ..... 356
- Cross ..... 358
- Redirect ..... 366

Hannah Mary Ashley:
- Direct ..... 366
- Cross ..... 371


*Rebuttal.*


Soren P. Hansen:
- Direct ..... 380
- Cross ..... 382

William H. Ashley:
- Direct ..... 384

Miss Carrie Cleark:
- Direct ..... 385

Charles Ashley:
- Direct ..... 388
- Cross ..... 396
- Redirect ..... 405
- Recross ..... 406
- Recalled ..... 406


*Sur-Rebuttal.*


John E. Glasser:
- Direct ..... 409


EXHIBITS.


C-1—Admitted page 78 ..... 412


CAVEATOR'S EXHIBITS.


V-1—Admitted page 135 ..... 135
V-2—Admitted page 136 ..... 136

Page

V-3—Admitted page 137 ..... 137
V-4—Admitted page 137 ..... 137
V-5—Admitted page 139 ..... 139
V-6—Admitted page 141 ..... 141
V-7—Admitted page 142 ..... 417
V-8—Admitted page 142 ..... 418
V-9—Admitted page 143 ..... 419
V-10—Admitted page 149 ..... 421

PROPONENT'S EXHIBITS.

G-1—Admitted page 201 ..... 423
G-2—Admitted page 202 ..... 423
G-3—Admitted page 204 ..... 424
G-4—Admitted page 204 ..... 424
G-5—Admitted page 204 ..... 424a
G-5½—Admitted page 206 ..... 206
G-6—Admitted page 207 ..... 207
G-7—Admitted page 207 ..... 207
G-8—Admitted page 209 ..... 209
G-9—Admitted page 209 ..... 209
G-10—Admitted page 210 ..... 210
G-11—Admitted page 211 ..... 211
G-12—Admitted page 213 ..... 426
B-G1—Admitted page 253 ..... 253
B-G2—Admitted page 253 ..... 253
B-G3—Admitted page 255 ..... 255
B-V7—Admitted page 280 ..... 279
B-V8½—Admitted page 310 ..... 310
V-B-85½—Admitted page ..... 425
V. B-1—Admitted page 388 ..... 388
V.B-2—Admitted page 389 ..... 389
V..B-3—Admitted page 390 ..... 390
V.B-4—Admitted page 389 ..... 427
V.B-5½—Admitted page 392 ..... 432
V.B-6—Admitted page 392 ..... 441
V.B-7—Admitted page 392 ..... 432
B.V-7½—Admitted page 393 ..... 434
V.B-8—Admitted page 393 ..... 436
B.V-9—Admitted page 319 ..... 450


## Notice of Appeal.

Filed June 2, 1927.

# New Jersey Prerogative Court.

In the matter of the Appeal from an order of the Orphans' Court of the County of Passaic Admitting to Probate a Paper Writing as the Last Will and Testament and Codicil of DWIGHT ASHLEY, deceased.

On Petition of Appeal. Notice of Appeal.

Irving D. Ashley and Charles E. Ashley, next of kin of Dwight Ashley, deceased, hereby appeal from the final decree made by the Ordinary on the advice of Vice-Ordinary Lewis in the above entitled cause, on June 17, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all Causes.

Dated June 1, 1927.

ARTHUR T. VANDERBILT,
Proctor for and of Counsel with Appellants.

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

ARTHUR T. VANDERBILT,
Of Counsel with Appellants.

A true copy
JOSEPH F. S. FITZPATRICK
Register.

## Petition of Appeal.

Filed June 16, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| In the matter of the Appeal from an order of the Orphans' Court of the County of Passaic Admitting to Probate a Paper Writing as the Last Will and Testament and Codicil of DWIGHT ASHLEY, deceased. | On Petition of Appeal. Petition of Appeal. |

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

The petition of Charles E. Ashley and Irving D. Ashley, the appellants in the above entitled cause, respectfully shows that:

Petitioners find themselves aggrieved by a final decree made in the Prerogative Court by His Honor Edwin Robert Walker, Ordinary of the State of New Jersey, on the advice of Vice-Ordinary Lewis, on the 17th day of June, 1927 in this respect, to wit: that the said decree affirms the decree of the Orphans' Court of the County of Passaic, admitting to probate a certain paper writing as and for the last will and testament and codicil of Dwight Ashley, deceased, and directing that letters testamentary thereon be issued to the executors named thereon, and that the said decree alleges that said paper writing is the last will and testament and codicil of the said Dwight Ashley, deceased.

And petitioners appeal from the decree of the Ordinary which decrees as aforesaid, upon the



ground that the same is erroneous in the following respects:

A. The Court below erred in finding a paper writing to be a codicil to the last will and testamentof Dwight Ashley, deceased.

B. The Court below erred in finding a paper writing decreed to be a codicil to the last will and testament of Dwight Ashley, deceased, to have been legally executed as such.

C. The court below erred in not finding that the said Dwight Ashley lacked testamentary capacity at the time of the alleged execution of the said alleged codicil.

D. The court below erred in not finding that said alleged codicil was not executed in accordance with the statutes governing testamentary dispositions of property.

E. The court below erred in not finding that said alleged codicil was executed by Dwight Ashley at the instigation of, and as a result of the exercise of undue influence by Dwight Ashley, Jr., the sole beneficiary therein.

F. The court below erred in not finding that said Dwight Ashley, Jr. obtained the execution of said alleged codicil by means of material misrepresentation to, and fraud practiced upon the said Dwight Ashley.

Your petitioner therefore prays that the said

decree of the said Ordinary, may be wholly reversed, set aside and for nothing holden and that petitioners may have such other relief in the premises as to this court shall seem proper.

ARTHUR T. VANDERBILT,
Solicitor and of counsel with Appellants.

Endorsed:
"Filed Jun 16 1927
JOSEPH F. S. FITZPATRICK
Clerk."



**Answer.**

Filed

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| In the matter of the Appeal from an order of the Orphans' Court of the County of Passaic Admitting to Probate a Paper Writing as the Last Will and Testament and Codicil of DWIGHT ASHLEY, deceased. | On Petition of Appeal. Answer. |

The answer of the respondents, Dwight Ashley, Jr. individually and Dwight Ashley Jr. and William B. Gourley, Executors named in the Last Will and Testament of Dwight Ashley, deceased, to the petition of appeal of Charles E. Ashley and Irving D. Ashley, appellants.

These respondents for answer to said petition say and admit that a decree was made and entered in the Prerogative Court on the date and of the purport mentioned in said petition but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced and they are advised and believe that the said decree is just and in accordance with law and pray that the same may be affirmed with costs to be adjudged to these respondents.

WILLIAM B. GOURLEY,
Proctor for and of counsel with Respondents.

## Statements of Caveats.

*Statement of Caveats, Petition for Probate and Issuance of Letters of Administration Pendente Lite.*

On February 28, 1925, Irving D. Ashley filed a caveat with the Passaic County Surrogate protesting against the admission to probate of any paper purporting to be a last will and testament of Dwight Ashley, deceased.

On March 9, 1925, a petition for the probate of the will of Dwight Ashley was filed with said Surrogate of Passaic County.

On March 10, 1925, citation was duly issued by said Surrogate and was returned served on all parties in interest

On May 6, 1925, an order was made by the Passaic County Orphans' Court and duly filed, appointing William B. Gourley as Administrator Pendente Lite of the Estate of Dwight Ashley, and letters of such administration were thereupon issued.



## Decree.

PASSAIC COUNTY ORPHANS' COURT.

| | |
|---|---|
| In the Matter<br>of<br>Admitting to Probate a Paper Writing purporting to be the Last Will and Testament of DWIGHT ASHLEY, deceased. | Decree. |

A caveat having been filed by Irving Ashley, one of the children of Dwight Ashley, deceased, with the Surrogate of the County of Passaic, against admitting to probate a paper writing purporting to be the last will and testament and codicil thereto of said Dwight Ashley, and citations to all persons concerned to appear before this court having been issued by the Surrogate, which citations have been returned duly served upon the persons to whom they were respectively directed and the court having taken testimony and heard the allegations of the parties herein and being satisfied that the said paper writing was duly executed by the said Dwight Ashley, as his last will and testament and codicil thereto in manner and form described by the statute in such case made and provided and that said Dwight Ashley, at the time of making said will and codicil was of sound and disposing mind, memory and understanding and that said will and codicil was not the product of undue influence.

*Decree.*

IT IS THEREUPON, on this twenty-third day of April, 1925, ORDERED, Adjudged and Decreed that said paper writing offered for probate be and the same is hereby established as the last will and testament and codicil thereto of Dwight Ashley, deceased, and that the same be and hereby is admitted to probate.

It is further Ordered, Adjudged and Decreed, that letters testamentary be issued thereon to the executors named in said will.

JOS. A. DELANEY,
Judge.



## Statement of Probate.

*Statement of Probate and Issuance of Letters Testamentary.*

On April 27, 1925, a paper writing purporting to be the last will and testament and codicil of said Dwight Ashley, deceased, was admitted to probate by the Surrogate of Passaic County, and letters testamentary were thereupon issued.

---

## Statement of Filing Notice of Appeal, Petition of Appeal, and Answer thereto, on appeal to New Jersey Prerogative Court.

On April 29, 1925, a notice of appeal from that portion of the decree of Passaic County Orphans' Court entered on April 23, 1925 which directed the admission to probate of the will and codicil of Dwight Ashley, deceased, and ordered the issuance of letters testamentary thereon to the executors therein named, to the New Jersey Prerogative Court was filed by Irving D. Ashley, caveator, with the Passaic County Surrogate.

On July 6, 1925, a notice of appeal from that portion of the decree of the Passaic County Orphans' Court entered on April 23, 1925, which directed the admission to probate of the will and codicil of Dwight Ashley, deceased, and ordered the issuance of letters testamentary thereon to the executors therein named, to the New Jersey Prerogative Court, was filed by Charles E. Ashley with the Passaic County Surrogate.

On May 26, 1925, a petition of appeal was duly filed in the Prerogative Court by the above named appellants, and answer to said petition of appeal was thereupon duly filed on July 16, 1926.

## Decree.

Filed January 12, 1927.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| In the matter of the Appeal from an order of the Orphans' Court of the County of Passaic Admitting to Probate a Paper Writing as the Last Will and Testament and Codicil of DWIGHT ASHLEY, deceased. | Decree. |

This matter being opened to the Court by William B. Gourley, proctor for respondents, and it appearing that the executors named in the last will and testament of Dwight Ashley, late of the County of Passaic, deceased, duly presented the said paper writing to the Surrogate of the County of Passaic aforesaid, for probate and it appearing that a caveat against the probate of said will and codicil had been filed by Irving D. Ashley with the said Surrogate and citations issued to all persons in interest and returned duly served and the matter coming on to be heard and the said court having taken testimony and examined into the matter, did duly order, adjudge and decree that the aforesaid paper writing was the last will and testament and codicil of the said Dwight Ashley, deceased, and that the same be admitted to probate and that letters testamentary thereon be issued to the said executors therein, and

It further appearing that said caveator duly filed his notice of appeal from said decree with the said Surrogate and served a copy thereof upon the proc-



tor of the said respondents, and duly filed his petition of appeal with the Register of this court and served a copy thereof upon said proctor and that said respondents duly filed their answer thereto all within the time allowed by law and the said cause having been duly argued after testimony taken before the Prerogative Court by the respective counsel for said caveator and said respondents.

It is thereupon on this seventh day of June, 1926, ordered, adjudged and decreed that the aforesaid decree of the Orphans' Court of the County of Passaic, admitting to probate the said paper writing as and for the last will and testament and codicil of Dwight Ashley, deceased, and directing that letters testamentary thereon be issued to the executors named thereon be and the same is in all things ratified and confirmed and that said paper writing is the last will and testament and codicil of the said Dwight Ashley, deceased.

E. R. WALKER,
Ordinary.

Respectfully advised,
Vivian M. Lewis,
V. O.

Endorsed:
"Filed Jul 16, 1926,
Thomas F. Martin,
Register."

PASSAIC COUNTY ORPHANS COURT.

In the Matter
of
The Probate of a paper purporting to be the last will and testament of
DWIGHT ASHLEY, SR., Deceased.

Before:
Hon. Jos. A. Delaney, *J.*

Paterson, N. J., April 3, 1925.

APPEARANCES.
HON. WILLIAM B. GOURLEY,
For the Proponents.
JOHN O. BENSON, ESQ.,
For the Caveators.

---

HARRY J. BOYLE, sworn for proponents.

*Direct-examination by Mr. Gourley*:

Q. Are you the Harry J. Boyle whose name is appended as a witness in that document? A. I am.

Q. When was that signed? A. The twenty-eighth of April, nineteen hundred and twenty-four.

Q. Whose signature is this? A. Dwight Ashley, Senior.

Q. Did you see him sign it? A. I did.

Q. Did you write your name at the same time immediately after he did? A. Yes.

Q. Who were present at the time? A. Dwight Ashley, Senior, Munson Force, Mr. Gold, myself and Dwight Ashley, Junior.



Q. What did Mr. Ashley say? A. He said this was his last will and testament and he wanted me to witness it.

Q. Did Munson Force write that in your presence? A. He did.

Q. Did Mr. Ashley sign that in the presence of Munson Force and yourself? A. Yes.

Q. Did Mr. Force sign in the presence of Mr. Ashley and yourself? A. He did.

Q. Did you sign in the presence of Mr. Ashley and Mr. Force? A. I did.

*Cross-examination by Mr. Benson*:

Q. Did you know Mr. Dwight Ashley? A. I did.

Q. How long had you known him? A. Probably fifteen or eighteen years.

Q. Where was this will signed? A. In Mr. Gourley's office.

Q. When? A. On the twenty-eighth of April, nineteen hundred and twenty-four.

Q. Have you ever witnessed a will before? A. Several.

Q. What was the occasion of your being in Mr. Gourley's office? A. My office is there.

Q. How long have been there? A. Five years.

Q. In what capacity? A. Real estate broker.

Q. What time of the day was it when Mr. Ashley Senior came there? A. When he came in?

Q. Yes. A. I can't say what time he came in.

Q. When did you first see him? A. That day.

Q. Yes. A. At the time of the signing of the will.

Q. When was that? A. I should say in the latter part of the afternoon.

Q. During the afternoon? A. To my knowledge, now.

Q. Who reached the office first, Dwight Ashley, Junior, or Dwight Ashley, Senior? A. I wasn't there when he came in.

Q. Was Dwight Ashley, Junior there? A. He was.

Q. Were they together in the room? A. No, Dwight Ashley, Junior stepped out.

Q. Where did he go? A. Into the adjoining office.

Q. When did he step out? A. I should say about the time Mr. Force and I went in.

Q. Where was Mr. Gold then? A. I believe he was present.

Q. Where was the will when you went in? A. It was before Mr. Ashley, Senior.

Q. Had he signed it at that time? A. No, he had not.

Q. Was Mr. Gold conversing with him at that time? A. I believe there was a general conversation.

Q. You don't recollect what that was? A. I cannot say.

Q. What was the first word you spoke when you went into the office where Mr. Ashley was? A. Mr. Ashley said he wanted his will witnessed.

Q. Are you sure he said that? A. Positive.

Q. Who sent for you? A. I believe Mr. Gourley sent for me.

Q. Don't you know? A. Well, I am pretty sure he did.

Q. Do you think anyone else might have sent for you? A. I don't know, Mr. Force and I were the only two in the office at the time.

Q. Did Mr. Dwight Ashley, Junior call you? A. No.



Q. How long have you known him? A. About the same time I have known his father.

Q. Have you done business with him? A. No business with him directly.

Q. You say you and Mr. Force went into the room, who went in first? A. I can't say that.

Q. Don't you know? A. It was a question of Mr. Force or I going in first but which one I can't say off hand.

Q. Was Mr. Gourley seated at the table? A. No, he wasn't seated, I think he came in to call in and the three of us went in together.

Q. What did Mr. Ashley then say when you all got to the table? A. Mr. Ashley said this was his last will and he wanted us to witness it.

Q. Didn't Mr. Gourley say anything? A. He might have said something.

Q. Didn't Mr. Gourley say this was Mr. Ashley's will and he wanted you and Mr. Force to witness it? A. He might have said that too.

Q. Don't you know? A. I can't say.

Q. You have a pretty clear conception as to what happened? A. Absolutely, but I can't testify with exactness what Mr. Gourley said.

Q. Did Mr. Gourley go out or remain in the room? A. I believe he remained.

Q. Are you sure? A. I am not.

Q. When you came into the room did Mr. Force sign the will or did you? A. The first signature was Mr. Ashley's.

Q. Then who signed first? A. Mr. Force.

Q. Then who signed after that? A. I.

Q. At that time the only thing that was said was this was the will and you are not sure whether Mr. Gourley said anything or not? A. I can't say.

Q. How long were you in the office with Mr. Dwight Ashley, Senior? A. A minute and a half or two minutes.

Q. Mr. Dwight Ashley, Senior didn't read the will over while you were there? A. I don't believe he did.

Q. After he signed, then Mr. Force signed and then you after that, nothing was said at that time? A. Nothing was said during the signing.

Q. After the signing nothing was said? A. Nothing.

Q. Did you and Mr. Force then go out of the room? A. Yes, sir.

*By Mr. Gourley*:

Q. Mr. Force is dead? A. Yes, sir.

Mr. Gourley: I offer the will in evidence.

---

EDWIN E. DUDLEY, sworn for the proponents:

*Direct-examination by Mr. Gourley*:

Q. Is this signature Edwin A. Dudley, which is appended to that paper, your signature? A. It is.

Q. When was it signed? A. On the ninth day of January, nineteen hundred and twenty-five.

Q. Whose signature is this opposite the red mark? A. Dwight Ashley, Senior.

Q. Did you see him sign that? A. I did.

Q. Did you write your name on this paper where it is after he did?

Mr. Benson: I object to it as leading.



Objection sustained.

Q. Did Marie Uhlig sign this paper? A. She did.

Q. Who is Marie Uhlig? A. She is the maid at Dwight Ashley's house.

Q. When Dwight Ashley wrote his signature was it in the presence of Marie Uhlig and yourself?

Objected to as leading by Mr. Benson.
Objection sustained.

Q. When you wrote your signature was it in the presence of Dwight Ashley and Marie Uhlig?

Objected to as leading by Mr. Benson.
Objection sustained.

Q. Tell us the order of the signing? A. Dwight Ashley, Senior, Marie Uhlig and Edwin E. Dudley.

Q. Was Marie Uhlig there at the time Dwight Ashley signed? A. She was.

Q. Were you there when Dwight Ashley signed? A. I was.

Q. Were you there when Marie Uhlig signed? A. I was.

Q. Was she there when you signed. She was.

Q. Did Dwight Ashley say anything about what this paper was at the time?

Objected to as leading by Mr. Benson.
Objection sustained.

Q. Did Dwight Ashley say what this paper was or not?

Objected to as leading by Mr. Benson.

The Court: What did Dwight Ashley say if anything in reference to this paper?

Q. What did he say? A. He said it was a codicil to his will.

Q. When did he make that statement? A. On the ninth day of January before he signed it.

*Cross-examination by Mr. Benson:*

Q. Where do you live? A. Ninety-eight Buena Vista Avenue, Hawthorne, New Jersey.

Q. How long have you lived there? A. Since the first day of August, nineteen hundred and twenty-four.

Q. Did you know Dwight Ashley, Senior? A. I did.

Q. How long did you know him? A. Seventeen years.

Q. Did you know Dwight Ashley, Junior? A. I did.

Q. How long did you know him? A. Seventeen years.

Q. You were on very friendly terms, were you not with Dwight Ashley, Junior? A. I was.

Q. I would put it this way, you were on very friendly terms with him? A. I was.

Q. You were under obligations to him, were you not? A. I was.

Q. To what extent?

Objected to by Mr. Gourley.

Objection sustained.

Caveator excepts. Exception allowed and signed and sealed accordingly.



*By the Court:*

Q. Did you visit his home prior to January 9th, 1925? A. Very often.

Q. Do you recollect what day of the week this January ninth was? A. I do not.

Q. Do you recollect what time of the day you went there on January ninth? A. I do.

Q. What time? A. About five-thirty.

Q. How did you come to go to Dwight Ashley, Junior's house at five-thirty on January ninth? A. At the request of Mr. Dwight Ashley, Junior.

Q. How did he communicate that request to you? A. I met him on the steps of the First National Bank as I was going home and he asked me to come to the house.

Q. At that time did he tell you the purpose of your coming to the house? A. He did not.

Q. How did you come to go there? A. At his request.

Q. Did you ask any questions regarding why he wanted you at his home? A. I did not.

Q. Were you in the habit of going to his home at his request without asking any questions? A. At any time.

Q. Did you go to his home by automobile or trolley car? A. By automobile.

Q. When you reached the home who was there? A. Mr. Dwight Ashley, Senior, Mrs. Dwight Ashley, Junior, and I didn't see Marie Uhlig but I imagine she was there.

Mr. Benson: I ask that that last be stricken out.

The Court: Strike it out.

Q. Who was the person that met you at the time? A. Mrs. Dwight Ashley, Junior.

Q. Where was Mrs. Dwight Ashley, Senior at that time? A. She might have been there, I don't know.

Q. When did you first see Mrs. Dwight Ashley, Senior? A. I cannot recall just exactly when I did see her.

Q. Did you see her? A. I am not sure.

Q. Did you see Mr. Dwight Ashley, Senior on the first floor? A. I did not.

Q. Where was he? A. On the second floor.

Q. In what room? A. In a bedroom.

Q. When you came in the house how long were you downstairs before you went upstairs? A. I cannot say.

Q. Were you there any length of time? A. Not any great length of time.

Q. Up to that time had anything been said to you that you were going to be used as a witness to a will? A. It had not.

Q. When was the first time you knew you were there for that purpose? A. When Mr. Gold came in.

Q. When did he come in? A. I should say about ten or fifteen minutes after I got there.

Q. What were you doing downstairs? A. We were discussing Mr. Ashley's condition, I believe, with Mrs. Ashley and Mrs. Dudley.

Q. Was Mrs. Dudley there? A. She took me there.

Q. And Mr. Ashley rode with you? A. Oh, no, I went up with Mrs. Dudley, she drove me up in my own car.

Q. Did she come in the house? A. She did, with me.



Q. During that entire conversation downstairs nothing was said about the will? A. Positively nothing was said concerning a will.

Q. What was the first question asked you or stated to you that intimated there was going to be a will signed? A. I believe Mr. Gold asked me to come upstairs later and witness a will or some paper I didn't know just exactly what it was.

Q. While you were there, downstairs, what room were you in? A. In the living room.

Q. Who was there conversing with you? A. I am not just clear on that because I have been there so many times, I believe Mrs. Dwight Ashley, Mrs. Dudley and myself.

Q. Where was Dwight Ashley, Junior? A. I cannot say.

Q. He wasn't with you was he? A. No.

Q. Did he leave you as soon as he reached his home? A. No, I don't think so, I think Mr. Dwight Ashley, Junior came in and sat down and talked to us.

Q. How long? A. Oh, just a few minutes.

Q. And then went out? A. Yes, sir.

Q. You have no recollection as to where he went? A. I believe he went upstairs.

Q. What is the basis for that belief? A. Recollection.

Q. You remember him going upstairs? A. No, I recollect he went.

Q. Who called you upstairs. A. I am not sure, I believe it was Mr. Gold.

Q. Can you tell us definitely who was the person that called you upstairs? A. I cannot tell you definitely.

Q. Did you see Mr. Gold come into the house? A. He came in with Mr. Ashley.

Q. Didn't he come home in your automobile? A. No, I have already testified to that effect.

Q. Didn't he come in your automobile? A. No.

Q. Where did Mr. Gold go when he came in? A. He came into the living room and I believe left his hat and coat there and went upstairs.

Q. Isn't that the time that Dwight Ashley went upstairs too? A. I am not prepared to say.

Q. Do you want to say that you don't know that Dwight Ashley took Mr. Gold upstairs immediately when he came into the house? A. No, I did not see that.

Q. You were there? A. I was there.

Q. You have a clear recollection of what happened? A. Not as clear in detail as you would expect.

Q. You have said, I think, you saw Mr. Gold come into the house? A. Yes, sir.

Q. Who came in first, Mr. Gold or Mr. Ashley? A. I cannot say, probably Mr. Gold.

Q. As a matter of fact didn't Mr. Ashley come in first? A. I don't know.

Q. And Mr. Gold followed him and put his hat somewheres downstairs? A. I didn't say so.

Q. And Mr. Gold and Mr. Ashley immediately went upstairs? A. I wouldn't say so.

Q. What would you say?

Objected to by Mr. Gourley.

Q. When Mr. Ashley came in what did he say to you? A. I don't recall.

Q. Did he have a conversation with you? A. I don't think so.

Q. Aren't you sure? A. No, I am not.

Q. This was rather an important event? A. I



didn't know it was an important event at the time.

Q. Didn't you think of it afterwards? A. Not to any great extent.

Q. Have you talked to anybody since about it? A. Practically no one.

Q. What do mean by that? A. I mean what I say.

Q. What do you mean by that? A. I mean I have not discussed this matter with anybody.

Q. Not a soul? A. Do you mean not with anyone?

Q. Yes. A. I have discussed it with Mrs. Dudley.

Q. That is all? A. Practically all.

Q. What do you mean by that? A. I believe I talked it over with Mr. Gold for a few moments; he asked me or said something about this matter was coming up—

Q. Did you talk it over in detail? A. No.

Q. Not at all? A. Not at all.

Q. He didn't ask you any questions? A. No.

Q. What did you talk about? A. He was just coming down on the elevator and said "That matter has been postponed, hasn't it", I said "I don't know, has it."

Q. That as a matter of fact is the only thing you said concerning the Ashley will relative to its execution to anyone? A. I didn't have anything to do with the will.

Q. I mean the codicil? A. Yes, sir.

Q. Don't you know whether you have spoken to anyone about the execution of this codicil since its execution? A. I don't recall talking it over with anybody.

Q. You haven't a very clear vision of what happened at the house on January ninth and you

haven't a very clear vision of what happened since then as far as the codicil is concerned? A. I haven't a very clear recollection, no.

Q. When you went upstairs who went with you in response to Mr. Gold's call for you? A. I think I went up alone.

Q. Where was Mrs. Dudley then? A. I believe she was in the living room.

Q. With whom? A. I think she was with Mrs. Ashley.

Q. Don't you know? A. I haven't a very clear recollection.

Q. When you reached the top of the stairs what room was Mr. Ashley, Senior in? A. In a bedroom.

Q. Which one? A. Now I don't know what the particular name of that bedroom is, but it is on the north east corner of the house in the front.

Q. You are sure of that? A. Positive.

Q. Where was Mr. Ashley, Junior, when you reached the upper hall? A. I don't recall seeing him.

Q. Did you go directly into the room? A. Yes.

Q. Where was Mr. Ashley, Senior? A. Seated in a chair at the foot of the bed.

Q. What kind of a chair? A. I cannot recall that detail.

Q. Was it an invalid's chair? A. I don't recall.

Q. Did you notice that? A. No.

Q. Who was in the room when you went in? A. Mr. Ashley, Senior and Mr. Gold.

Q. That is all? A. That is all.

Q. And you are sure of that? A. Positive.

Q. Where was Mr. Gold standing at the time you went in, or sitting? A. I really can't say.

Q. Was he standing up or sitting down? A. I cannot say.



Q. You don't know? A. No.

Q. Did you know up to that time when you entered the door you were going to witness a codicil to a will? A. I did not know.

Q. You didn't have the slightest suspicion that you were called there for? A. I didn't know what I was called for.

Q. When you stepped across the threshold of the room where Mr. Ashley, Senior was you didn't know what you were there for? A. No.

Q. When was the first intimation there was going to be a codicil to a will signed there? A. I should say when either Mr. Gold or Mr. Ashley expressed to me or read to me what is on the bottom of that codicil.

Q. Who read that to you? A. To us.

Q. Who do you mean by us? A. Naturally Miss Uhlig came into the room also and was there.

Q. When you went over the threshold of the door was the first time you heard anything about a will, when Mr. Gold read it? A. I believe so.

Q. Don't you know? A. No, because I have not a clear memory of just exactly the details of what happened.

Q. When you got there did you go into the room or stand in the doorway? A. I must have gone into the room because the paper was in the room.

Q. Did you go into the room? A. Why, certainly.

Q. What part of the room did you go into? Did you go into the part where Mr. Ashley, Senior was or on the other side? A. As I recall it I walked into the room over to where Mr. Ashley, Senior was and shook hands with him.

Q. You are not sure about that? A. I am sure.

Q. After you had shaken hands with Mr. Ashley, Senior—? A. Yes, sir.

Q. Or Junior? A. Senior, Mr. Ashley, Junior was not in the room.

Q. Where did you go? A. Stayed in the room.

Q. Did you sit down or stand up? A. I don't recall.

Q. Who was there at the time you shook hands with Mr. Ashley? A. I don't recall whether Miss Uhlig was there or not but Mr. Gold was there.

Q. Mr. Dudley, you have no clear recollection when Miss Uhlig came there? A. She came after I did, I can't tell you the moment.

Q. Can't you tell us whether she was there when you shook hands with Mr. Ashley? A. No.

Q. You don't know? A. No.

Q. What did you say? A. I asked regarding his health.

Q. He was in poor health? A. No, I wouldn't say so.

Q. Was he in good health? A. No, not especially good, but not any different than he had been for some time.

Q. Wasn't he confined to his room? A. I cannot say as to that.

Q. You were a visitor at the Ashley home, you knew that, you knew he didn't go downstairs around this period of January ninth? A. I can't say he didn't go downstairs then.

Q. Will you say he did? A. I wouldn't say he did and I wouldn't say he didn't.

Q. When Miss Uhlig came into the room what did she say if anything? A. I don't believe she said anything.

Q. If she had said something you would have



heard it? A. I don't recall her saying anything, I will put it that way.

Q. You were not watching it particularly? A. No.

Q. Not paying much attention to anything? A. Except the business at hand.

Q. You didn't consider it of any great importance? A. No more than witnessing any other paper.

Q. When you shook hands with Mr. Ashley, Senior where did Mr. Gold go? A. He didn't go he stayed there.

Q. Was he at the side of the chair? A. I can't say.

Q. Was he at the side—. You can't tell us where he was? A. I can't draw a mental picture of just how the different people were standing in the room.

Q. When Miss Uhlig came into the room where did she go, by Mr. Ashley or away from him? A. I can't say.

Q. Was he reclining in this chair? A. No.

Q. Did he have pillows around him? A. I can't say.

Q. Was he reclining in the chair? A. I can't say whether he was.

Q. You don't know? A. I don't believe so.

Q. Was he sitting upright in the chair? A. I wouldn't say he didn't have a pillow in back of him but he wasn't reclining.

Q. You don't recollect the type of chair he was sitting in? A. No.

Q. Did Mrs. Ashley, Senior come up after that? A. Not while I was there.

Q. You are sure of that? A. I am.

Q. How soon after you shook hands with Mr. Ashley, Senior did Mr. Dwight Ashley, Junior come in? A. He didn't come in while I was there.

Q. Where did you see him the next time? A. I believe down stairs just before I left.

Q. Where was he? A. I don't know.

Q. You went downstairs and don't recollect where Mr. Dwight Ashley, Junior was? A. I can't be in all the rooms at once.

Q. At the time you went downstairs? A. I just recall he was there when I went down.

Q. Did you have any conversation with him? A. I don't know.

Q. You had no conversation? A. Simply good-bye or something like that.

Q. You didn't comment about anything, about his father's health? A. I see Mr. Ashley so often I didn't consider it necessary.

Q. You knew just about his condition? A. Whose?

Q. Mr. Dwight Ashley, Senior? A. No different than it had been for some time.

Q. He was in a very weakened condition? A. I wouldn't say so, no.

Q. When you were up in the room you say you didn't see Mrs. Ashley, Senior at any time? A. I don't recall seeing her.

Q. Was she there or not? A. In the room?

Q. Yes. A. Not to my knowledge.

Q. Did you see any paper in the room at that time when you walked in and shook hands with Mr. Ashley, Senior? A. I believe Mr. Gold had the paper that was signed ready to read to us.

Q. At that time you knew you were going to witness a signature? A. Yes, sir.



Q. What was said? A. I don't recall what was said.

Q. What was said when you were downstairs? A. Mr. Gold asked me to come upstairs and witness a paper.

Q. When you got upstairs and crossed the threshold of the bedroom, you know what you were there for? A. Not that it was a codicil of a will, I knew I was going to witness some paper.

Q. Mr. Gold had the paper in his possession at that time? A. I believe he did.

Q. You knew he did? A. I can't swear he did.

Q. You know Mr. Ashley, Senior didn't have it in his possession? A. No, I don't know whether he did or not, I wouldn't swear to it.

Q. You noticed where the paper was, did Mr. Gold read it at that time?

Mr. Gourley: At what time.

Q. At that time when you first went in? A. The codicil, I don't believe he read the codicil because I have no knowledge of it, he read that part, the subscription clause.

Q. How long after you had shaken hands with Mr. Ashley was that done? A. I can't say, within a few minutes.

Q. The other lady had not come in yet? A. Positively.

Q. She was there? A. Certainly.

Q. How long after you reached the room did she come in, how many minutes? A. I can't say as to that.

Q. You don't know? A. No.

Q. You haven't the slightest recollection of it? A. Within a very few minutes.

Q. Would that mean five minutes? A. No.

Q. How many? A. I would say—I wouldn't swear as to the number of minutes.

Q. Approximately? A. Approximately two or three minutes.

Q. When Mr. Gold had this paper and read the attestation clause, what did Mr. Ashley do, sign the paper at that time? A. Yes, sir, signed the paper.

Q. Did he sign it with much ease and grace? A. Just the same as I had seen him sign a number of other papers.

Q. You had seen him sign documents previously? A. Yes, I knew his signature.

Q. And he signed it with the same degree of ease? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. You are sure he signed it with the same degree of ease he heretofore signed it? A. Yes.

Q. Was any thing said at that time except the reading of the attestation clause, that was all that was said? A. No, that was all that was said.

Q. Mr. Gold read the attestation clause? A. Mr. Gold said this is a codicil to the will and he wished me to witness it.

Q. He directed these remarks to you and told you what you were there for? A. To Miss Uhlig and myself.

Q. He directed his remarks to you and Miss Uhlig? A. Yes, sir.

Q. Then read after that the attestation clause? A. Yes, sir.

Q. Then Mr. Ashley signed after that? A. Yes.

Q. Mr. Ashley was sitting in the chair? A. Yes.

Q. Did he get a book to write on? A. No.



Q. How did he write it? A. On a table of some sort or other.

Q. Did he get up and walk to the table? A. No, I don't think so.

Q. Why not? A. Because it wasn't necessary, the table was at his hand.

Q. What kind of a table was it? A. As I recall it, it was one of these sick room tables that has a part you can move over to your lap to write on.

Q. Who had the pen and ink? A. I don't know.

Q. Did you see him have a pen and ink? A. Yes.

Q. Who gave it to him? A. I really can't say.

Q. Why? Did you? A. I can't say.

Q. You don't recollect that? A. He might have used my pen and he might have used another pen.

Q. You don't know? A. No.

Q. What was it, a fountain pen? A. I can't tell you.

Q. You saw the pen? A. Naturally if I saw him sign it I saw the pen.

Q. If you saw him sign it just tell us the kind of a pen he had? A. I really can't say.

Q. You were called there to witness a signature? A. I wasn't called there to witness a pen, but to witness a signature.

Q. You were looking at the man writing? A. Yes.

Q. You didn't observe whether he was writing with a fountain pen or a straight pen? A. No.

Q. After he wrote this then you signed it immediately? A. No, Miss Uhlig signed it first, ladies first, you know.

Q. Then you followed? A. Yes, sir.

Q. Nothing was said and you went out? A. Yes, there was something said. I said to Mr. Ashley I

hoped he would be with us a long time, you know those things you would usually say to an elder and excused myself.

Q. That was all the conversation stated from the time you had been there until you went out? A. All that I recall.

*Mr. Gourley (Redirect-examination)*:

Q. Is Mr. Gold a lawyer? A. I believe so.

---

MARIE UHLIG, sworn for the proponents:

*Direct-examination by Mr. Gourley*:

Q. What is your business or profession? A. House work.

Q. Were you employed at the house of Dwight Ashley, Junior, on the ninth of January, this year? A. Yes, sir.

Q. I show what purports to be the signature of Marie Uhlig and ask you did you write it? A. Yes, sir.

Q. When did you write it? January ninth, this year? A. Yes, sir.

Q. Whose signature is that opposite the red mark? A. Mr. Dwight Ashley.

Q. Did you see him write that? A. Yes, sir.

Q. Whose signature is this below here. Edwin E. Dudley? A. A friend of Mr. Dwight Ashley.

Q. Did you see him write that? A. Yes, sir.

Q. Was Mr. Dudley present at the time Mr. Ashley wrote his name? A. Yes, sir.

Q. Were you present? A. Yes, sir.

Q. Did both of you sign your names in the presence of Mr. Ashley or not?



Objected to as leading by Mr. Benson.
Objection overruled.

A. Yes, sir.

Q. Tell us about who were present when the signatures were made? A. Mr. Dudley was present, Mr. Ashley, Senior and myself.

Q. Do you know Mr. Gold, the lawyer? A. No, sir.

Q. Who else were present in the room, was any other person present in the room? A. Nobody else.

Q. Who signed first? A. I don't know whether I signed it or Mr. Dudley.

Q. Did you sign before or after Mr. Ashley? A. After Mr. Ashley.

Q. You don't know whether you or Mr. Dudley signed next? A. After that.

Q. Were you all three together there at the time? A. Yes, sir.

*Cross-examination by Mr. Benson*:

Q. You have been employed by Dwight Ashley for how long? A. Twelve years this month.

Q. You are familiar with the household are you not? A. Yes, sir.

Q. You knew Mr. Dwight Ashley, Senior was pretty sick? A. Yes, sir.

Q. He didn't leave his room, did he, around January ninth? A. No.

Q. He had been confined to his room prior to January ninth, nineteen hundred and twenty-five? A. Before that he had been confined to his room.

Q. He required the attention of Doctors almost daily? A. Yes, sir.

Q. Do you know what day January ninth, nine-

teen hundred and twenty-five was, what day of the week? A. I think it was on Thursday, I am not sure.

Q. Had you been home all that day? A. Yes, sir.

Q. Had Mr. Dwight Ashley, Junior been home all that day? A. I don't remember whether he was home all day.

Q. Was he there to lunch? A. Yes, he is nearly always home for lunch.

Q. Wasn't he around the house all afternoon? A. I don't know.

Q. You were there? A. I know, but this is quite awhile ago.

Q. During that afternoon how many times did you see him? A. I don't know, I was pretty busy.

Q. You haven't a clear vision of what went on in the house. You don't recollect very much of what happened on January ninth? A. No.

Q. Your memory has not been refreshed in any way since January ninth. You haven't talked with anyone about these things since January ninth? You understand that, don't you? A. I didn't talk it to anybody.

Q. Have you talked about it with anyone? A. No.

Q. Since the time you were up in the room and Mr. Dwight Ashley signed the will, you haven't bothered to talk about it since to anyone? A. No.

Q. That is right, isn't it? A. Yes, sir.

Q. What kind of a day was January ninth, nineteen hundred and twenty-five, clear? A. I don't know, I am not sure.

Q. Did you do the upstairs work that day? A. No.



Q. Who did that? A. I go up once a week, Fridays, and clean. I guess Mrs. Ashley cleaned around.

Q. You know because of that fact it wasn't a Friday this will was signed on? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. During the afternoon did anyone come to the home to visit Mr. Dwight Ashley, Junior or Senior? A. No, I don't think so, nobody came.

Q. You don't recollect seeing anyone there that day except the immediate family? A. I don't remember.

Q. Was anyone in the house besides you and Mr. Dwight Ashley, Junior and his wife? A. Dwight Ashley, Senior's wife.

Q. Did anyone else come there before dinner that night? A. No.

Q. You are sure of that? A. Yes, sir.

Q. Is that right? Are you sure on January ninth a Thursday, no one came to the home before dinner, in the afternoon? A. No, nobody was there before dinner.

Q. What time do you usually have dinner in the evening? A. Six or quarter past six.

Q. Who dine with you in the home? A. Mr. and Mrs. Ashley, and Mrs. Ashley, Senior and Father Ashley had his supper up in his room.

Q. Do you recollect now having seen Mr. Irving Ashley there? A. I don't remember that.

Q. You wouldn't say he wasn't there? He came there practically every day? A. Yes, sir, he used to come every day to see his father.

Q. What were you doing around five thirty on January ninth, nineteen hundred and twenty-five? A. I was upstairs in my room.

Q. Were you called out of the room by anyone? A. Mr. Ashley called me.

Q. What Mr. Ashley? A. Mr. Dwight Ashley.

Q. Where was he when he called you? A. In the hall.

Q. How far from the door where Mr. Ashley Senior was? A. About a yard and a half.

Q. When he called you did you come down? A. I wasn't quite ready and he said I should come down as soon as I was ready.

Q. When you came down did you talk to him? A. I had to wait in the hall.

Q. Where was Mr. Dwight Ashley then? A. By the door in the hall where he called me.

Q. Was anyone else there? A. Mr. Dudley was standing in the hall.

Q. He was talking to Mr. Dudley? A. Yes, sir.

Q. How long did they talk there together? A. About five minutes.

Q. Could you overhear that conversation? A. Yes, sir.

Q. Wasn't it, the conversation at that time, something about a codicil to the will? A. No.

Q. What was it about? A. I don't know what he said but nothing about that will.

Q. Did he tell about his father signing a paper? A. No.

Q. Tell us what it was about? A. He was standing there talking to pass the time with Mr. Dudley.

Q. When you got there what did Dwight Ashley Junior say to you? A. Just wait a few minutes.

Q. After that what did he say again to you? A. I guess that is all.

Q. What did you do stand there? A. Yes, for a few minutes.



Q. What were you waiting for? A. Until they got it ready.

Q. What ready? A. The will ready for Mr. Ashley, Senior in the other room.

Q. How did you know the will was being gotten ready? A. Just guessed it.

Q. Had there been talk about the house about it? A. No.

Q. Just tell us how you came to guess they were going to execute a will in that room? A. Because father Ashley was sick.

Q. He had been sick for months, isn't that right? A. Yes, sir.

Q. Tell us why you concluded there was a will to be executed there? A. I just thought it was.

Q. What made you think there was going to be a will executed? A. Because Father Ashley was sick.

Q. Didn't Mr. Dwight Ashley tell you he wanted you to come there to witness a will? A. No.

Q. He didn't say anything about it? A. No.

Q. And while you were standing there you thought it was to witness a will? A. When he called me I thought it was for that.

Q. Mr. Dudley was standing by the door. Did you go right into the room after Mr. Dudley? You followed him? A. Yes, sir.

Q. Right after him? A. Yes, sir.

Q. There wasn't any interval or any time between? A. No.

Q. Mr. Dwight Ashley went into the room at that time? A. Yes, sir.

Q. And stayed there most of the time? A. Yes, sir.

Q. He stayed there until after the paper was signed? A. Yes, sir.

Mr. Gourley: Where?

A. In the room.

*Cross-examination (continued by Mr. Benson):*

Q. Where was Mr. Dwight Ashley, Senior, Miss Uhlig when you went into the room? A. Sitting in a chair.

Q. What kind of a chair? A. A morris chair.

Q. Was he propped up with pillows? A. No, he had his bathrobe on.

Q. Was any table by him? A. Yes, a little table.

Q. Where was that? A. In front of him.

Q. The table he used to eat from? A. Yes, sir.

Q. What part of the room was that by the door or where? A. About the middle of the room right by his bed.

Q. After you went into the room who else was there. Who was in the room when you went there, Mr. Ashley, Junior, Mr. Ashley, Senior, Mr. Dudley and anyone else? A. Another man.

Q. He wasn't talking at that time? A. No.

Q. Mr. Dwight Ashley did the talking? A. No, he didn't say anything.

Q. Didn't he have something to say at that time? A. No.

Q. Didn't Mr. Dwight Ashley have something to say, didn't he say hello Dad or something like that? A. No.

Q. Wasn't anything said at that time when you walked into the room, you all walked in there and nothing was said? A. No.

Q. Did Mr. Dwight Ashley, Senior say anything? A. No.

Q. Mr. Dudley stood there, he didn't do anything



he just stood there waiting to see what was going to be done? A. No.

Q. He didn't have any conversation with Mr. Ashley? A. Senior.

Q. Yes? A. No.

Q. Did he go anywheres near him? A. Right up to the table.

Q. Did he say anything to him, do you recollect what was done then? A. He shook hands and said how do you do to him.

Q. He stood by him? A. Yes, sir.

Q. Did you see any paper at that time? A. I seen the will laying on the table.

Q. What table was that on? A. In front of Mr. Ashley.

Q. Was it signed at that time by Mr. Ashley when you walked in there? A. No, it was signed after.

Q. Did he sign it easy or make a considerable effort to sign? A. He signed it easy.

Q. He was quite sick wasn't he? A. I guess he was that sick he couldn't sign it easy.

Q. Look at his signature, wouldn't you say he made quite an effort to make that signature? A. He wasn't a quite good writer.

Q. Notice the difference there is there. Did he sign it with a lot of ease?

Mr. Gourley: She said he signed it easily.

The Court: So she said.

Q. Nothing was said by anyone at that time? A. No.

Q. Nothing was said then, I think you signed first? A. Yes, sir.

Q. You signed first? A. Yes, sir.

Q. Where was Mr. Dudley when you signed it? A. Standing there.

Q. Had he stepped out of the room? A. No, he stood there.

Q. Talking to Dwight? A. No, nobody was talking.

Q. Nobody said a word? A. No.

Q. Was anything said except what Mr. Dudley said "How do you do Mr. Ashley"? A. No.

Q. Wasn't anything said by anyone in the room? A. Yes, sir.

Q. That is true isn't it? A. Yes, sir.

Q. After when you got ready to go out of the room where was this paper? A. On the table.

Q. Dwight Ashley stayed in the room did he not? A. I guess so.

Q. You think he did? A. Yes, sir.

Q. You are sure? A. No, I am not sure because I went downstairs and got dinner ready.

Q. You are sure from the time you stepped into the room with Mr. Dudley, who went in the room and greeted Mr. Ashley while you were there? That is true? A. Yes, sir.

Q. There was nothing said from that time on by anyone in the room? A. No.

Q. Are you sure of that? A. Yes, sir.

Q. Do you know whether Dudley went out of the room with Dwight Ashley? A. I guess he did go out and leave the house.

Q. Did he go out of the room with Dwight Ashley, Junior? A. I am not sure.

Q. Did you see him downstairs with Dwight Ashley? A. No, I was in the Kitchen.

Q. You didn't see them after that? A. No.



*Redirect-examination by Mr. Gourley:*

Q. Do you know whether the ninth day of January was a Thursday or Friday, can you tell anything about it? A. I think it was on Thursday.

Q. That is your recollection? A. Yes, sir.

Q. Do you know Dwight Ashley was in that room when the will was signed? A. Yes, sir.

Q. Was Mr. Gold in the room when it was signed the lawyer? A. Yes, sir, he was there.

Q. You didn't mention his name? A. I didn't know his name.

Q. How did you know it was a will you were signing?

Mr. Benson: I object to it as improper—
Objection Overruled.
Caveator excepts. Exception allowed and signed and sealed accordingly.

Judge.

A. I just guessed it was a will.

Q. Was anything said at the time about it?

Objected to by Mr. Benson.
The Court: She said there was nothing said.

Q. You remember you signed first? A. Yes.

Q. Mr. Dudley, I understand, signed after you? A. Yes, sir.

Q. Did Mr. Ashley say anything about what the paper was?

Objected to by Mr. Benson as leading.
Objection overruled.

A. He just said he wanted me to sign my name.

Q. Did he say what the paper was? A. No.

*Marie Uhlig—Recross.*

Q. Did you know what it was? A. No, I didn't know what it was.

Q. Did you read the part before your signature? A. No, I didn't look at that.

Q. Did Mr. Gold read the paper?

Objected to by Mr. Benson as leading.

Objection overruled.

Caveator excepts. Exception allowed and signed and sealed accordingly.

Judge.

A. Yes, sir.

*Recross-examination by Mr. Benson:*

Q. Mr. Gold just read this part where your signature was? A. Yes, sir.

Q. That is all? A. Yes, sir.

(At this point an adjournment was taken until 10:00 A. M. Wednesday April 8th, 1925).



PASSAIC COUNTY ORPHANS' COURT.

| | |
|---|---|
| In the Matter of The probate of a paper purporting to be the last will and testament of DWIGHT ASHLEY, Deceased. | Before: Hon. Joseph A. Delaney, *J.* |

Paterson, N. J. April 8, 1925.

APPEARANCES.

HON. WILLIAM B. GOURLEY,
For the Proponent.
JOHN O. BENSON, ESQ.,
For the Caveator.

---

Hearing continued in the above matter from Thursday, April 2nd, 1925, to Wednesday, April 8th, 1925, at 10:00 A. M.

---

WILLIAM FLITCROFT, sworn for the Caveators.

Mr. Gourley: At the outset according to custom I think we ought to determine or have stated what the grounds for the attack on this will are.

The Court: I presume there is no objection to that.

Mr. Benson: I am perfectly agreeable. The ground for the attack on the will is that

it was procured by undue influence of Dwight Ashley's and second, that it was procured by fraud and deceit and third, that the will was improperly drawn, improperly executed, I should say that the testator did not have the capacity to make a will at the time of the execution of it. This is not the codicil of Dwight Ashley, Sr.

*Direct-examination by Mr. Benson:*

Q. What is your profession? A. Practicing physician.

Q. How long have you been practicing medicine? A. Thirty-five years.

Q. Did you know Dwight Ashley, Sr? A. I did.

Q. Did you attend him at any time during his last illness? A. I was called to see him with Dr. Todd on February first.

Q. Where was he on February first? A. He was at his home on Twenty-seventh Street.

Q. Who called you there, do you recollect?

The Court: February first of this year?

A. Yes, sir, nineteen twenty-five.

Q. Who called you there doctor? A. First Mr. Irving Ashley asked me to see his father because I had known him for a great many years and was an old friend of his. I told him I could not see him except in consultation with Dr. Todd so it was arranged and Dr. Todd and I saw him on February first.

Q. Where was he when you reached his home? A. In his reclining chair.

Q. Did you make an examination of him? A. I did.



Q. What did you find him to be suffering from? A. I found he had a valvular disease of the heart very bad and had some kidney trouble.

Q. Could you observe from the history of the case whether he suffered from a stroke of paralysis at any time? A. I had no evidence of it. I understood he had a slight stroke.

The Court: From your examination, Doctor.

A. I did not observe anything.

Q. You asked him questions? A. Yes, sir.

Q. Did you ask him about his physical history? A. Yes, sir.

Q. Did he tell you anything about a stroke he had?

Objected to by Mr. Gourley.

The Court: The Doctor says he didn't observe anything with reference to a stroke.

Q. What was his general physical condition on February 1st. A. He was rather bad. That was a case in which no physician would hold out a prognosis of recovery.

Q. Why, Doctor? A. Because he had an incurable valve disease of the heart and he had kidney trouble and at his age and time of life it would be unreasonable to expect him to become young again.

Q. From your observation was he in a weakened condition or strong? A. Naturally he was in a weakened condition.

Q. To what extent? A. He did not walk while I was there but I understood he went to the bath room, backward and forward, and I told him and I think Dr. Todd agreed with me that there was

danger in his walking. He was liable to die suddenly.

Q. In his condition would he be more susceptible to influence about him than he would under normal conditions?

Mr. Gourley: I object to it. That is for the Court to say.

Objection sustained.

Caveator except. Exception allowed.

Q. Did you have any conversation with him Doctor? A. I did.

Q. How often did you go there? A. Doctor Todd went to Bermuda and asked me to take care of him until his return and during that time I saw him on the eighth, twelfth, eighteenth and twentieth of February.

Q. During that time did he improve any? A. He held his own until towards the last and the last two calls I made, the call prior to the last one, I told Mrs. Dwight Ashley, Jr. he must be very careful that he did not walk or he would be liable to die suddenly, to be very careful and not have him take any exercise whatever, his condition was such I would not have been surprised had he died instantly at any time. I personally felt that and he seemed to me to be worse, his pulse had dropped down to forty and I told Mr. Dwight Ashley to be prepared for the worse at any time. I believe the following day Dr. Todd returned if I understand it right and from that time on I had no further interest in the case.

Q. Did you prescribe digitalis for him? A. I found he was taking it by orders of Doctor Todd and I approved of it.



Q. Did you approve of the quantity he was receiving? A. Yes, that was alright.

Q. Did you advise it in the same quantity? A. I only reduced it at the last visit I was there.

Q. To what extent? A. I told him to cut it down one-half.

Q. What effect does that have on the body? A. Well, on the heart and it acts on the kidneys.

Q. Was the heart condition as you found it a chronic weakened heart? A. The valves were in very bad condition, they were as Doctor Todd said all shot to pieces.

Q. Was that to your observation long standing? A. It must have been of long standing.

*Cross-examination by Mr. Gourley:*

Q. Doctor Todd was the physician in attendance? A. Yes, sir.

Q. Because of his temporary absence you were called in? A. That is right.

Q. You remained in attendance how many days? A. On the first of February I saw him with Doctor Todd in consultation and I saw him on February eighteenth, twelfth, fifteen and twentieth.

Q. Are you sure about the twentieth? A. I have it here on the twentieth.

Q. Might there not be some mistake? A. There might be some mistake about the last date but I have it down on the twentieth.

Q. How long did each visit last? A. How long did they last?

Q. About? A. Probably ten or fifteen minutes, long enough—

Q. Long enough to do your duty but you don't

know how long? A. How long, well ten or fifteen minutes.

Q. Ten or fifteen minutes that will do Doctor. A. Alright.

---

WILLIAM H. ASHLEY, sworn for the Caveators.

*Direct-examination by Mr. Benson:*

Q. Where do you live? A. Hackettstown, New Jersey.

Q. What relation are you to Dwight Ashley, Sr. A. Brother.

Q. What was your relationship with respect to him, was it close? A. Very friendly, yes sir, as brothers should be.

Q. Do you recall whether Dwight Ashley, Sr. spent any of his time in your vicinity or not? A. Yes, sir.

Q. Where was that? A. At a summer place at Budd Lake.

Q. Did you see him frequently there? A. Very frequently.

Q. Did you have any conversation with him respecting his affairs, his general affairs? A. His general affairs, yes, sir.

Q. How far does this date back, Mr. Ashley? A. The last time I saw him—

Q. When does it start? A. Oh, eighteen seventy-six or eighteen seventy three.

Q. Would you say your relationship was of a confidential nature from that right down to the time of his death? A. Yes, sir.

Q. Did he at any time discuss with you his re-



lationship to the Hawthorne Silk Company? A. Yes, sir.

Q. Just tell us what his comments were?

Mr. Gourley: I object to it unless the time is fixed.

Q. Was he interested in the Hawthorne Silk Company? A. Yes, sir.

Q. Did he tell you to what extent? A. No.

Q. Did he tell you whether he was an officer of the Hawthorne Silk Company? A. That is a detail I don't understand.

Q. When you had these conversations relative to the Hawthorne where were they had? A. Mostly at his farm, sometimes at my home.

Q. Do you recollect was there any conversation during the year of nineteen hundred and twenty-three or four? A. Yes, sir.

Q. Do you recollect any conversation during the year nineteen hundred and twenty-four? A. Yes, sir.

Q. When was that, about when? A. Shortly before Christmas.

Q. Do you recollect what he had to say regarding the Hawthorne Silk Company at that time?

Mr. Gourley: This is far removed from the immediate case.

The Court: What date may I ask is the codicil?

Mr. Benson: January ninth nineteen hundred and twenty-five.

Mr. Gourley: And the will is April nineteen hundred and twenty-four.

The Court: Proceed.

Q. Was his son, Dwight, to your knowledge, an officer and director of the Hawthorne Silk Co. A. He was reported to be.

Q. Did Mr. Dwight Ashley, Sr. say he was an officer of that corporation?

Objected to by Mr. Gourley.

Mr. Benson: The Hawthorne Silk Company was a family corporation of which there were just two so far as we are able to know about. The Hawthorne was a corporation organized in which Ashley, Sr. put in one hundred thousand dollars and gave to the boys part of the stock. I am going to bring out the fact that Dwight Ashley, Jr. and his brother Charles endeavored to oust him from the corporation and show by that his feelings.

Mr. Gourley: The will is dated April nineteen hundred and twenty-four and in that he leaves his property to all his boys.

The Court: I shall sustain the objection.

Caveators Except. Exception allowed.

Q. Did he ever say to you anything regarding the conduct of his son, Dwight, with respect to his being ousted from the Hawthorne Silk Company?

Objected to by Mr. Gourley.
Objection sustained.
Caveators except. Exception allowed.

Q. Was he friendly towards Dwight Ashley with regard to the management of the Hawthorne Silk Co?

Objected to by Mr. Gourley.



Objection sustained.
Caveators except. Exception allowed.

Q. Did he make any comments regarding his affection for Dwight Ashley at the time you spoke to him?

Objected to by Mr. Gourley.
Objection overruled.

A. He did not feel kindly.

Q. Tell us just what he said?

The Court: Was this prior to the execution of the will?

Mr. Benson: No, in December after the execution of the will but before the execution of the codicil.

A. It is hard for me to repeat those words. The substance is he did not feel kindly.

Q. Why? A. Due to the attitude he took to him ousting him from the Hawthorne Silk Co. He didn't feel kindly because he was ousted out of the Hawthorne Silk Co.

Q. Go ahead, tell us all. A. That is a complete answer.

Q. Was there anything further said about it? A. Only in regard to Charles Ashley, the other boy, who voted him out. He was opposed to Dwight Ashley and Charlie Ashley through their efforts to kick him out of the Hawthorne Silk Co.

Q. What other things in reference to that subject, what else did he say? A. He said they used the funds of the Savoy Realty Co. to further the interests of the Hawthorne Silk Co.

Mr. Gourley: What is the object of this conversation?

The Court: To show the feeling he had towards his two boys, or rather, particularly towards Dwight in this period prior to the date of this execution of the codicil. It might have some effect in the future. I am not prepared to say now. However, I think we ought to hear it.

Q. Tell us just what he had to say? A. I have told pretty well all he said. He was not satisfied with the attitude of the boys, he was not satisfied with the boys.

Q. Was he satisfied or dissatisfied? A. Very much dissatisfied.

Q. What was his comment with reference to the conduct of Irving Ashley? A. Very good, very commendable because he stood by him.

Q. What do you mean he stood by him? A. He refused to vote with the others to oust the father out.

Q. Out of what? A. The Hawthorne and Savoy Realty Co.

Q. Did he tell you anything further about the efforts to secure the vote of Irving?

Objected to by Mr. Gourley.
Objection overruled.

A. No, only another effort was made to buy Irving's stock in the Hawthorne Company.

The Court: Was this the conversation?

A. Yes, sir.

Q. Alright, go ahead. A. Irving refused to sell his stock in the Hawthorne for the sake of saving Dwight Ashley, Sr. from being ousted out as it



would leave the other side all the controlling interest.

Q. Did he tell you anything at this time of any other effort on the part of Dwight Ashley, Jr. to secure the control of the Hawthorne? A. You have got that wrong. Dwight Ashley didn't try to control, Charles Ashley did.

Q. Did Dwight Ashley vote with Charles Ashley? A. Yes, sir.

Mr. Gourley: I object to Mr. Benson putting the words in the witness' mouth.

A. He did not put the words in my mouth because these are actual conversations we have had.

Q. Did he, during the month of December, have any further conversation with you relative as to whether he was an officer of the Savoy Realty Co. A. He said he was put out of that.

Q. You refer to Dwight Ashley, Sr. A. Yes, sir.

Q. Tell us what he said about that and how he felt about that?

Mr. Gourley: I make the same objection to this class of testimony.
Objection overruled.

A. He felt very indignant.

Q. Which boy did he feel indignant against? A. Dwight and Charlie.

Q. Tell us. A. I told you.

Q. I am referring to the Savoy. What was Irving's position with reference to the Savoy Realty Company respecting his father?

Objected to by Mr. Gourley.
Objection sustained.

Q. Did he say anything about Irving's position? A. Only about Irving standing by him in all his difficulties.

Q. Did he mention any time the matters regarding the management of the Savoy Realty Co. A. They were very bad.

Q. What do you mean? A. The management was very bad.

Q. Who had charge of it? A. His two boys, Dwight and Charlie.

Q. Was he pleased with that? A. No, sir.

Q. What did he say about it? A. He said it was bad management.

Q. Did he say he had any conversation with Dwight regarding a change in the management? A. No.

*Cross-examination by Mr. Gourley:*

Q. This Hawthorne Silk affair with relation to Mr. Dwight Ashley, Sr. was at least nine or ten years ago? A. Yes, sir.

Q. You knew or heard of it then? A. I don't remember the dates of course.

Q. About that time? A. Yes, sir.

Q. Did you know the difference between the directors was that the young men wanted a certain method of manufacturing and marketing the product and your brother had another view, did you know that was the difference? A. I did not.

Q. Did you not learn it was purely a business difference as to which was the best method of making money? A. I did not. I don't know.

Q. Did you learn later their method was the better of the two methods? A. Just repeat that.

Q. Did you learn afterward that the methods employed by the young men in charge of the plant and the people there were more profitable than the method suggested by Dwight Ashley, Sr. A. No, I don't know anything about that.



Q. Charles Ashley was a director of the Hawthorne? A. Yes, sir.

Q. Dwight Ashley, Sr. was a director? A. Yes, sir.

Q. Dwight Ashley, Jr. was a director? A. Yes, sir.

Q. And Irving Ashley was a director? A. I understood from what my brother told me.

Q. Please answer my question. Did you know that the three sons and your brother were directors of the Hawthorne? A. I don't know.

Q. And about the Savoy, did you know they were all directors of the Savoy? A. At the beginning yes, sir.

Q. Did you know that Dwight, Sr. was a director of the Savoy? A. He was not permitted to be active in the later days.

Q. Think of what you are saying. It is about the Savoy. Was he a director? A. That I don't know.

Q. Was Charlie a director of the Savoy? A. Supposed to be.

Q. Dwight, Jr. A. Yes, sir.

Q. And Irving? A. Yes, sir.

Q. It was a family company composed of the three boys and your brother, their father? A. Yes, sir.

Q. This Savoy was a land company? A. Yes, sir.

Q. It was not a manufacturing company. It owned the land, Ashley Heights largely and owned considerable land in North Carolina? A. Yes, sir.

Q. Land which your brother turned into the company? A. Yes, sir.

Q. In other words they took the land and it was a question if they could sell the land or not? A. But my brother had no voice whatever in the matter in the latter end.

Q. You say that but I am asking you that other question about it? A. He said that to me.

Q. This Savoy was purely a land company? A. Yes, sir.

Q. What difference was there so far as he told you was had over or concerning prices for lots? A. They simply would not consult him for anything.

Q. Did he relate to you about the prices on lots? A. No.

Q. Did he speak to you about any point of difference? A. No.

Q. Nothing of that? A. No.

Q. Did he complain the lots were sold at too low prices? A. No.

Q. He complained they took too high a mortgage on it? A. No.

Q. Can you give us in any way what his objection was in that business? A. They didn't give him a voice in the management.

Q. Although he was a director they didn't give him a voice? A. Yes, sir, and did not receive him.

Q. Did he say anything about the checks or notes of the company? A. No.

Q. Nothing of that kind? A. No.



CLARA E. BENNETT, sworn for the Caveators.

*Direct-examination by Mr. Benson*:

Q. Where do you live? A. Yonkers.

Q. What relation were you to Dwight Ashley, Sr. A. A sister.

Q. You were friendly with your brother, Dwight? A. Very friendly during most of our life but we had a little difference but we parted friends.

Q. Did you come in contact with your brother frequently? A. Very frequently.

Q. Just tell us how often you would see him? A. At the time of the trouble with the boys most every Saturday, most every Saturday afternoon I would go down to visit, not every Saturday but very frequently, but I would spend the afternoon with him and we would talk.

Q. Do you know whether he spent a great deal of time in his home? A. When do you mean?

Q. In the latter years? A. Up on the farm.

Q. Where was that farm? A. At Blairstown.

Q. Did you visit him at the farm? A. I was housekeeper there on two or three different occasions.

Q. While you were acting as housekeeper did you have any conversation respecting his boys? A. I wished I had paid more attention to his conversation but I can say.

Q. When was this, about how long ago? A. I guess it is three years ago because I was on the farm with him.

The Court: It is rather remote.

Mr. Benson: It was just at this time he was ousted from this corporation. This would be in nineteen hundred and seventeen

and I want to show his frame of mind towards the boys in regard to that act.

Mr. Gourley: There was an act of forgiveness when he gave his property equally to his sons.

Mr. Benson: And then gave one son more than the other.

The Court: He subsequently left a will giving to his boys all his property. If there was a feeling that time he evidently changed his attitude when he made the will.

Mr. Benson: After the making of this will in April when he still repeated the same things referred to, spoke of the same business and of being ousted, or as he used the words being kicked out of the Savoy and Hawthorne.

Q. Go ahead. A. He was very much hurt. This is three years ago—

The Court: I think it is too remote.
Caveators except. Exception allowed.

Q. When was the last you had any conversation with him? A. In December nineteen hundred and twenty-four.

Q. At that time did he make a remark about the same subject regarding the Savoy? A. Not at that time, no, sir.

Q. What did he say? A. There was just a little conversation there, I was only there about ten minutes. I didn't know at the time he was ousted out of the Hawthorne.

Q. Do you refer to any conversation? You say in December you had a conversation? A. Yes, sir, but I wasn't with him over ten minutes.



Q. When was the conversation prior to that time? A. About three years ago.

Q. Then you were acting as his housekeeper on the farm? A. Yes, sir.

Mr. Benson: If we can hear this now I will connect it up.

Mr. Gourley: He has connected it up with his will.

The Court: There is nothing before the court as I understand.

---

CHARLES ATKIND, sworn for the Caveators.

*Direct-examination by Mr. Benson:*

Q. What business are you engaged in? A. Public Accountant.

Q. Where? A. Paterson.

Q. Did you have occasion to examine the books of the Savoy Realty Co. recently? A. Yes, sir.

Q. How long ago? A. March eleventh.

Q. Did Mr. Dwight Ashley, Jr., was he present? A. Yes, sir.

Q. Did he submit to you a statement of the assets of the Savoy Realty Co.? A. Yes, sir.

Q. Have you a copy of that statement? A. Yes, sir, I have.

Q. What does it show the total assets as submitted by Mr. Ashley? A. The total assets were two hundred and twenty-one thousand nine hundred and fifty-eight dollars and nineteen cents.

Q. And the liability? A. Fifty-two thousand six hundred and thirty-two dollars. That leaves the net worth of the corporation one hundred six-

ty-nine thousand three hundred twenty-six dollars and nineteen cents.

Q. What does that deduction mean? A. That is a note due at the bank. It includes the book value of the capital stock of fifty thousand and assets of one hundred and sixty-nine. The total worth is two hundred and nineteen thousand.

Q. How is that made up? A.

| | |
|---|---|
| Real Estate—Haledon | $1400. |
| Prospect Park | 6800. |
| Hawthorne | 26975. |
| Fayetteville, N. C. | 92725. |
| Total Real Estate | $127900.00 |
| Notes Receivable of Hawthorne Silk Co | 38680.00 |
| Liberty Bonds | 10000.00 |
| Certificate of Deposit | 17900.00 |
| Equity Mortgages | 26047.26 |
| Cash—First National Bank | 211.73 |
| Cash—Second National Bank | 220.29 |
| Cash—Fayetteville, N. C. | 998.91 |
| Total Assets | $221958.19 |

The only liability is notes due the First National Bank $2632.00.

Q. Did he refer to the Bills Receivable thirty-six thousand six hundred and eighty dollars, did he refer to that? A. Yes, sir:

Q. What was that? A. That represents money that the Hawthorne got from the Savoy Company for which they gave notes.

Q. Did he submit to you records showing the income on the property to the Savoy? A. Yes, sir, there were several.



Q. Did you take any memorandum of that? A. Yes, sir.

Q. Have you that there? A. Yes, sir, referring to nineteen hundred and twenty-four.

Q. What did it show was the income, the gross income of the property? A. In nineteen hundred and twenty-four the income as obtained from the Corporation Tax return which he had on his desk showed a loss of nineteen hundred and eighty-eight dollars and fifty-three cents.

Q. Did he submit the return for the year nineteen hundred and twenty-three? A. Yes, sir.

Q. What did that show? A. A loss of twenty three hundred and thirty-four dollars and sixty-nine cents.

Q. Did he show the year of nineteen hundred and twenty-two? A. We did not inspect the income of nineteen hundred and twenty-two. We got a copy of the balance sheet.

Q. Did that show a loss? A. I can't tell you whether it did without comparing that with the previous year.

Q. I think I asked you what the gross income for the year nineteen hundred and twenty-four was? A. Gross income Eight thousand ninety dollars and six cents.

Q. The examination of the books you made Mr. Atkind, were they in such condition it was easy to discern these balances?

Mr. Gourley: I object to it. I don't think it makes any difference whether the books were kept in lead pencil or in red ink.

Objection sustained.

Caveators except. Exception allowed.

*Cross-examination by Mr. Gourley*:

Q. How long did it take you to get this information? A. This was done in one morning.

Q. You asked Mr. Dwight Ashley for that information? A. Yes, sir.

Q. And he was there with you three hours giving you that information? A. Yes, sir.

Q. As far as you know there was no application to the court? A. Yes, sir.

Q. How many times were you there? A. That is the only time we got in.

Q. How many times were you there? A. Once when he wasn't there.

Q. Answer the question? He gave you all that information the first day you were there? A. Yes, sir.

Q. And you went back another day after making an appointment for a particular hour. You were late for that appointment? A. The appointment was for all morning.

Q. Yes, but the time of your arrival? A. Between nine-thirty and ten.

Q. You didn't keep the appointment? A. We were not there by that time, no.

Q. These balances you have given us, for instance you said Hawthorne twenty-six thousand dollars. That is all land? A. Yes, sir, land and some buildings.

Q. Scattered in North Carolina and around here? A. Yes, sir.

Q. Do you know anything about whether that value is high or low? A. Those are the figures he gave me.

Q. These books show if they sold the land they would get that much? A. I didn't have time to



get the value of it, of each parcel, we accepted his value.

Q. You don't know anything about the North Carolina land? A. Only what the books show.

---

CARRIE CLARK, sworn for the Caveators:

*Direct-examination by Mr. Benson*:

Q. Where do you live? A. Stillwater, New Jersey.

Q. You kept house on the farm owned by Mr. Ashley? A. Yes, sir.

Q. Did he spend part of last Summer at the farm? A. Yes, sir, he was there most all the time.

Q. What part of the summer did he spend up there? A. Mostly all the time.

Q. Did he during the time make any comment or not or in any conversation refer to his feelings toward Dwight Ashley and Charles Ashley? A. He loved all his children.

Q. From your observation did he love them all equally? A. He certainly did.

Q. What did he ever say about it? A. He loved all his children. He didn't love some of their conduct.

Q. Did he at any time comment his being ousted from the Savoy to you? A. No.

Q. You don't recollect that? A. No.

Q. Did he ever speak about the children? A. No.

Q. You will say he never said that to you? A. What do you mean?

Q. About his being ousted from these corporations to you. He didn't say he wasn't pleased by being put out?

Objected to by Mr. Gourley.

The Court: That contemplates a conversation which has not been testified to.

A. How do I understand that question?

Q. Did he at any time appear to feel bad because of his being ousted from the Savoy?

Mr. Gourley: I object to it. It is about time a limit should be put on this.

Mr. Benson: That was last summer?

A. No, I cannot recall he did.

Q. Did he in the early spring comment on his being ousted? A. No, sir.

Q. You don't recall any such conversation? A. No.

*Cross-examination by Mr. Gourley*:

Q. You spoke about some conduct he didn't like, what conduct, whose conduct did he speak about? A. The two boys.

Q. Which two? A. Charles and Irving.

Q. What did he say Charles and Irving had done? A. He didn't like their drinking.

Q. Did he say anything about what the result would be if they kept on drinking? A. He says my boys will go to Hell if they don't stop.

*Redirect-examination by Mr. Benson*:

Q. Do you recollect what he said about Dwight and Charlie? A. That is what I refer to.

Q. Dwight and Charlie? A. Yes, sir.

Q. That was about April, nineteen hundred and twenty-four? A. This is last spring.

Q. A year ago he talked quite frequently of his affairs to you? A. No, not in particular.



Q. Did he talk about them generally? A. Occasionally.

Q. What did he say with reference to the conduct of Dwight and Charlie? A. Nothing that I can recall.

Q. Are you sure he never said anything to you about the Savoy Realty Co.? A. He said occasionally they had arguments.

Q. With whom? A. No one in particular. He didn't mention. He said there were arguments and that was about all.

Q. Didn't he say at times he was rather sore because they had put him out? A. No.

Q. In the early spring? A. No, he had nothing to say.

Q. Are you sure, just think? A. Not that I can recall.

Q. You won't say he didn't say that? A. Yes, sir, I will.

Q. Did you have a conversation with Mr. Irving Ashley a short time ago? A. About what?

Q. About Mr. Ashley's comments about the Savoy? A. Not that I recall.

Q. You will say there was no conversation? A. Between Irving Ashley and I?

Q. Yes. A. Not that I recall.

Q. Do you recollect Mr. Ashley and Mr. Kinne being at your place at Stillwater? A. Yes, sir.

Q. Will you say there was nothing at that time said where you referred to a conversation with Mr. Ashley in which he stated he was provoked at the boys for the way they had handled him? A. Not that I recall. Nothing about that.

Q. You say you didn't make any statement to Mr. Irving Ashley respecting any conversation relating to the Hawthorne Silk Co.? A. No.

The Court: You said he complained about two of the boys drinking?

A. Yes, sir.

The Court: To which of the boys did he refer?

A. You want the names?

The Court: Yes.

A. Irving and Charles.

*By Mr. Benson*:

Q. At that time when Mr. Ashley was there with Mr. Kinne didn't you state to them that Mr. Ashley, Sr.'s affection was equally received by all his children? A. Yes, sir, he loved all his children.

Q. He didn't regard their conduct seriously? A. No, only they were throwing themselves away.

Q. Didn't he tell you then and didn't you tell them then that he had some feeling towards Charlie? A. Financially, you mean?

Q. Yes. A. Not that I took out of it.

Q. You discussed that in that time? A. No.

Q. Did you discuss at that time regarding his feelings toward Dwight, Junior? A. No.

---

IRVING D. ASHLEY, sworn for the Caveators.

*Direct-examination by Mr. Benson*:

Q. You are the son of Dwight Ashley, Senior? A. Yes, sir.

Q. Do you recall the age of your father when he died? A. I think it was seventy-six.

Q. How old are you? A. Thirty-eight.

Q. Were you interested in any business with your



father during his life time? A. I was.

Q. What business were you interested in with your father? A. Altogether in the Hawthorne and the Savoy.

Q. What was the type of these two corporations? A. They were close coupled.

Q. What did they represent? A. The represented the family interest.

Q. What do you mean by family interest? A. We were all interested.

Q. Whose capital organized these corporations? A. My dad's.

Q. Did the boys put any in? A. No, sir, not any of us.

Q. Now the Hawthorne, what business was that engaged in? A. Manufacturing.

Mr. Gourley: What relation does it bear to the present inquiry?

The Court: I will admit it.

Q. Do you hold stock in the Hawthorne? A. I do.

Q. Did your father? A. He did.

Q. What position did he hold in the Hawthorne? A. Vice-President.

Q. Did he have any interest, any active interest in it? A. At one time.

Q. What happened in reference to his official position as Vice-President?

Objected to by Mr. Gourley.

Objection sustained.

Q. What business was the Savoy in? A. A holding company, holding property.

Q. Whose property? A. My dad's.

Q. Did the boys put any money in that? A. No.

Q. Did Dwight Ashley, Sr. have any office in the Savoy? A. Secretary.

Q. At the beginning? A. I think so.

Q. Do you know whether he continued as the active manager in the Hawthorne Silk Company up to the time of his death? A. He was put out long before.

Q. By whom? A. The majority.

Q. By whom? A. Dwight and Charlie and the majority of the stock holders.

Q. In the Savoy did he continue to the time of his death active management of it? A. No.

Q. Why? A. He was put out of the Savoy, he was voted out.

Q. By whom? A. By the majority consisting of Dwight, Charlie and my mother.

Q. At the time he was voted out which way did you vote? A. Naturally I voted with my dad.

The Court: You said the majority was Dwight, Charlie and who else?

A. My mother.

Q. How did he feel in reference to your conduct with respect to the Hawthorne and the Savoy? A. I think he was fairly pleased.

Q. Did he ever say anything about it? A. I think so.

Q. Did he? A. Certainly he did.

Q. When? A. The exact date I cannot state.

Q. Has he spoken lately? A. Not lately, because it was generally understood. I never asked him for any boquets.



Q. Has he commented on it? A. He might have told other people but he didn't to me.

Q. Did he speak to you? A. As far as commending me he might have said that was the way to treat a father but I didn't press it.

Q. Did he comment about your voting with him? A. He might have done it maybe because I stuck with him.

Q. Did he say anything after these meetings or after the meeting of the Savoy regarding his being ousted from the corporation? A. Yes, sir, he was very sore and never forgot it.

Q. What did he say? A. There were several conversations.

Mr. Gourley: When was this?

A. Ever since the meeting was held. He never forgot it.

Mr. Gourley: I object to it, there is no date fixed.

Q. Did he make any comment about this since April, nineteen hundred and twenty-four? A. Yes, sir.

Q. What were the nature of the comments in nineteen hundred and twenty-four? A. The same at all times. It was just the same. He repeated in his conversations and he never forgot it.

Q. Tell us what that conversation was since nineteen hundred and twenty-four? A. I am telling you every conversation we had he never forgot it. Nothing else, he never got over the way the boys treated him and he practically used the same words that he was kicked out which we will show later, that is I have a letter to that effect. He never commended us. I didn't expect it. I was just

loyal to him. That is all there was to it.

Q. Was there any effort at that time to overcome your attitude towards the management of the Hawthorne?

Mr. Gourley: When was this?

A. Nineteen hundred and sixteen.

Objected to by Mr. Gourley.

Objection sustained.

Q. Did he during the year nineteen hundred and twenty-four refer to the management of the Hawthorne Silk Company? A. Yes, sir.

Q. What did he say? A. It was very badly managed and he was heartbroken because it had to go into bankruptcy finally.

Q. Just tell anything further he said about the management of the Hawthorne? A. He was a man that said few words. What he did say was this: That the management was bad and the boys if they would go to work might bring it back, but he realized conditions were bad but at the same time they should never have let it go as far as it had gone.

Q. Did he at any time comment to you about the conditions of the Savoy during the year nineteen hundred and twenty-four? A. Yes, sir.

Q. When did he make any comment about that? A. The last conversation I had with him he said just as soon as he got better there must be a meeting of the Savoy.

Q. What did he say? A. I am telling you, trying to tell you as far as I can think.

Q. What else did he say? A. He also stated the Savoy stock should never get out of the family and that it could never be a one man corporation the same as the Hawthorne was and that meeting would have been held had he not died.



Q. Did he ever make any comments about the disposition of funds of the Savoy?

Mr. Gourley: I object to it. He was only a stockholder and may be a director.

Q. What did he say? A. He said he believed the Savoy had been cleaned out.

Q. In what way? A. Money taken out without his consent.

Mr. Gourley: How can this be evidential?

The Court: It is not.

Q. Did he say what the amount was? A. No, he didn't, large sums.

Mr. Gourley: When was this conversation?

The Court: This is since April, nineteen hundred and twenty-four.

A. This is as late as December, nineteen hundred and twenty-four at my home.

Q. Do you recall one occasion when he came from the farm to Paterson in December? A. On the sixteenth, about.

Q. Where did you first see your father that day? A. I met him on the train.

Q. Where? A. At Sparta Junction.

Q. How did you come to go there? A. I just wanted to go up to see him and at the same time I had a note to be endorsed and I went up to see him and found he had left. I found he had taken the train and I wired ahead and told him to get off and I met him on the train at Sparta Junction.

Q. Where did he go? A. To my house.

Q. Did he stay there? A. A day or two.

Q. Was he in the habit of going there? A. Frequently, yes, sir.

Q. What do you mean by frequently? A. It might have been one or two times a week and sometimes he would go direct to my mother's house.

Q. At the time he was at your house did he talk about his affairs with you? A. Naturally.

Q. Did he talk about the condition of the Hawthorne at that time? A. He did.

Q. And the Savoy? A. Yes, sir.

Q. Was he pleased with the way the Hawthorne had been managed? A. No, sir.

Q. What did he say? A. He summed it up, I cannot use the same words, that it was very badly managed and he never could understand how they let the concern go as far as it did.

Q. Who was managing it? A. Charles E. was president.

Q. Who else? A. Dwight Ashley, Jr.

Q. Did he make any comments about the condition of the Savoy? A. Just the same as I have stated; he thought the Savoy had been cleaned out and he also had been cleaned out.

Q. By whom? A. By the Hawthorne.

Q. Did he have an interest in the Hawthorne? A. He had some stock.

Q. Did he have an active management in it? A. No, sir.

Q. Were you a director? A. I was at one time, and I was ousted out when my Dad was.

Q. Did your dad keep any of his property at your home? A. Yes, sir, we had a safe up there, my Dad's safe.

Q. Did it continue there until his death? A. It did.



Q. Do you recollect in January, did you know of your father being sick at that time? A. On a Sunday night I was told he was expected down.

Q. Was there anyone that called up to notify you he was sick? A. No, sir.

Q. When did you first know of his illness? A. Wednesday morning.

Q. What did you do? A. I went to business and Wednesday night I stopped there.

Q. Where? A. At the home.

Q. Where was he? A. In bed.

Q. Where? A. In the front room.

Q. Where, in whose house? A. My brother's.

Q. Which brother's house? A. Dwight's.

Q. What was his condition on Wednesday night? What day would that be of the month? A. Wednesday the seventh.

Q. Did you see your father that night? A. I did.

Q. What was his condition, did you observe? A. Very poor.

Q. What do you mean by that? A. Apparently he looked a very sick man, which I guess he was.

Q. What did you say? A. I said, Dad, I am sorry to see you like this. I didn't know you were here. He made me no answer that I can remember.

Q. Yes. A. I stayed there maybe half an hour, or an hour, maybe less, maybe more. I don't know I have forgotten.

Q. Who was there all the time? A. I think my mother was in the room that night.

Q. Did you go back again that night? A. Not that night.

Q. Did you go back again after that? A. Practically every day with the exception of one or two times.

Q. Did you see him on the eighth? A. I must have.

Q. What was his condition then? A. I should say he was a sick man.

Q. How sick? A. I really cannot state as to that. He was in poor health and his manner was that—well, the only way I can term it is he was a sick man.

Q. Do you remember anything he said? A. If it was, it was only relative to his condition.

Q. Was he friendly at that time? A. Yes, sir, very.

Q. Did you see him again? A. Many times.

Q. Did you go there the ninth? A. I believe I did, yes, sir.

Q. What was his condition on the ninth? A. I imagine—

Q. Not what you imagined. A. As far as outward appearance was concerned I would say he was probably getting a little stronger.

Q. Was he in bed? A. No.

Q. Where was he? A. Probably downstairs on that day.

Q. On the ninth? A. I didn't arrive there till late, probably six-thirty.

Q. On the ninth, I am speaking about? A. I wouldn't testify as to that, whether he was upstairs or downstairs.

Q. Did you see him on the ninth? A. I did.

Q. Did you go there the tenth? A. That was on Saturday, I think so, yes, sir.

Q. Did you have any conversations with him during these visits? A. I remember a very distinct conversation I had with him. I think it was the twenty-fourth of January, on Saturday afternoon.

Q. During these visits you went to the house



where was Dwight, Jr.? A. He was in attendance.

Q. Did he leave you alone with his father? A. No, sir.

Q. Not at all? A. Once in a while.

Q. When he went out did your father voluntarily talk to you? A. He naturally would start a conversation.

Q. When Dwight came back what would he do? A. He wouldn't say as much.

Q. That continued until the twenty-fourth of January?

Mr. Gourley: That is an unfair question.

A. I won't say every time he came into the room he would stop, but on different occasions he may have. It all depends on what he was talking about.

Q. On January twenty-fourth you had a conversation? A. On Saturday afternoon.

Q. Who was there? A. My mother was present.

Q. What was that conversation? A. The conversation, it was relating—it was really the last business conversation I remember that I held with him. He was upstairs in his room and I came in and asked him how he was feeling. He says I feel a little stronger and one word led to another and I said Pop I don't understand how Dwight and Charlie, who have not worked for over a year, how they keep the same establishment with no salary. I said I am beginning to become suspicious. Then the matter turned to the Savoy and I don't know whether he led off or I did. I said Pop, there are three of us boys. I said when it comes to signing checks, and he broke in and said how many signatures are there on a check now and I said two. I said there are three of us boys, and I want my

they had taken up practically all the funds which were in the family.

Q. Did you talk to him anything further about the funds of the Savoy? A. I told him as far as I was concerned there would be nothing more, not another dollar drawn out as far as my interests were concerned.

Q. Did he say anything further about the funds of the Savoy? A. He thought it was cleaned out.

Q. Did he say anything about making any requests to Dwight concerning the affair? A. He did. I know it was on the sixteenth or about that time I had him sign my notes and both were in ignorance regarding the Savoy, regarding its wealth or as far as what it was worth. I said, Pop, can't you get a statement. He said I have asked for one and Dwight promised to give it to me.

Q. Did he get it? A. Not that I know of.

Q. What did he say about it? Didn't he say anything about the statement? A. He just took it for granted he was going to get it and if he didn't get it he didn't that is all.

Q. I show you a paper, is that your father's signature on that? A. Yes, sir.

Q. What is it? A. It looks like a will.

Q. What date is it? A. The twenty-seventh of June, nineteen hundred and twenty-one.

Q. Do you know that is your father's signature? A. Yes, sir.

Mr. Benson: I offer this in evidence.

Will admitted in evidence and marked Exhibit C-1 for the Caveators.

Q. Do you recollect any conversation with your father in April, nineteen hundred and twenty-four,



and Dwight Ashley, Jr. being present? A. No, we may have had that but I don't recollect.

Q. Do you recollect being in Dwight Ashley's house in April, nineteen hundred and twenty-four? A. No, sir, not that I remember.

Q. Did your father ever speak to you since April nineteen hundred and twenty-four about the amount of money withdrawn for personal use by Charles and Dwight out of the Hawthorne?

Objected to by Mr. Gourley.

Objection sustained.

Q. In April, nineteen hundred and twenty-four, did you have any conversation with your father about the amount of salary or money obtained from the Hawthorne by Dwight or Charles? A. You mean the salaries they drew from the Hawthorne? No, I wouldn't state as to that because as far as he was concerned he knew nothing, all he knew was they were not drawing any salary, and if there was any conversation about their taking any salaries or anything I wouldn't say anything, I wouldn't testify as to that.

Q. Did he speak to you about his withdrawing or getting any of the dividends of the Hawthorne? A. That matter was about that time long before that, a couple of years ago, in fact, I have a letter showing his feelings in that respect but in the latter part I don't remember him so stating.

Q. I show you a letter, is that written by your father? A. It is.

Q. You say that is in your father's handwriting? A. Yes, sir.

Q. You received that letter from your father? A. Yes, sir.

Q. Does it refer in that letter anything to the Savoy or the Hawthorne Silk Co.? A. The letter was written one twenty-nine, what year it doesn't state, but it evidently was after they fired him out of the corporation.

Objected to by Mr. Gourley.
Objection sustained.
Caveator excepts. Exception allowed.

Q. Did you receive a letter on April the eleventh nineteen hundred and twenty-three? A. Yes, sir.

Q. Is that in your father's handwriting? A. Yes, sir.

Q. Does it refer to anything in connection with the Savoy or Hawthorne?

Mr. Gourley: I object to it. How is this relevant when it is dated the eleventh of April, nineteen hundred and twenty-three?

The Court: I shall sustain the objection and permit an exception.

Q. Did he since April, nineteen hundred and twenty-four make any particular comments about Dwight Ashley, Jr. and his conduct towards him? A. After an apology was made to my Dad about six months ago, maybe a year, I should judge it was a year ago, an apology was made to my Dad by Dwight in his home and while my Dad accepted that apology for the treatment he had received, why I wouldn't say whether it lessened his feeling or whether it increased it. I don't think it increased it. I will say his remarks to me was he did all he could when he made the apology.

Q. Who made that remark? A. My father.



Q. After that did he make any mention of Dwight and his characteristics? A. No.

Q. During the summer? A. Not as far as his personal feelings were concerned, his characteristics, but the management of the business I would say he did, because towards the latter part of the summer or spring he spoke of this.

Q. Did he during the summer months speak of Dwight's conduct with reference to his character? A. No, he was being treated alright then as far as that is concerned.

Q. Do you recollect being at Dwight, Jr.'s house on a Sunday night when you had a conversation with your father? A. Yes, sir.

Q. When was that? A. I think I remember that well. If I can refer to notes I can give you the exact date.

Q. When was it about? A. In December.

Q. What was said? A. That was a business conversation.

Q. Who was there? A. My Dad, Dwight and myself.

Q. What was said by your father? A. With reference to the affairs of the Hawthorne?

Q. Your father was concerned about the Hawthorne? A. At that time I went down there with a suggestion and he told me it was the eleventh hour and it was too late.

Q. Did he say anything to Dwight that night about it? A. As far as censuring Dwight that night or making any comment I wouldn't say he did because he was probably feeling too badly.

Mr. Gourley: I ask that that be stricken out.

Q. Where did Dwight go that night ? A. Down to Mr. Gourley's office.

Q. Did you have any further conversation that night? A. No, I took exception to the treatment because they had suggested I wait there all afternoon and when he came home at night we were both to go down to Mr. Gourley's office and he went alone, I didn't go.

Q. Did he invite you to go? A. He did not.

Q. Who do you refer to as he? A. My brother.

Q. At that time didn't your father have anything to say about the management? A. The management always.

Q. What did he say? A. Mismanagement.

Q. What did he say further on that Sunday night? A. I won't say what he did, I don't know.

Q. Do you recollect in August, nineteen hundred and twenty-four what the condition of your father was? A. That was the time of his stroke.

Q. Did he have a stroke? A. Yes, sir, on August nineteenth.

Q. Where was he when he had it? A. On the farm.

Q. Did you see him right after? A. Dwight went up the same day or the next day, in fact, I think it was the same day he got the message and brought him down to his house.

Q. What was his condition? A. Bad, he couldn't talk.

Q. During the visit you had with your father at Dwight Ashley's house was he in a keen state of mind did you observe? A. No, I wouldn't say so.

Q. What would you say? A. He was not as quick, as active, as he was before his stroke.



*Cross-examination by Mr. Gourley*:

Q. How much did you owe your father at the time he died? A. Twenty-four thousand.

Q. How was that shown? What form of obligations, notes or what? A. A statement.

Q. You are not able to pay that back of course?

Mr. Benson: I object to it as immaterial.
Objection sustained.

Q. That is true, you have no property?

Objected to by Mr. Benson.
Objection sustained.

Q. You have settled with your creditors, haven't you?

Objected to by Mr. Benson.
Objection sustained.

Q. Was this property given to you? Have you any property at the present time to pay this estate?

Objected to by Mr. Benson.
Objection sustained.
Proponent excepts. Exception allowed.

Q. How many notes did he cancel for you? A. Twenty-one thousand dollars.

Q. Did he ever cancel any for Dwight, Jr.? A. One hundred thousand dollars.

Q. On notes? A. Yes, sir, that will be cancelled.

Q. Do you know of a single case where he has endorsed a note for Dwight, Jr.? A. No.

Q. When did your father last endorse a note for you? A. February seventeenth, nineteen hundred and twenty-five.

Q. He was in a sound mind then? A. He was not.

Q. And you took advantage of that fact? A. No, he wasn't just sure of what he was doing.

Q. Then why did you get him to do it? A. Simply because he was on previous notes. The last time he endorsed a note for me I saw how vague he was and I made a note for that note and laid it on the dresser in the presence of my brother.

Q. Did he understand what he was doing when he endorsed your note? A. He didn't know what note it was and I said Pop, don't you remember. I said—

Q. Did he understand what you were doing when he endorsed your note? A. He knew it was a note.

Q. How much was it? A. Sixteen hundred and fifty dollars.

Q. On what bank? A. The First National.

Q. Did you tell the First National your father didn't understand what he was doing? A. I didn't think it was necessary.

Q. And you took it down and gave it to the First National although your father didn't know what he was doing? A. They accepted it, didn't they?

Q. They accepted it because you didn't say anything about it.

A. Why should I? I took a record of it and left it with my father.

Q. Because he understood what he was doing. Is that the reason you didn't think it was necessary to tell the First National Bank? A. I didn't think it was necessary.

Q. When before that was the next note? A. December sixteenth.

Q. How much? A. There were two or three notes at that time.



Q. How much were they? A. I can't tell you.

Q. You don't remember the amounts? A. My book will show that.

Q. Can't you tell me the total? A. No.

Q. This man after he had a stroke and was in that debilitated condition you went to him to sign a batch of notes and don't recollect the amount or number? A. The bank knows.

Q. How many? A. Probably three or four.

Q. On the one date? A. I think they were all within a very short time and I had him sign them together.

Q. How far apart were they? A. I can't say.

Q. How long before that did you get him to endorse a note for you? A. I can't say.

Q. About when? A. I won't say.

Q. Can't you remember an important matter like that? A. I won't say.

Q. Won't? A. I don't know without record.

Q. You don't know how much they were? A. Not without record.

Q. Or the number of notes? A. No, sir.

Q. During the year nineteen hundred and twenty-four how many notes did he sign for you? A. I don't know without records.

Q. Can you tell us the amount? A. No, sir.

Q. Or the number? A. No.

Q. On what bank? A. The First National.

Q. Were they all on the First National? A. Yes, sir.

Q. Are these notes still there? A. They have been gradually reduced.

Q. Are they still there? A. What notes?

Q. The notes you got from your father? A. With reductions.

Q. How much? A. Without the reductions they are still there. I will produce records that show that is all.

Q. I give you notice now I want the records the next day we are here. A. I will have them here. Make a note of that, Mr. Benson.

Q. Do you know the number of notes or the total? A. What do you refer to?

Q. Any notes in which your father was an endorser on your paper. A. What dates?

Q. Any notes now standing, do you know? A. Not unless I have records.

Q. You can't even tell approximately? A. Outside of the twenty-one thousand dollars if these are the cancelled notes.

Q. How much do you say? A. Twenty-one thousand I would say.

Q. Your father paid for all that? A. He did.

Q. The notes now due the estate are how much? A. Not any.

Q. You mean you have no paper now on which your father was endorser? A. Outside of the notes in the First National.

Q. Don't you know how much you owe the bank? A. No, I don't without record.

Q. You don't know how much your father endorsed for you? A. My records will show it.

Q. Have you anything on your mind? A. I've got enough right now thanks.

Q. That is all you can tell us? A. Without records that is all I can say.

Q. He was a pretty good father? A. You ought to know.

Q. They don't make them any better? A. I will say they don't.



Q. He gave you a quarter of the Hawthorne Silk Company? A. My stock shows that.

Q. Isn't that so? A. It must be.

Q. And Dwight, Jr. and Charlie a quarter? A. Yes, sir.

Q. And kept a quarter for himself? A. I think that was his portion.

Q. And there were one or two shares to qualify the officers of the company? A. Yes, sir.

Q. When they organized that company, that company was taken over on account of the dissolution of the old Ashley & Bailey Co. A. Alright, sir.

Q. In other words he divided the Ashley & Bayley Company stock up and gave you a share of it? A. I don't know what you are driving at.

Q. I am just driving at you? A. I know that. Go ahead.

Q. I want to know whether or not you didn't get shares of the Ashley & Bayley stock? A. That I have forgotten. I must have had it.

Q. How otherwise did you get the property you have except by the Ashley & Bayley dissolution? A. I bought it.

Q. That is the way you got the Hawthorne? A. No, that was given by—

Q. Didn't you get the mill at Putnam Street? A. My Dad didn't give me that, that was purchased by myself.

Q. Yes? A. Yes, sir.

Q. As part of the dissolution it was given to you from the Ashley & Bayley? A. I purchased it.

Q. How did you pay for it? A. My records will show.

Q. In other words he started you all off alike, equally, all three? A. I wouldn't testify against that.

Q. That was so of the Savoy and also the Hawthorne, isn't that a fact? A. Yes, sir.

Q. The stock of the Savoy is five hundred shares? A. I really can't tell you.

Q. That is right, isn't it? A. All I know is what was proportioned to each of us.

Q. You have one hundred and twenty shares of Savoy? A. I have.

Q. Yes. A. No, I haven't .

Q. What has become of it? A. I never had it.

Q. Aren't you a director of the Savoy? A. I am a stock holder.

Q. How much stock do you own? A. You said one hundred and twenty.

Q. One hundred and twenty I say? A. I don't know anything about that.

Q. You don't know you own one hundred and twenty shares? A. No.

Q. You need not be afraid to testify. This is no effort of your creditors— A. I state the truth. I don't know of any one hundred and twenty shares unless someone is holding them for me.

Q. You mean your wife is holding it for you? A. She is not holding one hundred and twenty shares.

Q. You mean you endorsed them over to your wife in blank to avoid your creditors? A. One hundred and twenty shares I don't know.

Q. How many did you turn over to your wife? A. I don't know where you get that from, that one hundred and twenty.

Q. As many as you like, how many shares of Savoy did you turn over to your wife?

Objected to by Mr. Benson:



The Court: The question is how many shares did he have?

A. Ninety is all I know of. I don't know of any one hundred and twenty.

Q. You turned the ninety over to your wife?

Objected to by Mr. Benson.

Objection sustained by the Court.

Q. Are you or are you not a stock holder? A. I am not right now. I can be so when I need to be.

Q. You mean you have under your control and can get them when you want to? A. Yes, sir.

Q. Your wife has them?

Mr. Benson: I object to that as immaterial.

The Court: It is not material who has it. He is not a stockholder.

Q. How many shares have you got? A. Ninety.

Q. Not one hundred and twenty? A. No, sir.

Q. Do you know your mother has thirty, from each one of you, making ninety in all? A. Yes, sir.

Q. In other words that one hundred and twenty was cut down when your mother got thirty of each? A. Now I have it. I had forgotten it.

Q. In other words each of you have ninety shares and your mother out of the one hundred and twenty your father gave you your mother holds ninety at the present time, independent of your father's one hundred and forty, in other words your mother owns ninety, Dwight owns ninety, Charles owns ninety, and you or what you have

control over. A. Outside of the one hundred and forty, yes, go ahead.

Q. You are all stockholders of ninety shares of this stock? A. Yes, I think so.

Q. What about a director, are you a director of the company? A. I never received any notice I was.

Q. And you never made any inquiry as to whether you were or not and didn't know until now you were a director of the company? A. I don't know I am now.

Q. You don't know that? A. No.

Q. Well, you are? A. Thank you.

Q. Have you made any inquiry about the company at any time when any knowledge was withdrawn from you or held from you? A. Have I? You mean as far as the directorship is concerned.

Q. As far as the business in any way is concerned. A. Yes, I have asked several things about the business.

Q. Did you ever send anybody to look over the books that were refused? A. Yes, sir.

Q. Only since this will contest was started? A. Yes, sir.

Q. Then you sent a man there to see what he could find? A. Yes, sir.

Q. Did you personally visit the office and ask to see the books? A. Yes, sir.

Q. Was it denied you? A. They told me the books were downstairs.

Q. Did you go to see the books? A. I told my Dad—

Q. Cut out your Dad for the present. Did you, yourself, go to examine the books? A. No, sir.

Q. This Savoy is purely a land company? A. Outside of the money taken from it.



Q. Outside of any sales made and money on deposit it is a land company. It owns property in Hawthorne and some in North Carolina? A. Yes, sir.

Q. How many acres in North Carolina? A. I know of one thousand acres.

Q. There are several thousand acres of wild open land that has all to be sold and realized from definitely to fix the value? A. We haven't come to that yet.

Q. That is the character of this company, that is right, isn't it? A. Yes, sir.

Q. You haven't been very good of late? A. Go ahead, sir.

Q. You haven't been very good? A. I don't know what you mean.

Q. Well, you have been drinking a good deal?

Objected to by Mr. Benson as improper.
Objection overruled.

A. What do you mean by drinking?

Q. Well, what is the characteristic word, Lushing? A. You ask me to admit—

Q. Well, you have not been attending to business due to drinking? A. Prove it.

Q. You have not answered the question? A. I haven't, I have been on the job every day.

Q. You never heard what your father had to say about it? A. He never said a word to me, no sir.

Q. Did you hear his remarks to other people about you? A. I want to hear them.

Q. Have you been home since the funeral, home to your own house since the funeral? A. I have not been in my own house since before the funeral.

Q. How long before the funeral? A. Two days.

Q. And how long beyond that, how long? A. Seven weeks.

Q. Lately or recently there has been a good deal of trouble at home? A. Not any more than there was when my Dad was alive.

Q. Was it very bad then? A. I won't say so.

Q. He didn't know the relationship at home wasn't pleasant? A. My Dad understood the relationship.

Q. That is so, isn't it the relationship at home wasn't very pleasant? A. I don't understand.

Q. Your association with your wife and family at home wasn't pleasant? A. I don't know what you mean.

Q. You didn't give them any attention? A. Go ahead.

Q. Do you know that young lady? (Counsel shows witness a slip of paper) A. Do I, I do.

Q. Have you been out with her a good deal, haven't you? A. No, sir.

Q. So much so you have caused trouble with your wife and family on her account? A. No, sir.

Q. And your father knew about it, did you know that? A. No one knows about it, because I haven't been out with her. I ask for proof of that.

Q. We will supply that if necessary. A. It is necessary.

Q. You said something about mismanagement that your father said, something about mismanagement. Did he indicate what the character of mismanagement was? A. Did he ever say that to you?

Q. Will you answer my question? A. Yes, sir. he said that many times.

Q. You are speaking of the Hawthorne and Savoy? A. What did you ask me?



Q. I understood you to say mismanagement, was that the Savoy or Hawthorne? A. He said it for both firms.

Q. Did he say so or are you just putting that in? A. No, I am not. Now you answer my question. Didn't he say that to you?

Q. I am not on the witness stand just now. The Ashley & Bayley Company dissolved when business conditions were not good? A. Yes, sir.

Q. Your father was one of the owners of that concern? A. Yes, sir.

Q. The Hawthorne Company now is to be sold out? A. Yes, sir.

Q. Due to the non-success of that concern? A. Yes, sir.

Q. The Gary Silk Company of which you are the manager has gone, where I don't know but gone? A. You can answer that.

Q. What are these concerns now you are dealing with? A. What do you mean?

Q. What business are you at now, under what name? A. The Beltgrip Company.

Q. Is that a silk company? A. No a belting concern.

Q. What kind of belts, ladies belts or machinery? A. Machinery.

Q. You didn't make a success of the silk business, was there any mismanagement on your part? A. What do you mean by that?

Q. The Gary didn't succeed in the manufacture of silk, your company? A. Alright.

Q. That is true? A. Go ahead.

Q. The Hawthorne evidently at the end has not succeeded either, that is so, isn't it? A. It must be.

Q. Ashley and Bayley didn't succeed at the end,

they just faded from the manufacturing business of the town? A. Yes, sir.

Q. They dissolved, got out of business? A. Yes, sir.

Q. That is the history of these silk associations of which you speak? A. Yes, sir.

Q. Did he indicate what the mismanagement was? A. His term was something like no "mill brains".

Q. That must have been Charlie, he was at the mill? A. Wait a minute I am going to speak of New York and he also said that the New York end was badly managed.

Q. Charlie was the manager of the Hawthorne? A. Yes, sir.

Q. And Dwight was the sales agent in New York? A. Yes, sir.

Q. They both helped the Gary at one time? A. For instance.

Q. When you were pretty hard pressed they got an outlet for your product, Charlie and Dwight did in New York? A. Not that I remember.

Q. Now do you want me to testify? A. Yes, please.

Q. You don't remember when you were pretty hard pressed and they got you a better chance to sell your product in New York? A. I don't remember.

Q. You don't remember both of them Charlie and Dwight doing that? A. An outlet for my product?

Q. Yes. A. I don't remember, maybe you can help me.

Q. You don't remember? A. No, I will lay off that.

Q. When you speak of finances did he refer at all to any particular amount of finances? A. Who?



Q. Your father? A. What do you mean finances.

Q. You used the word to us speaking about the finances of the Savoy? A. He spoke of the decrease of the finances of the Savoy and also the mismanagement of the Hawthorne and the draining of the Savoy.

Q. You didn't understand that any of them were taking money that— A. That didn't belong to them?

Q. Yes. A. I am sure that letter—

Q. The question is with relation to the finances of the Savoy. Did he say anything to lead you to believe that the finances were improperly or the funds were improperly being taken from the Savoy? A. I have a letter with his signature on wherein he states Dwight should never have asked him to sign that.

Q. Did he say anything to indicate what that was, what funds had been improperly taken from the Savoy and who took it, did he say that? A. As far as mentioning any names whoever took any he never did. He spoke of the depletion, of the money being taken out.

Q. Did you understand there was a great sum of money apparently due the United States Government from the Hawthorne Silk Company? A. So did he.

Q. During the years of nineteen hundred and nineteen and nineteen hundred and twenty there was an apparently a large sum of money earned if you take into consideration all the silk on the shelves that was the information charged up against them, what appeared to be a profit, you know about that? A. I know the money was owed to the Government.

Q. The Savoy people got together, the stockholders, of which you were one, consented to using some of this money and placing it in the First National Bank in order that they could guarantee this sum to the government. A. I consented?

Q. To a certain amount of it? A. Thank you, sir, I don't even remember consenting.

Q. That was the object of the depletion and that money is still in the First National Bank as a pledge to what the government says they owe? A. I can't tell you.

Q. So that in case the government calls upon them the First National Bank has to guarantee the amount of the taxes? A. That I can't tell you.

Q. Your father was a good business man, wasn't he? A. He was a good man.

Q. And also a good business man? A. Some people didn't think so. I always thought he was.

Q. You are speaking for yourself? A. I said so.

Q. The difference in the original Hawthorne Company was due to the fact whether one method or another method was the better for the company? A. To my mind it wasn't method, it was stealing.

Q. Were you there at the time? A. In New York, yes, sir.

Q. Were you in the board of directors when the difference arose between your father and between the employees, bookkeepers, etc. and Dwight and Charlie as to the best method of marketing the output? A. I don't know as to marketing the output.

Q. Well, the manufacture? A. Yes, sir, the marketing was mostly taken up in New York.

Q. Was that due to a difference in judgment between them as to what was best method as to whether they would make tie silk or broad silk or what? A. It was a difference of feeling.



Q. It was a difference of judgment as to how best to make money? A. Yes, sir, and feeling mixed with it.

Q. Was it a difference of judgment, before that difference everything was friendly? A. What year would that be?

Q. Maybe nine or ten years ago? A. I think the feeling commenced at that time.

Q. It grew out of this difference? A. There was feeling between Charlie and Pop even before the organization of the Hawthorne.

Q. Between Dwight and your father was there any difference until about then? A. That is too far back.

Q. Between your father and Charlie there has been a long estrangement? A. For seven years.

Q. Has Charlie and your father spoken in seven years? A. Not to my knowledge.

Q. He lived for a while at the house on River Street now owned by the Barnert Memorial Home? A. Yes, sir.

Q. Charlie lived there for a while with your father and mother? A. Yes, sir.

Q. Charlie didn't speak to your father in that house for some years? A. I believe so.

Q. He hasn't spoken to him or visited him for years? A. He didn't speak to me either.

Q. Until when? A. The day of the funeral.

Q. I am speaking of your father and Charles' relationship, Charlie's relationship. They had not spoken for years and Charlie didn't visit him at his house or see him until the day of the funeral? A. As far as I know.

Q. That was the condition of things? A. Yes, sir.

Q. You say you and Charlie are estranged? A. Now?

Q. Yes. A. I don't know just how to answer that. I will answer it straight. I went out to supper with him one night and I have been to his house three or four times. I will let you determine how friendly I am with him.

Q. That has occurred since this contest has arisen? A. That has occurred since my mother asked us to shake hands and we did.

Q. That was after the funeral? A. The day of the funeral.

Q. Your mother has been living at Dwight's house for how long? A. She can tell you better than I.

Q. Is Charlie's wife living at Dwight's house? A. I don't know anything about their family affairs outside of what I see or hear.

Q. Do you know that Mrs. Charles Ashley is living at Mr. Dwight Ashley's house? A. I don't know.

Q. Have you visited it often enough to know that? A. I was there every day until he ordered me out.

Q. You can't tell? A. About Mrs. Charles Ashley, no.

Q. You know there is also an estrangement there, between Charles and Mrs. Charles Ashley? A. Why ask me these things, it is none of my business.

Q. Don't you know? A. Only what I hear.

Q. You know there is matters pending in the Court of Chancery now? A. I know?

Q. You never heard of that? A. No, sir.

Q. You never heard of it until I asked you of a suit begun? A. No, sir.



Q. You don't know of that at all? A. Not if you say a suit was begun.

Q. You know he is not living with his wife? A. From what I heard he is not.

Q. Do you know your father knew that? A. That a suit had begun?

Q. Yes. A. I don't think he did.

Q. Do you know he knew he didn't live with his wife? A. I think he did.

Q. In other words Mrs. Charles Ashley was living at the house with them? A. She might have stayed there a certain time but as far as living there I don't know anything about that.

Q. At any rate they were not living together? A. Go ahead.

Q. He had somebody else too. This is funny to you, isn't it? A. Why ask me.

Q. Did your father know that? A. I refuse to testify. I don't know.

Q. You don't know or refuse to testify, which? A. I don't know. I never bothered.

Q. You went to that house regularly? A. What house?

Q. Dwight Ashley, Junior's? A. Go on. When my dad was sick I was there.

Q. When did you first go there this last six months or so? A. Just as soon as he went to Dwight's and commanded the attention of Doctor Todd and when he was in any way laid up I would visit him regularly.

Q. You went how often, every night? A. I would say so, yes, sir.

Q. You had no trouble seeing him? A. What do you mean?

Q. Just what I say. A. I don't know what you

mean. If you mean the door was barred against me, no it wasn't. It was reluctantly opened for me and I would go in.

Q. Nobody prevented you? A. They opened the door for me after a fashion.

Q. Did you go upstairs? A. It depends whether he was up or down.

Q. That was so up to the day of his death? A. At one time he was bed-ridden for a week or so.

Q. With that exception? A. I think after that he was around.

Q. The doors were open when you talked with him or closed? A. I would say it was open.

Q. Do you remember they were open? A. There was a curtain between them but the door was open.

Q. Your father had been at your house last when? A. I would say about the time of these notes, December sixteenth.

Q. He stayed at your house overnight? A. Yes, sir, I think I brought him down at that time.

Q. He had been at your house before that when? A. I can't remember as to that.

Q. A month, two or three months? A. He came down whenever he was near me. As far as visiting me, my house, regularly, if that is what you are trying to get out I would say he did.

Q. How often would you say? A. Either weekly or two weeks, these trips.

Q. He didn't come down every week? A. I am speaking of the one time when he did come every week.

Q. Did he visit your house regularly during nineteen hundred and twenty-four? A. Yes, sir.

Q. And he was also regularly at Dwight's? A. Yes, sir.



Q. There was no preference? A. I wouldn't say there was any preference.

Q. Where was Mrs. Dwight Ashley, Sr. during these months? A. Nineteen hundred and twenty-four?

Q. Yes. A. Or nineteen hundred and twenty-three?

Q. Nineteen hundred and twenty-four? A. I would say at Dwight's house outside of three or four weeks I think she was with me.

Q. What weeks was she with you? A. I would say the early part of nineteen hundred and twenty-four.

Q. You would deny she was entirely at Dwight's house? A. I would say so.

Q. There was no restriction put on your father about anything when you and he were talking? A. Restrictions?

Q. As to subjects? A. No, if we got personal I would probably ask the missus to go upstairs, if that is what you mean.

Q. You only went to Dwight's house in the Fall of nineteen hundred and twenty-four or in the Spring of nineteen hundred and twenty-five or January. When was the first visit you paid to Dwight's house when your father was there? A. I think after the stroke I was there more or less. That would be in August.

Q. He didn't remain at Dwight's house all that time? A. No, he was back and forth.

Q. During that time did you visit him at Dwight's every week when he wasn't at your house? A. I was in touch with him.

Q. Did you visit him at Dwight's house when he was there? A. Yes, sir.

Q. How did you know he was up there? A. If

he didn't notify me he was coming to my house he would phone me.

Q. When he was at Dwight's house and didn't go to your house he would call you up? A. Yes, sir.

Q. Did he do the same when he was at your house? A. Call Dwight up, yes.

Q. You didn't call to see him Christmas Day? A. I did.

Q. Did you know he was mightily offended? A. December twenty-fifth, I wasn't there?

Q. Yes. A. Mr. Gourley, you will have to prove it. My recollection is I visited him on Christmas Day.

Q. Do you know he expressed very strong feeling about you not visiting him and he being laid up sick? A. I didn't visit him on Christmas Day?

Q. I am not contradicting you. A. I said I did to the best of my knowledge and belief.

Q. You continued these visits every time he came down. When did he come down here and not return? A. My dates are not exact. I think he returned on the fourth.

Q. Returned where? A. Returned here, I think that is Sunday night.

Q. From January fourth until he died he was at Dwight's house? A. Absolutely, he never got out.

Q. He got out riding? A. I won't testify to that.

Q. As far as you know? A. As far as I know I don't believe he did.

Q. During all these times how long would you be at these visits? A. It was after I came back from business in New York.



Q. Did you ever visit him of an afternoon? A. Sometimes on Saturday.

Q. Were the family all in and around the place, Dwight's family and your mother? A. My mother was present at most conversations.

Q. Were you several times present with your mother, father and yourself when no one else was there? A. Yes, sir.

Q. Were you several times present when your father and yourself, when no one else was present? A. I wouldn't say so.

Q. Did you make any requests for a private interview? A. I should say not.

Q. You didn't ask to see him alone? A. I don't remember.

Q. You came and went as you thought best? A. Absolutely.

Q. You talked to your father during these various visits about various things, about a variety of subjects? A. Yes, sir.

Q. He was able to talk with you? A. At times he was better than others.

Q. He knew the answers and questions and carried on a conversation, is there any doubt about that? A. He could answer your questions.

Q. Were there any statements he made at any time that were incoherent, if you know what I mean? A. I don't remember.

Q. In other words his conversation was the usual conversation? A. I would say so.

Q. There was no failure to recognize you at any time? A. No, I wouldn't say so.

Q. Nothing of that kind? A. No.

Q. He was perfectly clear? A. We always understood each other.

Q. He was rather a silent man? A. Very.

Q. He wasn't very demonstrative in his affection? A. No, sir.

Q. He wasn't morose? A. He was towards the last.

Q. He was rather silent and contemplative? A. Yes.

(At this point a recess was taken until 2 P. M.)

---

IRVING D. ASHLEY, recalled.

*Cross-examination continued by Mr. Gourley:*

Q. Did the Garey Silk Company eventually go out of business?

Mr. Benson: I object to it as not proper cross-examination.

Objection overruled.

A. They did.

Q. That is no longer in existence, that company? A. No, sir.

*Redirect-examination by Mr. Benson:*

Q. Did you know of the existence of this will or codicil on January ninth nineteen hundred and twenty-five? A. No, sir. From what my dad told me we would share equally in the will, that is all.

Q. Mr. Gourley has asked you a question as to whether or not there was a difference of opinion that caused some little discussion in the Hawthorne. That difference of opinion, did it arise over the question of the cost of goods or was it to get your father ousted from the management of the



business? A. They thought him incapable of running the business and took these methods of getting him out.

Q. What methods? A. Voting him out.

Q. At that time did he have an active management in the business? A. Absolutely.

Q. After that did he? A. No, sir, he was out of a job.

Q. At that time what was the salary of Dwight Ashley? A. From what I heard—

Objected to by Mr. Gourley.

Objection sustained.

Q. Do you know what he was receiving? A. No.

Q. Do you know at that time when he was ousted whether Charlie and Dwight were taking any funds for the corporation for services.

Objected to by Mr. Gourley.

Objection sustained.

Q. Did your father after that receive any benefits from the Hawthorne? A. Not one dollar.

Q. Your father visited you at Ridgewood since April? A. Yes, sir.

Q. Did he talk to you about the condition of your home affairs? A. He didn't altogether agree with me but at the same time he did not censure me.

Q. Was he put out as a result of your attitude? A. If he was he didn't say anything to me.

Q. Do you recollect having a discussion in your home at the time your wife was present and did he uphold you in the discussion? A. He upheld me in my discussions but didn't agree with me. I

wanted to leave the house and in fact he asked me to come back.

Q. Did you go back? A. I did.

Q. Were you living home up to the time of his death? A. I was.

Q. Had you been addicted at that time prior to his death to the use of liquor? A. No, he never smelled liquor on my breath.

Q. Did he ever find fault? A. He used to tell me to be careful.

Q. Mr. Gourley spoke about twenty-one thousand dollars worth of notes. Where were these notes a few days ago to your knowledge? A. In his safe in my house and in there there was a letter and he told me that after he had gone he wanted me to read that letter because it is history. I went up to the house—

Q. When? A. Night before last. Let me see today is what, Wednesday, Monday night I went up there. I have never entered that safe before although I have had the combination given to me in my brothers handwriting but I happened to remember that letter and I went up there to get it and the safe was cleaned out.

Q. Were your private papers taken? A. My private papers that were taken consisted of that letter.

Q. Do you know who went up to your house and got them? A. I do, my brother.

Q. Which brother? A. Dwight.

Q. Did he have your permission to go to the house? A. Before the will was read, not after. I suggested we go together.

Q. Did you go with him? A. No, sir.

Q. When did he go? A. He must have gone in my absence.



Q. Did he tell you anything about it? A. No, sir.

Q. Did he take any of your private papers? A. There are letters missing that I have saved for ten years.

Q. Some words were said about that twenty-one thousand dollars loaned to you by your father? A. I didn't owe my dad a dollar at his death.

Q. Do you recollect returning any part of it? A. A dividend check for four thousand dollars from the Savoy, all the boys kept theirs and I turned mine over to my dad. In addition to that I sold a piece of property in the South and made ten thousand dollars for my dad.

Q. Did you turn that over to him? A. Absolutely.

Q. This conversation you had with your father sometime in the middle of December, I think you said December sixteenth. A. I think it was around that time.

Q. Did he mention more than once to you about the condition of the Savoy on that occasion? A. Summing up every conversation I had with him, using the same words, they cleaned it out. That is all I can say. Every conversation I had with him. That is all I can say. Every conversation he had with me pertains to that and he used the same words.

Mr. Gourley: Speaking of the Savoy?

A. Yes, sir.

*Redirect-examination continued by Mr. Benson:*

Q. On this particular occasion did he say anything about his embarassment over the bankruptcy of the Hawthorne? A. It hit him very hard.

Q. What did he say? A. That it should never have happened.

*Recross-examination by Mr. Gourley:*

Q. What did you say about your indebtedness to your father? A. That I didn't owe him anything when he died, not a dollar.

Q. You just told me you owed him twenty odd thousand dollars? Can you explain that? A. He cancelled every dollar that I owed him.

Q. How much money did you get from him? A. Twenty-one thousand dollars.

Q. You mean he cancelled the twenty-one thousand dollars indebtedness? A. Yes, sir, and in addition to that he gave me ten thousand dollars, a note, as protection against these boys suing me.

Q. Do you get thirty-one thousand dollars? A. Yes, sir, that was his thought for me.

Q. What indorsement was he on your notes when he died? A. That I can't tell you when he died.

Q. Have you any impression as to the amount? A. No, sir, I wouldn't testify as to that.

Q. Do you mean to say you don't know whether it is five thousand or fifty? A. If you want me to say five I will say five.

Q. Do you mean to say you dont' know your obligations to the First National Bank? A. I don't know if I have.

Q. Do you do business in any other bank? A. In several but not for notes.

Q. And you can't tell whether it is between five and fifty thousand? A. Do you want five. I will say it was not fifty.

Q. Ten thousand? A. I don't know.

Q. What kind of a business man are you that



you cannot tell us what you owe the bank? A. If you had asked me I would have found out.

Q. What is your recollection as to that indebtedness? A. I would not commit myself because I have no record in front of me.

Q. What is the matter with your mind? A. Now there is no use getting personal.

Q. Is there anything wrong with you that you cannot answer that thing?

Objected to by Mr. Benson.

The Court: He has said he cannot remember.

Q. Is there any reason you can't answer?

The Court: He answered. He said he did not remember and that if he gave the amount he wanted to be correct.

Q. How many notes comprise the indebtedness? A. I don't know.

Q. Can you tell whether it is five or ten? A. I cannot tell.

Q. Can't you tell whether it is one note or five? A. No, sir.

Q. What is the lowest? A. I don't know.

Q. What is the highest? A. I can't tell you.

Q. When is the next one due? A. I can't tell you.

Q. You don't know when it comes due? Who keeps your books? A. My bookkeeper.

Q. Does he know? A. It is a she.

Q. Where, in this company of yours? A. What do you mean this company.

Q. This Beltgrip Company. A. It is a corporation.

Q. That is the only company you are doing business with? A. Now, yes.

Q. These notes belong to that company? A. No sir, they were the company's notes and I had to take them over.

Q. This particular company or the other company? A. The Gary Silk Company.

Q. Your father had indorsed these notes and you indorsed them? A. I made them up to my father as fast as I could.

Q. But you don't know how much was paid off? A. No, sir.

Q. You don't know how much you owe on it now? A. I have records but I don't know now.

Q. That is your statement? A. Yes, sir.

Q. I show you a note dated nineteen hundred and fifteen and covered with stamps. Look at that. A. What do you want me to say?

Q. Is that signed by you? A. Absolutely.

Q. When was it paid? A. What do you mean, when was it paid?

Q. Exactly what I say. A. To whom? My dad?

Q. Was it paid to anyone at all and when? A. Nineteen hundred and fifteen.

Q. Did you pay that to your father? A. That note is marked paid by Dwight Ashley.

Q. Did you pay it to your father? A. Did I pay it in money? He cancelled it.

Q. That is a series of these notes he cancelled? A. Yes, sir, twenty-one thousand dollars.

Q. Look at that series of notes and see whether it is twenty-three thousand? A. I have it in my Dad's own handwriting. I can compare that. This says twenty-three.

Q. You can't tell us anything about that? A.



Do you suppose I keep that in my mind? Be reasonable.

Q. I have here in nineteen hundred and twenty three a stub of his checks February twenty-seventh five hundred dollars to Irving D. Ashley. Do you remember that? A. Where is the voucher?

Q. That is in your father's handwriting? A. That is his handwriting but I don't know what it was for or anything about it.

Q. I find another here April twenty-third, I. D. Ashley, loaned five hundred dollars, what can you tell us about that? A. I can't tell you anything about it.

Q. I show you this stub another, May tenth, nineteen hundred and twenty three. I. D. Ashley, loaned two thousand dollars. Do you know anything about that? A. Not a thing.

Q. I show you a stub September twelfth, nineteen hundred and twenty-three, I. D. Ashley, loaned one thousand dollars. Can you tell us about that? A. I don't know a thing about it.

Q. I show you one October twelfth nineteen hundred and twenty-three, I. D. Ashley loaned one thousand dollars. You know that is your father's writing on that stub? A. I don't deny that but I don't know what it was for.

Q. December twenty-eighth nineteen hundred and twenty-three loaned two thousand dollars. Do you know anything about that? A. No, except that if I produce the books, then I will know what it was for.

Q. I show you a stub July eighth nineteen hundred and twenty-one I. D. Ashley loaned one thousand dollars. That is your father's handwriting and do you know anything about it? A. No, sir.

Q. Would any book you have show what this was

for? A. I think so. How far back was the first one, nineteen hundred and twenty-one? I think so, in fact I have a statement of all this.

Q. I show you one August fourth nineteen hundred and twenty to I. D. Ashley for fifty dollars, do you know anything about that? A. No.

Q. There is another one above that August second of that year I. D. Ashley loaned two thousand dollars? That is your father's handwriting I believe? A. Yes, sir.

Q. Do you know anything about that loan? A. I don't know.

Q. And one February 4th nineteen hundred and twenty-two. I. D. Ashley loaned one thousand dollars in your father's handwriting. Do you know anything about that or do you remember anything about it? A. That is when he was helping me out the same as the others. If you ask me if I have positive records I believe I have.

Q. January twenty-fifth nineteen hundred and twenty-two. I. D. Ashley loaned two thousand dollars. A. That is the same one.

Q. No. A. I don't know anything about it.

Q. January twenty-seventh I. D. Ashley loaned twenty-five hundred dollars? A. I don't know anything about it.

Q. May the third nineteen hundred and twenty-two for loom two thousand dollars? A. That is where he is helping me out to get looms.

Q. Did you get the money? A. I must have gotten the money. What it was for I don't know.

Q. You say that is for looms because the stub says so? A. My books will show.

Q. August sixth nineteen hundred and twenty-one, I. D. Ashley one thousand loan. Do you remember that loan? A. I must have had it.



Q. June the eleventh nineteen hundred and twenty-three, I. D. Ashley loaned one thousand dollars in your father's handwriting? A. I don't remember.

Q. One July eighteenth nineteen hundred and twenty-three, I. D. Ashley loaned one thousand dollars, do you remember anything about that? A. No.

Q. I find here in my memorandum, correct me if I am wrong, in nineteen hundred and twenty-three you got seven thousand three hundred dollars from him, is that right? A. I don't know. I can't tell you.

Q. In nineteen hundred and twenty-two, seven thousand five hundred, and in nineteen twenty-one, two thousand dollars, and in nineteen twenty, two thousand dollars. Have you any recollection of these individual loans? A. No.

Q. You say he gave you the same as he gave the others. Did you ever know of a check to be given to Dwight for loans? A. I know of about one hundred thousand. I know of him giving them blank checks to use.

Q. Do you know of any checks? A. I have no record. He kept the record.

*Redirect-examination by Mr. Benson:*

Q. Did he loan any money to Dwight? A. The same as he loaned it to me only where he used to give me checks he gave him signed blank checks. What he drew them for I can't tell you.

Q. You have a record that shows these various items? A. A record in my Dad's handwriting.

Q. I am speaking of your records. A. Our books must show these receivables.

Q. You can produce those books? A. Absolutely.

Q. I show you a note made by the Hawthorne Silk Company signed Charles Ashley, President. Did your father hand you that note? A. He had indorsed it over to the Gary Silk Company.

Q. What for? A. The Gary Silk Company owed the Hawthorne ten thousand dollars for throwing silk. In order to protect me if they started suit he gave me that because they were going to start suit. He did that in order to protect me from those boys.

Q. You said something this morning about your father had signed some paper and had spoken to you about it respecting the withdrawal of funds from the Savoy for the Hawthorne. Do you remember him speaking to you about that? A. Yes, sir, that was an agreement.

Q. What did your father have to say about it? A. I asked him, that agreement was given him to sign and when I looked at it I wouldn't sign it because I had made a statement I wouldn't see the withdrawal of any more money from the Savoy. I said to him "Dad I see you signed this agreement". I said "do you know what you were signing" and he said "no, I didn't know" and I told him what he was signing and I wouldn't sign it and he said "Dwight should never have asked me to sign it if that is the condition."

Q. Is this the paper you refer to? A. Fifty-one thousand, yes, sir.

Q. He had signed it? A. Yes.

Q. Who else? A. The signatures are on there. Charles E. Ashley, Dwight Ashley, Jr. and my dad.

Q. Did he make any other comment? A. Only the comment that it should not have been signed



and Dwight should never have asked him to sign it.

Mr. Benson: I offer it in evidence.

Objected to by Mr. Gourley.

Objection sustained.

Q. What was the purport of that agreement? A. It was taking fifty-one thousand from the Savoy and putting it in the First National Bank as security for—

Objected to by Mr. Gourley.

Objection sustained.

Q. When did you speak to your father about that? A. When that agreement was given to me to sign.

Mr. Gourley: We have been over all this once.

The Court: That is true. We have been over all this Mr. Benson.

Mr. Benson: We can explain what this is about.

The Court: It has been explained. I have permitted considerable latitude in this matter and I am anxious to give counsel all the opportunity possible. At the same time we have to draw the line sometime.

*Cross-examination by Mr. Gourley:*

Q. The Gary Silk Company owed ten thousand dollars to the Hawthorne for work done by the Hawthorne for the Gary and the Gary never paid them? A. Right.

*Irving D. Ashley—Recross.*

*Redirect-examination by Mr. Benson*:

Q. Mr. Gourley mentioned that you owed thirty one thousand dollars, ten thousand of that was this security which you always held for your father?

Objected to as leading.

Q. Did you have thirty-one thousand dollars from your father? A. From what the statement in his own handwriting says twenty-four thousand dollars. There is his own statement in his own handwriting.

Q. That ten thousand was that in cash or in this note? A. In this note.

Q. Nobody had received anything on it? A. No.

Q. Mr. Gourley was your father's solicitor and attorney? A. Absolutely.

Q. And is now Mr. Dwight Ashley, Jr.'s attorney? A. Yes, sir.

*Recross-examination by Mr. Gourley*:

Q. What business have I done for Dwight Ashley, Junior? A. What about the Hawthorne matter? Do you mean personally? If it is personally I don't know, the Hawthorne matters yes. I don't know of any personal work you have done.

Mr. Gourley: I will be very glad to do business for him but I have not, that is all.

(At this point an adjournment was taken until ten A. M. Wednesday, April fifteenth.)



*Clara Bennett—Recalled—Direct.*

PASSAIC COUNTY ORPHANS' COURT.

| | |
|---|---|
| In the Matter of The probate of a paper purporting to be the last will and testament of DWIGHT ASHLEY, Deceased. | Before: Hon. Joseph A. Delaney, *J.* |

Paterson, N. J., April 15, 1925.

CLARA BENNETT, recalled.

*Direct-examination by Mr. Benson*:

Q. Do you recall seeing your brother Dwight Ashley, Sr. sometime in December, nineteen hundred and twenty-four? A. It was either in the latter part of November, or December, just previous to the holidays. I am not positive as to the date. I saw him but it was just before the holidays in nineteen twenty-four. Either the latter part of November or around the first of December.

Q. Where did you see him? A. I saw him at my sister's house, Mrs. Gettmenas.

Q. Did you have any conversation with him? A. Very little when he first came in.

Q. Just tell us what his condition of health was that you observed? A. I didn't think he looked very well and I told him so, and he said the doctors had said—

Mr. Gourley: I object to what the doctor said.

Q. What did he say or do? A. He first spoke to me as if I was my sister, Mrs. Gettmenas and I replied then I guess you don't know who it is and then he looked at me again and said oh, it is Clara and he kissed me and said he thought I looked well and just a few words like that.

Q. Do you know your brother's handwriting? A. Yes, sir.

Q. I show you a letter dated May nineteen hundred and twenty-four. Was that written by your brother, Dwight Ashley, Sr. A. Yes, sir, that is his writing.

Mr. Benson: The letter is directed to dear Charles. You keep well and am sorry they made a failure of the mill. It is generally the way. There was a lack of judgment.

Q. I show you a memorandum dated December seventeenth nineteen hundred and twenty signed Dwight Ashley, is that your brother's handwriting? A. Yes, sir, that is his handwriting.

Mr. Benson: This is a statement to the executors of the will.

Mr. Gourley: This is nineteen hundred and twenty and I object to it.

The Court: I will not admit it.

Caveators except. Exception allowed.

Mr. Benson: I offer this letter of May nineteenth nineteen hundred and twenty-four.

Letter admitted in evidence and marked Exhibit C-2 for the Caveator.



DR. FRANCIS TODD, sworn for the proponent.

*Direct-examination by Mr. Gourley:*

Q. You are a practicing physician in this County? A. Yes, sir.

Q. You have attended Mr. Dwight Ashley, Sr., during his last illness? A. I did.

Q. What observations did you make concerning his condition, physically and mentally, during that period? First tell us what that period was? A. I can't give you dates but I suppose it would have been about two years ago, a little more or a little less, when I first attended him at Dwight Ashley, Junior's.

Q. How frequently did you visit him? A. In the beginning I saw him occasionally. He was feeling a little bad and he came down to Dwight's and I would see him there. Then he would go back home and come down again. I can't tell you how often I saw him the first year or so. It might have been once a month, sometimes once in two months.

Q. During the last three months how frequently did you call to see him? A. I saw him almost constantly from the last time he came down from the farm to his death.

Q. That means what? A. Almost daily. Practically every day except a period when I was away on a vacation a short time before he died.

Q. What was he suffering from? A. Heart and kidney trouble.

Q. How did that affect his going out? A. In the beginning he walked a good deal about the place in the country and often he engaged in work which was too much for a man of his age and condition. I noticed that as long as he would take it easy and not walk fast he would be alright but if

he would overdue himself physically, if he over did it, after a week or so he would land down to Dwight's house.

Q. Did you notice any decrease in his physical power or energy? A. His physical powers gradually decreased. He would have good period and then he would overdue it and naturally he gradually wore himself down until he became incapacitated and died.

Q. You were away part of the time? A. For two weeks. I was at home when he died but I had only been home two or three days.

Q. During these visits did you converse with him? A. Yes, sir.

Q. What have you to say about the condition of his mind or understanding of the subjects which were discussed?

Mr. Benson: I object to it unless the time is fixed.

Q. You admit he was of sound mind when the will was signed. He was of sound mind then in April nineteen hundred and twenty-four, about eight months before he died. During that period what have you to say, Doctor? A. Mr. Ashley, Sr. to my knowledge, showed no evidence of any mental disturbance or anything affecting his reason until possibly a month or six weeks before he died and then that was transitory. He would be clear at times and other times he would be confused. Possibly at the time he had the stroke or partial stroke there was a short period of time when he had confusions but as to just the date of that I don't know, but it was only for just a day or so and then he was alright. He was very keen and enjoyed, apparently, aside from any professional advice he got from



me, he enjoyed discussing anything he read in the paper and went into it in great detail.

Q. That continued for how long? A. He always discussed everything every time I went there. There might be a few days he wouldn't but as a rule I used to look on my visits as slightly professional and partly social as he would discuss various things. He was greatly interested in foreign affairs, governmental affairs and was greatly interested in his farm and appeared greatly interested in affairs in general.

Q. Were these discussions intelligent? A. Yes, sir.

Q. How long did that continue? Was there any cessation of these qualities up to his death? He died I think the twenty-first of February, I am concerned about the period of January ninth, nineteen hundred and twenty-five. A. I don't know the exact dates.

Q. I don't mean the exact dates, but that would be some weeks before he died A. I went away about the first of February or the first week in February. I can't answer. I don't recall, sir.

Q. Do you remember, let us say, the first week in January, whether at that time there was any cessation of his mental faculties? A. I think very shortly before I went away, possibly a week before, or about that time, I went away I think on the seventh or ninth of February, I think very shortly before I went away he was not well and I know I consulted another physician and made arrangements for him to attend Mr. Ashley at that time during my absence and in fact he saw him with me, but I don't know exactly.

Q. Three weeks before your departure, approxi-

mately, I am not confining you to any dates but I am trying to get as near the facts for the Judge has to consider these things, have you anything in your mind which will permit you to say what his mental condition was at that time, three weeks or so before you left? A. I can't fix the dates very well. He only had a short period of confusion, during the day or part of the day he would be confused and then the next day he would be alright. He would be confused one day and the next day he would discuss things with me as he usually did but he seemed to be confused on some things. I should set his first mental confusion down probably a week or so before I went away, perhaps ten days, in fact I think that was the real beginning of his mental disturbance.

Q. Beyond that period, would you say earlier? A. The first time he had the stroke, that is the first time. That was some long time ago. He was over it, he was only confused a day or two but after that he was perfectly clear.

*Cross-examination by Mr. Benson:*

Q. You say you visited Mr. Dwight Ashley almost constantly after he came back from the farm? A. Which time?

Q. When he came back from the farm? A. Yes, sir, I saw him every day or two.

Q. When you first saw him he was in quite bad shape? A. Yes, sir.

Q. That was the early part of January, wasn't it? A. I have forgotten exactly.

Q. You know it was the last time he came down? A. Yes, sir.

Q. At that time he was in a pretty confused state



of mind and body? A. No, he was physically very ill when he came down, so ill I thought he was going to die, I thought so for a period of twenty-four hours.

Q. That was for twenty-four hours? Then what did you do in order to bring him around, did you give him medication? A. He had some medicine, yes, sir.

Q. What was the character of that medicine? A. Cathartic, diet, do you want the technical names of those medicines?

Q. Did you give him any medicine to cause him to sleep? A. No, but he did have digitalis. I had been giving him that for over two years.

Q. What effect does that have? A. It stimulates the heart.

Q. I am speaking of the first time you saw him? A. Yes, that is—

Q. He was then in great danger of dying? A. For a short time.

The Court: Digitalis was prescribed for the heart condition?

A. Yes, sir.

The Court: That has nothing to do with affecting his mental condition?

A. None at all.

*Cross-examination by Mr. Benson:*

Q. Was he in a very weakened condition? A. I thought he was going to die.

Q. He got better very gradually? A. This last time he made his improvement practically over night.

Q. When was that great improvement? A. The

day after he came down if you say that is the time.

Q. What was his condition the day after? A. He improved and was pretty well except for this swelling of the lower extremities.

Q. Did he move around or did he not? A. No, I did not allow him to get out of bed.

Q. You did not allow him to get out for three or four days? A. No, for quite a little time, about a week after I let him up.

Q. That was your orders to keep him in bed? A. Yes, but he didn't stay in bed.

Q. That was your orders? A. Yes, but I say he didn't stay in bed.

Q. When he got up during this three or four days you speak of it would naturally cause a pretty good strain on the heart? A. He didn't show it in spite of that fact. He insisted on getting out to urinate as he always did and he did.

Q. Did he go back again after that? A. Yes, sir, usually.

Q. I am speaking of the first three or four days? A. That is what I am speaking of.

Q. Did he have any tendency to be very dull? A. No, he cleared up over night practically.

Q. What caused that clearing up? A. Stimulating the action of the heart and cleaning the body through his bowels.

Q. When did you first see him on the afternoon when he came down? A. I don't know, lets see, I think it was, I am not sure, I seen him shortly after he arrived.

Q. When was that? A. You mean afternoon, evening, or when?

Q. Yes. A. I don't know. I am inclined to think it was in the evening or late afternoon.

Q. When did you say his memory failed? A.



No, he would be confused and then he would clear up and then he would answer questions.

Q. He had good days on which he would be better and days on which he would go back again. A. In what way.

Q. Well, he would be a little better and then he would be confused? A. After he cleared up he was clear.

Q. Would you say the fact of his having the stroke in August didn't affect him at the time of his death? A. It didn't affect his mind.

Q. Would you say the fact of his having had a stroke in August didn't affect him at the time of his death? A. No. It had no affect whatever.

Q. Did you see him in August when he had his stroke? A. Yes, sir.

Q. How long did that confused state of mind last after he had his stroke? A. Immediately after he had confusion, his mental condition was clear, he could understand but he couldn't express himself on account of paralysis which affected his speech. He knew what you said. You could ask him anything and he would know. He was bright but he couldn't get his words. It was a speech affection trouble.

Q. When did that become clear, his condition from that stroke? A. You refer to his speech?

Q. When did he come back to his usual physical condition? A. Do you want to know of his speech?

Q. I am speaking of his general physical condition in August? A. What do you mean by his general physical condition, there was nothing the matter with this man but his speech.

Q. He had a stroke? A. Which affected what?

Q. Affected his speech, you say? A. Yes, sir.

Q. When did that clear up absolutely and the

effect of that stroke clear up? A. You refer now to his speech?

Q. Yes. A. Well, I don't know, I should judge, it is hard to remember, a period of a couple of weeks or something like that.

Q. That stroke had an effect also on the other physical parts? A. Not that I know of.

Q. It had no effect on any other part of his body outside of his speech? A. Not that I know of.

Q. It would not as a matter of fact cause him to be considerably weakened? A. I suppose he weakened.

Q. That weakened condition continued for how long? A. I can't answer that question. He was a man who from two years ago until the time of his death we prognosed he was going to go on and run a course much as he did, we could not set the time it was going to happen but it was explained to the family.

Q. But continued to give him medication for a particular purpose for a long time after? A. He practically lived on it. He was dependent on it for his heart.

Q. Keeping in mind the time he came down, when did he have this confused state of mind as you observed him? A. Well, when he came down, do you mean the last time?

Q. Did he have it intermittently right up until his death? A. Why, no.

Q. When did he have it again? A. I told you he cleared up after twenty-four hours and then a week or ten days before I went away he then had some mental confusion.

Q. He had this confusion of mind some six or eight weeks before he died, didn't he, for that period? A. His first confusion was at the time he



came down, whatever date that was, but that I don't know. He was confused and the family was in fear of death and so was I but he cleared up and made a very marked improvement in twenty-four hours and the next morning he was much improved and his confusion cleared up.

Q. He was a very sick man? A. He was at that time.

Q. And he was after? A. His trouble was due to his heart. His symptoms were due to the heart slowing up and this condition had to be cleared up through stimulation of the heart but he still had the heart and still had the condition and had it two years ago and had it ever since.

Q. You had to build him up at that time? A. He lived on digitalis for two years.

Q. Did you cut the digitalis down after your consultation with the other doctor? A. I think we agreed on a sort of a five three treatment for him. Put him on for a period and then take him off. I think it was probably five days on and three days off that that would be the thing.

Q. When was that agreed upon? A. Sometime around the time Dr. Evans saw him or right after.

Q. When was that? A. Dr. Evans didn't see him in this last acute illness in which he died.

Q. He was there after he came down from the farm? A. Not the last time.

Q. Sure of that? A. Yes, sir.

Q. Didn't Dr. Evans consider he was getting too much digitalis? A. No, I don't think so. We agreed on this, on the dose.

Q. Didn't you limit the dose? A. No, not then but it varied the dosage from time to time.

Q. You gave him less? A. Towards the last I gave him more.

Q. I am speaking of the time when Dr. Evans was there? A. His dosage changed from day to day or from week to week all the time.

Q. You went away about February first? A. No, about February seventh or ninth.

Q. Are you sure? A. I am pretty sure.

Q. You visited the house after he came down every day? A. No, I would say that. I said I saw him every day or two, sometimes every day.

Q. When he first came down from the farm did you see him every day? A. Yes, sir.

Q. Did you see him more than once a day? A. I can't answer. I don't know.

Q. Wasn't he from the time he came down from the farm in a very weakened condition physically? A. I thought he was going to die.

Q. Wasn't he at that time, due to his physical condition, didn't that affect his mentality to a certain extent? A. The first twenty-four hours it did.

Q. Did it affect it to any degree the next forty-eight? A. He made a very rapid recovery after the first twenty-four hours.

Q. Did it affect it the next day? A. The next forty-eight hours he was apparently very clear with a steady improvement.

Q. Did it affect his mental condition to any degree whatever within the next forty-eight hours after the first twenty-four? A. After the first twenty-four hours, take the next forty-eight hours. Did the effect of his illness in any way affect his physical condition? A. Of course it affected his physical condition.

Q. Was he weaker? A. He was better in the next forty-eight than he was in the first twenty-four.



Q. Did the effect of the first twenty-four hours affect his powers of resistance in the next forty-eight hours? A. He improved.

Q. Did it affect his power of resistance? A. His power of resistance was going down for two years, his improvement was due to the stimulation. He had to live on digitalis when his heart was bad. The dose was increased. He started two years ago with a heart condition complicated by a kidney condition. We prognosed he would gradually peter out. We knew this thing was going to happen, this attack when he came down from the farm was one of a series. He had them before and with treatment had improved, on this last one the improvement was immediate and then gradual, he gradually improved up until a week or ten days before he died when he became absolutely waterlogged and he was unable to excrete sufficient to carry him along.

Q. His power of resistance was reduced? A. It had reduced from the time he was taken sick. It was a progressive condition. He would have momentary improvement but you would map it going down all the time if you would draw a scale and map it.

Q. The effect on his physical condition would naturally affect his mental condition? A. He was mentally a very keen man.

Q. Wouldn't it naturally? A. You would expect it would but apparently it did not, he would discuss all sorts of things with me.

Q. Would the effect of a weakened physical condition weaken his mentality? A. It might to some extent.

Q. By virtue of that his power of resistance was

gradually lessened? A. I have answered that several times.

The Court: There is a repetition which does not make it the least bit more impressive.

Q. Did it affect his power of resistence? A. I will say it did. We prognosed it would. If it didn't he wouldn't have died.

Q. It did? A. Yes, sir.

Q. So he could be much more easily influenced? A. I don't know, I don't know about that.

Q. It would affect him in his power of resisting the influences of those about him? A. I am not a mental expert and wouldn't answer. I don't know.

---

DR. DAVID S. HAMILTON, sworn for the proponent.

*Direct-examination by Mr. Gourley*:

Q. You are a minister of the Gospel connected with what church? A. St. Paul's Church.

Q. Episcopal Church? A. Yes, sir.

Q. Did you have occasion to visit Dwight Ashley, Sr. some time during his last illness? A. Yes, sir, sometime about the middle of February.

Q. Do you know how long before his death? A. A week, two weeks, ten days, maybe.

Q. How long was your visit before that? A. I had not seen him at all before that.

Q. Tell us what time the visit took? A. I was in the house half an hour and he was in the parlor.

Q. Downstairs? A. Yes, sir, on the first floor,



and I had a very nice, fine talk with him on many interesting things of one sort and another. Just as fine and reasonable as any man. You wouldn't know there was anything wrong with his mentality as far as I could see.

*Cross-examination by Mr. Benson*:

Q. You didn't know him very well? A. Very well, indeed.

Q. Did he attend your church? A. No.

Q. Dwight Ashley, Jr. attended your church? A. Not at that time.

Q. Does he now? A. Yes, sir.

Q. And his family? A. Yes, sir.

Q. How did you come to go to see him? A. I went to see Mr. Ashley as a result of some information and advice—

Q. Was he fully dressed? A. Fully dressed.

Q. In a bathrobe? A. I went up there and he was sitting in a chair, leaning back, taking things easy.

Q. Did he walk around while you were there? A. No, didn't get off the chair at all.

Q. You noticed he was a sick man? A. Yes, he was a sick man.

Q. You knew he was very sick? A. Yes, sir.

Q. You lead most of the conversation? A. Not at all, not all of it. We just got into a conversation and I addressed my remarks to him.

Q. Did you talk to Mrs. Dwight Ashley, Jr. A. Yes, sir, and Dwight also.

Q. Your remarks were not altogether to Dwight Ashley, Sr. A. No, but he impressed himself at times into the conversation.

Q. You paid very little attention to that? A. No.

Q. You didn't pay any great attention to what Dwight Ashley said? A. No, except to know that he was perfectly normal like any other member of the group.

Q. What particular statement did he make during the time you were there that made you think he was normal? A. His answers to questions about things in general.

Q. What was that? A. He said he was feeling better and hoping to get along nicely and hoped to be around again in a few days.

Q. That is about the extent of his conversation? A. That was about the extent of the conversation except matters of general interest to which he gave attention.

The Court: I am not disposed to continue this matter. As the matter rests there is nothing before the court, in the court's judgment, that would under any circumstances justify the court in refusing to admit this will to probate. Absolutely no evidence to justify the court to conclude there was any undue influence and nothing to justify the court to conclude there was any impropriety or that the execution of the will was not in conformity with the statutes and that being so I don't feel justified in taking up any more time and will order that the will be admitted to probate.

Mr. Gourley: Your Honor thinks there is no duty resting on us to produce more proof.
The Court: I do not.

Mr. Benson: I ask an exception to the Court's ruling.



## NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| In the matter of the Appeal from the decree of the Orphans' Court of the County of Passaic Admitting to Probate Certain Paper Writings as the Last Will and Testament of DWIGHT ASHLEY, deceased. | On Appeal. Testimony. |

## FIRST DAY.

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-fifth day of November, nineteen hundred and twenty-five, before HON. VIVIAN M. LEWIS, Vice Ordinary.

APPEARANCES:
WILLIAM B. GOURLEY, ESQ.,
For the Proponents-Appellees;
VANDERBILT & HEDDEN, ESQS., associated with JOHN O. BENSON, ESQ.,
For the Caveators-Appellants.

---

Mr. Gourley: This is an appeal from the Orphans' Court to the Prerogative Court. Testimony was taken below. An order was entered upholding the will. Appeal has been taken. Testimony was taken below and they put in their whole case then. The Judge stopped us midway, and said he was satisfied and not to proceed any further. That left our testimony not fully completed. I will read

the order of Judge Delaney. (Reads it.) We were cut off in mid-air. I think we are entitled to put in additional testimony.

The Court: I can hear the whole thing.

Mr. Gourley: I have only been presented with the testimony of three of the witnesses, which was given to me yesterday.

The Court: How many witnesses were there below?

Mr. Gourley: We only put on two. We put on Dr. Hamilton and Dr. Todd. It seems to me that we should go on with our additional proof. So far as recalling these identical witnesses that have already taken up two days of testimony, would seem to be a waste of time.

Mr. Vanderbilt: We desire to supplement the testimony that was taken on behalf of the caveators below, submitting to your Honor the testimony taken there. Some questions were overruled in the lower court, and that was improper; and in addition to that, we would like to supplement in some details some of the testimony given below.

The Court: You don't want to go over the whole testimony?

Mr. Vanderbilt: No, that is not our desire.

Mr. Gourley: There is no objection to the will; that is admitted, and it is the codicil; that codicil disposes of 140 shares of Savoy stock, and that is all the issue in the case. I desire to file our answer to the appeal.

Mr. Vanderbilt: Your Honor suggested that we go on with our further proof, but Mr. Gourley says he is going to call Mr. Gold. If there is going to be further testimony dealing with the execution, I think that should go in before our further proof as caveators.



The Court: Put in your supplementary proof, Mr. Vanderbilt.

---

IRVING ASHLEY, being duly sworn, testified as follows:

*Direct-examination by Mr. Vanderbilt:*

Q. Mr. Ashley, you are the youngest son of Dwight Ashley, Sr.? A. Yes, sir.

Q. I show you a letter and ask you if this is your father's signature? A. Yes, sir.

Q. Was that letter sent by your father to you? A. It was.

Q. Has it been in your possession since that time? A. It has.

Mr. Vanderbilt: I offer it in evidence.

Mr. Gourley: Objected to on the ground that it is too remote.

The Court: Objection overruled.

Marked "Exhibit V-1."

Mr. Vanderbilt: "To executors of my will: I hereby direct them to divide the stock of Savoy Realty Company and the Hawthorne Silk Company between Charles Ashley, Irving D. Ashley and Dwight Ashley, equal parts, share and share alike, and not to sell the stock and divide the proceeds. (Signed) Dwight Ashley."

Mr. Vanderbilt: These were offered below and refused by the trial Judge.

Q. I show you another letter, dated December 17, 1920, and ask you if that is your father's signature?

The Court: This is prior to the will?

Mr. Vanderbilt: Yes, your Honor.

The Court: What is the theory you are now offering it on?

Mr. Vanderbilt: Under Cooper's will, 75 New Jersey Equity, 177, to show the testator's intent, to show what was in his mind with reference to the objects of his bounty.

Mr. Gourley: It cannot be for undue influence.

The Court: I will note your objection, Mr. Gourley, and will admit it for the present and deal with it afterwards.

A. Yes, sir.

Marked "Exhibit V-2."

Mr. Vanderbilt: (Reading): "Ridgewood, December 17-20. In consideration of $100.00 and other considerations, I hereby cancel all notes and other obligations due me of the Gary Silk Company and Irving D. Ashley. (Signed) Dwight Ashley."

Q. The Gary Silk Company was a company that you were interested in, Mr. Ashley? A. Yes, sir, my dad was an officer and a stockholder.

Q. Who else was in the company besides your father and yourself? A. A salesman was the third incorporator.

Q. I show you another letter and ask you if you received that from your father? A. Yes, sir.

Q. When did you receive it? A. That is undated, and the best of my recollection is, that it came around when I was sick.

Q. When was that? A. Around March, 1924.



Q. When was the will dated? A. April 24,—codicil, January 9, 1925.

Marked "Exhibit V-3."

Mr. Vanderbilt: (Reads "V-3."): "Dear Boy: As to the amount you owe me and anyone throwing it up to you, that is all nonsense. You have a receipt in full, and it is a question of honor to the boys. If you cannot pay you don't have to. Pop."

Q. I show you another letter, and ask you if you received that from your father? A. Yes, sir.

Q. When did you receive that; look it through and tell us. A. This is not dated, and there is only one way of getting the exact date, and that is, from the records of the Savoy Realty Company.

Q. Can you tell us approximately? A. That would go back six years.

Q. Who has the possession of the books of the Savoy Realty Company? A. The President.

Q. Who is the President? A. Dwight Ashley, Jr.

Q. Are you a stockholder in that company? A. I can be when I want to be.

Mr. Gourley: We have had all that.

Q. How much stock is there in that company? A. Five hundred shares.

Marked "Exhibit V-4."

Mr. Gourley: I interpose an objection.

The Court: The objection will be overruled for the present. I will admit it and deal with it afterwards.

Mr. Vanderbilt: (Reading) "Dear Irv.:

Now the Savoy is to pay 90%, but here is the situation: I put in every dollar the Savoy has; not one cent was contributed by any of you, but I was one of its officers and in cold blood at a meeting I was thrown out of office by D. A., Jr.; C. A. and your mother. I tell you it was a bitter pill after my calamity of the wreck of Ashley and Bayley; and now I am to get 90%. I am glad to get it, and so will you be; but I did not know, and I was not to know, if they ever had in cash $40,000 or 40 cents in the treasury; and here is the great wrong to me, and I hope others will learn by my experience, never to part with what is yours until you are in the sixfoot box. I done right to divide, so my family could use while I lived the earnings of my life, as I feel it was theirs; I wanted them to use it and not wish for a funeral; but the great wrong was to kick me around after I done my part in good faith, and to show me that I was no use in the Savoy or in the H. S. Co., or in any capacity where they were connected, but with the funds of Savoy I would have made in a year more than three to three and a half per cent; but now I have one course, and that is 'play the man' and protect so far as I can the few years I have left; and not one dollar will I neglect to hold for my children and grandchildren. I will not take the advice of friends, 'Take your cash and see the country.' I will make more if I can, as it keeps my mind in action—Pop."



Q. Now, I show you another letter and ask you if you received that from your father? A. I did.

Q. And is that dated? A. This one letter?

Q. Take this one for a minute, and I ask you if you received that from your father? A. Yes, sir.

Q. And what is that dated? A. January 12, 1921.

Mr. Gourley: My objection goes to every one of these.

The Court: Yes.

Marked "Exhibit V-5."

Mr. Vanderbilt: (Reading) "January 12, 1921. Dear Boy Irv.: Yours received with check. I did not expect this, but I will keep it earning if I can; and you can have it back any time you need it. Well, I eat good, but my legs are not 100%—rheumatism, I think—but I took a sun bath today. I am accumulating 12 dozen eggs. My, what a mild winter so far. I will send you some pork and roasters as soon as it is cold; use special care if you cut any ice; it is rotten what there is. I will let you apply the check to any account you wish. My reason for you not trying to get 6% from H. S. Co., as I think it is too late, and I think any good attorney will tell you so. Of course, get what you can out of H. S. Co. I won't stop you. I only give you what I think the legal end of it. I hope you will find some business soon that will pay a profit. If I could buy from ten to twenty box looms 4 x 4 wide, cheap, I would buy them, and let you have them a long time; then it would give you a stronger plant to throw out the

old ones. You can make cheap goods if Bailey can, I think; but figure on cost. I generally answer letters prompt, as I have plenty of time, Love to all. Pop."

Q. Did you receive that, Mr. Ashley? A. Yes, sir, from the farm.

Q. Where was your father's farm? A. Stillwater, New Jersey.

Q. How long had he lived there? A. Steadily for about four years.

Q. Now ,in these letters that I have read, especially the one just before this, the A. & B. that is referred to is what? A. The Ashley and Bailey Company.

Q. That was a company that your father has been in most of his life? A. Yes, sir.

Q. What is the H. S. Company that is referred to? A. A company that was started after the liquidation of the Ashley and Bailey Company, in which we were all supposed to be interested in.

Q. And what was the Savoy? A. That was a holding company of property which my Dad had purchased, and he formed a company, giving us equal shares, holding the majority for himself.

Q. And what is the incident that he referred to in the letter about your mother and Dwight, Jr. and Charles throwing him out of the company? A. He was Secretary of the company at that time; I believe that is the office.

Mr. Gourley: That is all in the testimony below.

The Court: Is that in the testimony below.

Mr. Vanderbilt: I will withdraw that; I



wanted to show what those abbreviations were; that was my chief point.

Q. I show you another letter and ask you if you received that from your father? A. Yes, sir.

Q. What was the date of this letter? A. That letter is undated. I should say it was received during the silk slump of 1920.

Marked "Exhibit V-6."

Mr. Vanderbilt: (Reading) "Dear Irv.: To supplement my remarks, I wish to say that I feel that I must do all I can for myself and each of you boys and feel you must do all you can for yourselves, and to do this we must look ahead further. We are in a condition the world never saw before. Every man and his property was mortgaged for generation to come, and there must come some changes to meet the conditions. I recommend special care, and don't sacrifice your interest to keep the plant going; but don't miss one opportunity to put the Gary in hands of H. S. Company on some practical basis. This is economy; for the departments that eat in your profits, as designing, card cutting, and selling, as well as a department that will get you better results. This is the economy and efficiency I want to see, and you can work on salary same as the others. This is only fair and just to us all. Let us all work for the good of all. I personally am in a class that will have to cut down, and may have to take up some sure business that will find a cheap living, such as a farm on right scale. Thousands are in

my class and will have to live according to their condition.—Pop."

Q. Was that received before or after your father went on the farm? A. There is no date on it and I cannot remember back that far, but I should judge it was around 1920.

Q. I show you another letter and ask you if you received that from your father? A. Yes, sir.

Q. What is the date of that? A. 6/9/23.

Mr. Vanderbilt: I ask to have that marked.

Marked "Exhibit V-7."

Q. Will you read that to the Court? A. "Dear Son Irve.:"

The Court: I don't think it is necessary to read them into the record. Offer the letters and note Mr. Gourley's objection that they are too remote and immaterial and incompetent, as I understand you.

Q. I show you another letter, dated 3/13/24, and ask you if you received that from your father? A. Yes, sir.

Marked "Exhibit V-8."

Q. He made another one dated 10/2/23, consisting apparently of two sheets, and I ask you if you received that from your father? A. Yes, sir, and there is still another sheet to complete that.

Mr. Vanderbilt: Consisting of three pages.

The Witness: That is right.



Marked "Exhibit V-9."

Q. I show you another letter dated 10/8/23, and ask you if that is in your father's handwriting? A. Yes, sir.

Q. And do you know to whom that was sent? A. Charles McBenwell; he used to be the foreman of the Southern mill of the hard silk of the Hawthorne Silk Company.

Marked "Exhibit V-10."

Q. Now, in 1922, were you on the train one time with your father coming from New York, when your brother Dwight passed your father by without speaking to him? A. Yes, sir.

Q. Did your father say anything about this? A. He was very much put out; he passed him in the aisle of the train; he never forgot it, and often commented on it, and stated that it comes to a pretty pass when your own son passes you without speaking to you.

Q. What happened as a result of that? A. Naturally, there was a difference, a very cool feeling existed.

Q. How long did that continue? A. For a long time; I would say up to a few years ago, not more than that.

Q. Were your brother and your father afterwards reconciled? A. Finally there was a reconciliation and I effected it.

Q. Tell me what the date was that this occurence took place, the passing by of the son, of the father. A. I think it was in 1922,—I would like to correct the date; I am quite sure that was in 1915, probably 1916, and the reconciliation was effected two years before the will was made.

Mr. Gourley: When was the reconciliation?

Mr. Vanderbilt: In 1922.

Q. How was the reconciliation brought about? A. I effected it. I took my brother Dwight up to his farm, and the friendship was renewed there.

Q. Did you have any conversation in December, 1924, with your father and your brother Dwight with reference to the portion of the stock which you each held in the Savoy? A. I don't understand that.

Q. Did you have any conversation with your father and your brother Dwight in December, 1924, with reference to the proportion of stock each of you held in the Savoy, and the right to control the company? A. I remember a distinct conversation which took place with my brother Dwight and my father and myself, where he plainly stated it should never be a one man concern the same as the Hawthorne was; and that some plan would have to be made to that effect, and that as soon as he was well anough, there would be a meeting of the Savoy Company, and Mr. Gourley would be present at this meeting. My father said this.

Q. After your father was put out of the Hawthorne Silk Company—

Mr. Gourley: I object to the question "put out;" it is simply using an expression that the facts do not warrant.

Q. After your father went out of the Hawthorne Silk Company, did you or didn't you, continue to pay your father a salary in the Gary Silk Company? A. I did, sir; he had charge of the New



York end and used to receive a commission on sales made during the month. Our business got so small that it made him feel quite put out to have to accept any money from a company whose sales were so small; and he finally refused any commission which we offered from that Gary Company.

Q. Did he, after he severed relationship with the Hawthorne Silk Company, get any salary from that company? A. He did not; he received a salary from a company which we formed, a silk company in New York, called the Forest Silk Company.

Q. When your father came down from the farm for visits, where did he generally stay? A. Practically at my house, unless, at certain times, he had made arrangements to go to Dwight's home; many times I have received telephone calls from Dwight, asking me to stay home on Sunday as father was coming down, and that he was going off on a motor trip, or wherever he was going, and to bring him down, or he would come up after him on a Monday.

Q. You say on most of these occasions he stayed at your house? A. Yes, sir.

Q. Now, between November 10, 1924, and December 15, 1924, your father stayed at your brother Dwight's house? A. I would not say that, not to my recollection.

Q. Where did he stay? A. He was up at the farm; he came down, to the best of my knowledge, on December 16, 1924.

Q. Where did he go? A. He came to my house.

Q. How long did he stay there? A. Probably over night, and the next day; either my brother or myself took him down to my brother's house, my brother Dwight's.

Q. Was he taken to your brother Dwight's

house? A. I went up there; I had a note due at the same time, I wanted to see him; I went to the farm, I say, and I found out he had left; I immediately set out after him.

Mr. Gourley: We have had all that.

Mr. Benson: I don't think we went into the details of that.

The Court: We want a complete record now.

A. (Continued) So I followed him and I got to Sparta Junction ahead of the train; I wired up the road that I was waiting for him; so he got off and was very, very cordial to me, and thanked me very much.

By the Court:

Q. Your father did? A. Yes, sir.

Further direct:

Q. Was he ill at that time? A. He felt an attack coming on.

Q. Where did you take him?

Mr. Gourley: This was all on page 74.

A. I think I testified before; I am in doubt whether I took him to Dwight's house that night or my own; I think he went to Dwight's house to be near Dr. Todd, who had been his family doctor for the past year and a half or two years. It was not his family doctor; Dr. Todd was Dwight's family doctor.

Q. Did you suggest a heart specialist? A. Yes, sir.

Q. When? A. I think that was the trip from the—we will say the latter part of December.



Q. Whom did you make the suggestion to? A. To my brother Dwight.

Q. What did he say? A. He strongly objected to it, and stuck up for Todd and said he was big enough.

Q. Was a specialist called in? A. Yes, sir.

Q. Who was he? A. Dr. Evan Evans, of New York; I remember the day he was there and I went up to the house and went into the room; Dr. Todd, Dr. Evans and my brother were there. They were there ahead of me; I went in; there was no introduction; they were examining my dad and the examination did not last very long, maybe ten or fifteen minutes. They went downstairs; I stayed upstairs, so as to not excite my dad. I was very anxious to know the outcome of the examination. In about five or ten minutes I went down; the three of them were in the front room, the two doctors and my brother, and when I entered they were close together; and when I entered, still there was no introduction, and almost immediately they got up and walked out of the room and bid everybody good night, and I had no word from that examination.

Q. In other words, you were not told the condition of your father as found by these consultants? A. No, sir; I knew from the talk of Dr. Todd that his heart was bad.

Q. Did you arrange for any other doctor to come? What was this date? A. I should judge from the 16th and 31st of December, 1924; it was along that period.

Q. Did you ask about it when you came in the room; did you ask your brother or the doctors what the report was? A. No, sir.

Q. Why not? A. There was the feeling.

Q. Did you arrange for any other doctor to see your father? A. I suggested to Dwight to get a heart specialist, and he got through Dr. Todd, Dr. Evan Evans.

By the Court:

Q. You went in the room and did not ask any questions? A. The examination was taking place when I got in the room.

Q. They were standing together? A. Yes, sir, downstairs.

Q. You did not ask any questions? A. No, sir, they were cool, and I expected that Dwight would explain.

Q. You did not ask your brother? A. No, sir, I don't remember that I did.

Q. Why didn't you ask your brother about his father? A. My brother was cool to me at that time.

Q. What did your brother's coolness arise from? A. From the fact that he had taken money and put it in the bank from the Savoy Company without my consent or signature.

*Further Direct*:

Q. How much? A. $50,000.

Q. Tell the Court what that transaction was.

Mr. Gourley: I think we have had all that.

A. Dwight asked me to sign this agreement.

Q. What was the agreement? A. I will lead up to that.

Mr. Gourley: We have had all that. This was money that the Savoy loaned to the Hawthorne for the United States Govern-



ment, and Irving says he did not consent. (Continuing explanation).

(Mr. Benson replies).

Q. In October or November, 1924, did Mr. Dwight Ashley ask you to sign such paper? A. He did.

Q. Did you refuse to do it? A. Yes, sir.

Q. Where was this? A. At his house.

Q. When you refused to do it, what did he do? A. He was very much put out.

Q. Did you take the paper with you? A. I did.

Q. When the will was read, after your father's death, did he ask you again to sign the paper? A. He said, "Sign and return those papers, and never come in my house again, and I said, "I will not trouble you, I will not sign." This was the night of the reading of the will after my father's death.

Mr. Gourley: I object to that.

The Court: I think it is immaterial.

Marked "Exhibit V-10."

Q. You were on bad terms with your brother at that time, as a result of this agreement? A. Yes, sir, that was the starting of the coolness; I expected him to tell me of the examination because I had suggested it.

Q. Did you suggest any other doctor to your father? A. No, sir, my father did, Dr. Flitcroft.

Q. Was he called in? A. I went after him and made the arrangements.

Q. While your father was at Dwight's house during his last sickness? A. Yes, sir.

Q. Tell us about it. A. Papa said to me, "Irve, Dr. Todd is not helping me;" and his sister, who is

being attended by Dr. Flitcroft has now and did have the same trouble and he was apparently helping her, and he had visited her in December, I think the early part, or in some way he knew of her being treated by Dr. Flitcroft; and Dr. Flitcroft had been his physician for a great many years before when he lived on River Street.

Q. After this illness of November and December, 1924, did your father leave your brother Dwight's house? A. He went back to the farm.

Q. When? A. I would say on the first of January; I am not certain as to that date, but I say it is near there.

Q. Then, after that, what was his condition? A. Well, he returned on the 4th of January.

Q. To your brother Dwight's house? A. Yes, sir.

Q. Were you notified of his coming there? A. I was not.

Q. When did you first hear of his being at your brother Dwight's house? A. On the Wednesday morning following, that would be the 7th—the Wednesday following the Sunday.

Mr. Gourley: Haven't we had that? It is all in the case.

Q. Who was it called you up and told you? A. No one called me up, which they had usually done when Pop came down. Sometimes he did go direct to Dwight's house, and when he got there, I was either notified by Dwight or Pop, would call me himself, and tell me he was down. He was in bed and very sick when I went over to see him on January 7th, 1925.

Q. Will you tell us in detail what his physical



condition was? A. I went in and I said, Pop, I did not know you were here;" and I said, "I am sorry they did not let me know;" and I don't know whether he made any remark or not; he was too sick; so I stayed there for, probably, half an hour, and then left.

Q. Was he able to talk to you? A. Very little.

Q. Do you know whether he was or was not able to attend to his personal wants? A. On that very night I cannot testify as to that, but at a later time I know he was not, because he told me he could not.

Q. How much later was he unable to attend to his personal necessities? A. I would say around the latter part of January to the first of February.

Q. Was he able to leave his room on January 7th at the time you were there? A. No, sir, absolutely not; he was in bed. What he did during the day I cannot tell you; I only went there during the evening. He slept in the front room of the house on the second floor.

Q. Do you know whether or not he was able to digest his food? A. About the time he could not control himself I happened to be there on two occasions and found out his food did not stay with him; he was not nauseated, but he could not control it.

Q. Did you ever mix his medicine for him? A. No, sir, Dwight used to take care of that; I remember on one occasion I was in the room and Dwight came in and handed him a glass and never said a word, and when Dwight went out to wash the glass, he said to me, "They are giving me too much medicine." That was around the end of January or around the first of February.

Q. Was Dr. Flitcroft attending him? When

was this? A. Towards the end of January, 1925. I don't know whether Todd or Flitcroft was attending him.

Q. After January 9, 1925, when you came to see your father would or would not Dwight Ashley come into the room with you? A. I have gone up the front porch in the evening and through the window have seen him, after I would ring the bell I would see him go up ahead of me; the maid or his wife would open the door; if his wife opened it, I would have to shut it. I would go upstairs and find him sitting in the room; he would never enter into a conversation.

Q. You would find him sitting in the room with your father? A. Yes, sir.

Q. He would just sit there and never enter into a conversation at all? A. He just sat there.

Q. Did your brother Dwight speak to you on these occasions? A. If he did, it was a nod, it was not cordial.

Q. Did you see your father alone after January 9th? A. My mother was present, if not all, most of the time that I conversed with my dad.

*By the Court*:

Q. She is the one that has an income of $1,000? A. Yes, sir.

*By Mr. Benson*:

Q. Is she alive yet? A. Yes, sir.

Q. Did or did not your father complain to you that he was not allowed to see his friends? A. Yes, sir, I remember that occasion; he complained just once—

Q. What date, as far as you can fix it, was it that he said it; was it towards the end of his life?



A. He was bedridden, or he was to bed, one or the other; it was in the evening and he was lying in bed.

The Court: What did he die of?

Mr. Benson: Heart trouble.

*Further Direct*:

Q. Did you or didn't you have any conversation with your father; can you fix any date? A. Well, I would say it would be in January, 1925.

Q. He was confined to his bed? A. Yes, sir.

Q. He had these two physicians, Todd and Flitcroft? A. Todd was away on his vacation.

Q. Did he have a nurse, too? A. No, sir; he was taken care of by the Dwight Ashley family and my mother; he was in bed and was dozing; and I sat there quietly, and the doorbell rang, and I heard voices downstairs, and he turned over on his side and said to me, "Who is that downstairs?" and I said, "I don't know;" he said, "They are keeping all my friends away from me;" and I said, "Pop, don't feel that way, I will find out." So I went to the top of the stairs and listened, and I heard a gentleman talking about some repair bill, so I came back and I said to him, "You see you are just agitating yourself over nothing;" and I told him who the man was that was there about the repair bill.

*By the Court*:

Q. You were not excluded? A. You bet I was not.

Q. You visited your father right along? A. Yes, sir.

Q. Did you know of the execution of the codicil of the will? A. No, sir.

Q. When did you first learn of it? A. When it was read.

The Court: How many shares are there in the Savoy Company?

Mr. Vanderbilt: Five hundred; 140 was the total of the father's holdings in the Savoy.

Mr. Gourley: He gave the 140 shares to Dwight.

*Further Direct*:

Q. Did you ever have any conversation with your father with reference to the financial condition of the Savoy? A. Many times.

Q. In his last illness? A. Yes, sir.

Q. What did he tell you as to the financial condition of the Savoy?

Mr. Gourley: I think we have had that; it is in the record; Mr. Benson went into it at great length.

Mr. Benson: That has not been covered.

*Further Direct*:

Q. Proceed. A. He thought there was very little, and so expressed himself; he thought there was very little left; he often asked; and even in my presence I have heard him ask Dwight for a statement of the Savoy Company. He never received it, and when he died, he did not know what the wealth was or what the company was worth.

Q. What did he say with respect to the condition of the Savoy? A. He said it had been very badly managed, and funds had been taken out, and



even on this agreement, this agreement he said, when I explained fully to him about the agreement, and told him this money had been taken out, he said to me, that Dwight should never have asked him to sign it if such was the case" and then, just at that time, and many times after that, he would say—

Mr. Gourley: We have gone all over this.

Q. What expression did he use with reference to what had been done with the Savoy? A. His expressions were, that the money had been taken out, misused, badly managed.

Q. Was Dwight, Jr. the president of the company? A. Yes, sir, and he has often told me that if he was still in a position where they had not put him down, that is, lowered him, taken his position away from him, and authority, he would have gone on and developed the company and made more than 3½%, which he claimed in one of his letters to me.

*By the Court*:

Q. You say your father, in conversation, said he did not think it was worth much? A. Yes, sir.

*Further Direct*:

Q. He finally assumed, in bequeathing it to your brother, that it was not of much value? A. He said his own personal account was very low or had been cleaned out, his personal account; my father said this—

Q. Did he use that expression of the Savoy? A. Yes, sir, he did.

Q. More than once? A. Many, many times.

Q. Did he ever have a financial statement as to the condition of the Savoy? A. No, sir, never.

Q. What is the Savoy worth, the company?

Mr. Gourley: We put the expert on, the bookkeeper, and we agreed on about $200 a share; these are facts which have developed since that hearing.

A. I would say the Savoy is worth $500 a share; an offer came up at one of the meetings from a purchaser, who offered $100,000 for part of the company's holdings.

Q. What holdings? A. In the South, which does not include any holdings in the North.

Q. How did you make the rest? A. Naturally, the rest of the property on that basis would make up the $500 a share.

Q. How soon after your father's death was that offer made? A. I should judge about two months; I have not the exact date; it is on record. I remember very distinctly at the reading of the will my other brother, Charles, and myself, we asked him at that time, we asked him "What is the value of the Savoy?" and after much parrying he said $200.00.

Q. Who did? A. Dwight.

Q. But you don't agree with that figure? A. I certainly do not.

The Court: Is it operating now?

The Witness: We are waiting for Vice Chancellor Bentley in a receivership.



*Cross-examination by Mr. Gourley*:

Q. You say your father said the estate was cleaned up? A. His personal account, yes, sir.

Q. You cleaned it out more than anyone else? A. I did not receive my share; everybody received the same as I did.

Q. In one form or another, you got more than $78,000 from your father? A. How much did I pay back?

Q. Answer my question. A. You have figures which I have not in my head, so I cannot say.

Q. Endorsements and loans and in indebtedness cancelled, you got $78,000 from your father; is that correct? A. What do you expect me to say?

Q. Either "Yes" or "No." Is it true? A. I don't know the amount.

Q. You don't know? A. No, sir.

Q. You have been the white-haired boy?

Mr. Vanderbilt: I object to that question.

Q. You got all you asked from him? A. What if I did? I got my share the same as the rest of them.

*By the Court*:

Q. Did you get your share? A. Up as far as the time when any moneys were paid out.

*Further Cross*:

Q. You got infinitely more than Charlie? A. I would not say so.

Q. What did Charlie get? A. I don't know—ask him—he is here.

Q. You got infinitely more than Dwight? A. No, sir.

Q. I show you three notes, one dated December 16, 1924, signed by you, for $2515.16; was that discounted by you at the First National Bank? A. Yes, sir.

Q. Is that still at the bank? A. As far as I know.

Mr. Gourley: I just got it from Mr. Riley.

Q. That was discounted on your father's endorsement? A. Yes, sir.

Q. Without that endorsement you could not have had it discounted? A. I don't deny it.

Q. I show you another note, dated February 17, 1925, signed by you, payable to yourself, of $1565.00, bearing date February 17, 1925, and endorsed by your father? A. Yes, sir, and that is the note, if I may make that statement—I have no records here to be sure; but he called up the bank unbeknown to me, without my consent, and endorsed that note.

Q. This is the note you said you got him to sign, and he said he did not know what he was doing? A. No, sir.

Q. What was the date of that note? A. I don't know.

Q. It was one of these three, wasn't it? A. (No answer).

Q. I show you a third note, December 23, 1924, for $1402.50, payable to yourself at the First National Bank, and endorsed by your father? A. I admit that.

Q. That was discounted at the bank? A. Yes, sir.



Q. And the bank still holds the note? A. Yes, sir.

Q. Discounted with your father's endorsement? A. Yes, sir, but I imagine the bank states there is collateral against those notes.

Q. Not your collateral? A. His collateral—notes and stocks and bonds.

Mr. Gourley: These three notes, $1565.00, $1402.50 and $2515.16 are of the same character, and I will put in copies of those.

Recess to 2 P. M.

---

After Recess.

IRVING ASHLEY resumes the witness stand.

*Cross-examination (continued) by Mr. Gourley:*

Q. There were some notes, Mr. Ashley, that your father held of yours at the time of his death; do you remember? I have included them in the inventory, January 13, 1922, a note purporting to be signed by you for $1,000, payable to your father; is that your signature? A. Yes, sir.

Q. One of January 30, 1922, purporting to be your signature, for $2,000, payable to your father; is that right? A. Yes, sir.

Q. And one of February 8, 1922, signed by you for $4500; is that right? A. Yes, sir.

Q. Now, then, there were loans: I spoke to you before about them; I have the original check here; the dates from the stubs appear in your former testimony, but I have here now the original checks. Will you just look over those loans and see the

fifteen checks, aggregating $18,800? A. Yes, sir.

Q. They run from August 2nd to December 8th, in various sums? A. Yes, sir.

Q. Then there was the indebtedness of which you have spoken, the cancelled notes; do you remember how much that made; I have it $23,661.-64; was that about right? A. Do you refer to the cancelled indebtedness?

Q. Yes. A. Could I see one of those notes?

Q. Yes, here they are; you claim these were cancelled? A. Yes, sir, I would say so without looking at them closely.

Q. Now, then, there were various payments of small sums from July 24 to December 8, 1924, sums of fifty and one hundred dollars during that summer and fall; those payments make $800? A. Yes, sir.

Q. Dwight received some and you received some? A. Yes, sir.

Q. The last one paid you was December 8th? A. December 15 or 16, $150.00.

Q. I have it December 8; are you sure about your date? A. Only from memory, Mr. Gourley.

Q. Then there were some old demand notes, a great many years ago, $12,000, way back in 1910; do you remember about that? A. May I see them?

Q. I haven't them here; Dwight got some and you got some and Charlie got some, $12,000 in the aggregate; I am not particular about the precise amount. You cannot tell us whether they were loans or gifts? A. I really don't remember.

Q. Do you know where those old demand notes are, the old demand notes of 1910, about that time? A. I have some notes that my dad gave me as a protection against the boys.



Q. Have you any demand notes in your possession, signed by you, payable to your father, 1910, of about that time? A. No, sir, I have some signed by Dwight payable to his father.

Q. I would like to have them; I am the administrator. A. They were given to me.

Q. What demand notes have you that Dwight signed? I want them as administrator of the estate. A. I can only answer that he gave them to me as protection, the same as he gave me the $10,-000 note of the Hawthorne.

Q. Do you mean, they are your personal property? A. I would say so.

Q. And they don't belong to the estate; is that so; how much money are they?

Mr. Benson: How is this cross-examination?

Mr. Gourley: It is, as to the indebtedness.

Q. That is all you have to say? That incident of the train, tell me about that; were you and your father on the train at Jersey City coming to Paterson? A. Yes, sir.

Q. Were you facing towards Paterson? A. Coming from New York.

Q. Did Dwight come in from the back of the car? A. We were standing in the aisle and he passed stomach to stomach, right in between us.

Q. Did you speak to Dwight yourself? A. I don't think we were very friendly at that time; I did not.

Q. Now that, according to your judgment, was the basis of the unfriendliness, as you say, between Dwight and your father; I gathered that from your

testimony? A. It did not help it any.

Q. Was that the basis of the estrangement, as you term it, that incident? A. Yes, sir.

Q. That incident remained there for five years? A. To 1922; 1915 was the time it happened.

Q. So that for seven years, because of that incident, your brother Dwight and your father were not very friendly? A. I would say so.

Q. Your father never wanted the Savoy to be a one-man concern? A. He did not.

Q. And he did not want control in the hands of Charlie and Dwight; did he speak to you about that? A. Yes, sir.

Q. You did not tell that? A. What was that?

Q. That he spoke to you about it? A. I am answering that now. I remember distinctly a conversation he had with me asking me to formulate a plan—to see Mr. Benson, who was my attorney, and to formulate a plan whereby the stock would always be kept in the family.

Q. He did not send you to see me then? A. No, sir, not that I remember.

Q. I was his attorney—you knew that—not yours, but his; is not that so? A. I would say so.

Q. And was for thirty years? A. Yes, sir.

Q. Not your personal attorney? A. I guess you have helped me out more than once.

Q. Or Charles' attorney; that is right, isn't it, as far as you know? A. Yes, sir.

Q. Or Dwight's attorney? A. I would say so.

Q. Now, you said you paid your father a salary from the Gary Company; that is the first I knew of that, and I am very glad to hear it. What did you pay him? A. A certain commission on the net sales per month; I have forgotten the amount.



Q. Was he in New York at the time attending to business? A. Yes, sir, but he did not have much to attend to.

Q. Then he did not earn his commission? A. Well, I would say he styled the mill; I would say he was entitled to reimbursement for what he did—

Q. What did you pay him? A. Maybe two or five per cent.

Q. What year was that? A. Around 1915.

Q. And continued how long? A. Until the sales got pretty small, and he did not want to accept it.

Q. When was that? A. Maybe two or three or four months.

Q. From 1915, your father received money from the Gary Silk Company for three or four years? A. Yes, sir.

Q. Would your books show that? A. Yes, sir.

Q. Where are your books? A. Mr. Benson has them.

Q. The Gary Silk Company went out of business? A. Yes, sir.

Q. Bankrupt? A. No, sir, we made a settlement; it is not in business now.

Q. What is the settlement? A. Fifteen per cent. I think.

Q. That was when—when was that settlement? A. I would say around last August or September, somewhere in that neighborhood.

Q. Now, when he came down he went to your house sometimes, and sometimes to Dwight's, when he came from the farm? A. Yes; I would say mostly he came to my house.

Q. The farm is at Stillwater, Warren County? A. I don't know.

Q. He went up there when, what year? A. He was there living steadily since 1921 or 1922.

Q. He was only there four years all together? A. Before that, he went up on odd trips.

Q. When did he buy the farm? A. I would say around 1919.

Q. And he lived up there for several years on the farm? A. He lived up there up to his death.

Q. He came down here on what day in December? A. On the 16th of December; I had a note due, I think, that day.

Q. Is that the way you remember it? A. At the same time I wanted to see him, so I went up to the farm and found he had left; I told you that. At that time he sure was glad to see me when he got off that train.

Q. You had the note signed? A. The note was not signed then, but it was signed at the house.

Q. You did not speak to Dwight at that time? A. I don't think he was present.

Q. Was he present? A. I would not say that he was.

Q. You did not inquire of your mother? A. I think my testimony shows that I was just in doubt whether he came direct to Dwight's house or mine.

Q. Did you speak to your mother in regard to anything? A. Naturally, I would have; I went to Dwight's house.

Q. Did you speak to your mother of these visits? A. Yes, sir.

Q. Your mother lived with Dwight? A. She has lived there.

Q. And lives there now? A. As far as I know.

Q. How long has she been with Dwight? A. Outside of a period she spends with me, I should say



she has been there since the early spring, or beginning of summer.

Q. Was Mrs. Charles Ashley there most of the time during any of these visits? A. I would see her occasionally at Dwight's house.

Q. Did you know she was living there, too? A. No, sir.

Q. Did you see her son? A. He came in occasionally.

Q. Do you remember sending him down to the car for a bottle of whiskey the day your father died? A. I remember it very well; I always carried that bottle in the car for just the trips that I made to my dad. He always would take a little whiskey and water when he felt weak.

Q. Was this whiskey there for your father? A. I always carried it for that purpose.

Q. Did you take it away with you? A. No, sir, I did not.

Q. Did you leave it behind? A. Yes, sir.

Q. Were you under the influence of liquor that morning? A. No, sir, I made a deposit in the First National Bank that day.

Q. You were notified by your mother of your father's death? A. No, sir, I was not.

Q. Who told you of your father's death that morning? A. Why Mrs. Somebody telephoned from the house.

Q. It was in answer to that that you went to the house? A. Yes, sir.

Q. I want you to state what restrictions were put upon your visits to your father at Dwight's house? A. I never was refused admittance, but at the same time, the coolness that existed there, and the feeling, and watching me when I went in

the room to see dad, I certainly took exception to that.

Q. Was anything done by anyone in that house to prevent you from coming in? A. It would not have done them any good if they had.

Q. You would have gone in? A. You bet I would.

The Court: I am satisfied he was not obstructed.

Q. You have spoken of this Savoy paper; you knew, I presume that this Savoy Company was simply a land company? A. It was a land company; at the same time, it was a going concern.

Q. It was not a manufacturing concern? A. No, sir, no manufacturing.

Q. It was simply a land company and you had land in different places? A. Yes, sir.

Q. At Hawthorne, New Jersey, you had 600 or 700 lots? A. I don't know the details.

Q. Have you ever tried to find out? A. Many times, and requests have been stated by my dad in my presence, asking for statements of the Savoy as well as the Hawthorne.

Q. Did the Savoy Company at Hawthorne, New Jersey, own about 600 or 700 lots? A. I could not tell you.

Q. Did they have at Haledon, New Jersey, in this county, about four acres of ground? A. I don't know.

Q. Did they have at Prospect Park about 30 acres? A. I don't know the amount.

Q. And a number of acres in North Carolina? A. There is one tract of 1,000 acres.

Q. It is said that there is 1700 acres in North Carolina; is that a fair statement, so far as you



know? A. I know of 1,000, and I know there is more, but I don't know the exact amount.

Q. Do you know that there were some lots in Paterson on Eleventh Avenue? A. No, sir.

Q. Did you know of your father's residence on River Street? A. I don't know whose name it was in.

Q. You never inquired about the Savoy holdings; you never made an inquiry? A. No, sir, I left that entirely with the boys.

Q. Now, then, this property was simply for sale if a reasonable price could be had on this property? A. I remember there were houses built and sold, and having made on the houses.

Q. Where was that? A. I think there was some property on North Eighth Street, if I remember correctly.

Q. All this land is still there, the North Carolina property is still there? A. I believe it is.

Q. And the Savoy property at Hawthorne, and the Haledon property, and the Prospect Park property, is all there; no one has got away with the land? A. As far as I know, that is right.

Q. Do you know of any property that has been sold? A. There must have been some property sold.

Q. Do you know? A. I cannot tell.

Q. You don't know about that? A. I did not keep the books.

Q. The next question discussed was this thing about the Savoy Realty Company; you were a stockholder in the Hawthorne? A. Yes, sir.

Q. And a stockholder in the Savoy? A. Yes, sir.

Q. And you are a stockholder in the Savoy, too? A. Yes, sir.

Q. Your father and two brothers were also stockholders in the Hawthorne and the Savoy? A. Yes, sir.

Q. You know there was some difficulty with the United States about their income tax for 1919-1920? A. I did not know any details, but I knew they owed the Government.

Q. There was some difficulty with the Government about the income tax? A. I heard about it.

Q. Did you know that sprang from the principal fact, that at the close of the year the silk on the shelves in New York in the commission house was put in at the market value, and later when it was sold the prices were very low and they realized much less; and, therefore, it was only a paper profit at the close of the year, and not a real one? A. I was not in the Hawthorne actively, and I cannot answer that question.

Q. The Government decided against the company? A. I know only what I have heard.

Q. And this appeal was taken by Perley Morse & Company, representing the Hawthorne; and the Government would not grant an appeal unless they were assured in case it went against the company, that they would get the amount of the tax? A. I was only a stockholder and knew nothing about it.

Q. You knew the talk about those things, didn't you? A. I would say that I heard it.

Q. And the only way the Hawthorne Company could put up this money was by the stockholders of the Savoy pledging the securities they held for that purpose? A. That was an arrangement between themselves.

Q. Your father signed it; that is your father's signature, isn't it?



Q. And that is Charlie's signature A. Yes, sir.

Q. And that is Dwight's signature? A. Yes, sir.

Q. And the Savoy Realty Company, by its president, secretary and seal, have signed this? A. Yes, sir.

Q. I refer to "Exhibit V-10." What is your objection when your brother and father had signed this—it might be only a temporary loan—what was your objection? A. Because there had been over $200,000 put in the Hawthorne Silk Company, which was a great deal more than I ever received, and I would not put another dollar into that company.

Q. Was there any objection on your part to do this? A. Absolutely.

Q. In other words, if it were not done, there would be no appeal? A. I was not consulted, and that settles it.

Q. You were ready to let your father's and brother's interest be lost rather than sign a paper? A. I told you why I would not sign it.

Q. Is that what you mean by cleaning out the Savoy? A. The money was taken without my father's consent.

Q. He signed this paper— A. And when I showed him and explained to him what was in that agreement, he said "Dwight should never have asked me to sign it;" I told him that the money had been taken without our consent.

Q. You were asked to give your consent? A. I did not give it; the money had gone.

Q. What did you say to him that led you to say he did not understand it? A. The money was gone before he signed it; that is why I objected to it strongly.

Q. You did not understand it? A. I thought I did.

Q. You have a clearer notion now than you did before? A. Not necessarily; maybe you can explain it to me.

Mr. Gourley: No, I won't try.

Q. What was Perley Morse engaged for? A. I supposed it was in reference to this settlement of the Government.

Q. Didn't you agree to pay the Perley Morse bill of expenses? A. I don't know.

Q. Try and remember. A. Maybe I did.

Q. You spoke about a personal account cleaned out; tell his Honor what you mean by that. A. His own money; his own account.

Q. I am interested in that. A. When the Hawthorne was in trouble, Dwight would come to him for help, and he would sign blank checks and give them to Dwight, and he never knew the extent that Dwight had drawn money on his account, whether bonds or stock.

Q. He would know when he got the checks back? A. I don't think he kept his own books.

Q. He did not know what he was doing, then? A. Maybe he didn't.

Q. You said before that he was a sharp business man; is that still correct? A. He used to be.

Mr. Benson: Where does it appear in the testimony that he said that? He said he was a good father.

Mr. Gourley: No; I spoke about his characteristics.

Q. He was a good business man, wasn't he? A.



He was up to the time of his stroke; that stroke was on August 19, 1924.

Q. He made his money himself originally? A. Yes, sir.

Q. He used to work over in the Whitney Machine Sewing Company? A. I have heard him speak of it.

Q. And then he went in the silk business? A. Yes, sir.

Q. And founded Ashley and Bayley, and that went into dissolution and paid 100 cents on the dissolution and had some money left? A. Yes, sir.

Q. And from that money they established the Hawthorne? A. He had his own personal funds that he established the Hawthorne Company with.

Q. He was one of the leading silk manufacturers of Paterson, wasn't he? A. I should say so.

Q. And a very good father? A. Yes, sir; many times in your office you have told me that.

Q. And every time you believed it when I said it? A. Yes, sir.

Q. And you are of the same opinion still about it? A. Yes, sir, he never meant to cut me off that much.

Q. He was a good business man up to the time of his stroke; is that right? A. That is what I said.

Q. Pretty keen-witted? A. Well, up to the time of his stroke—

Q. Up to the time of his stroke? A. Even in the latter years up to the time of his stroke, I would not call him so keen-witted after he got out of active business; I think he lost some of his keenness, but he was active up to the time of his stroke.

Q. Very much concerned in investments and manufacturing? A. Yes, sir, of all of us.

Q. And all of this that you three boys got, you got from him? A. Well, we made some money and lost some; I know I did; I don't know what they did.

Q. You have none now? A. No, sir, that is true.

Mr. Vanderbilt: I object to the question.
The Court: He may answer.

A. I can show every dollar that he gave me right through my books to the end.

Q. This money you got from your father, you say, went into your business? A. Yes, sir.

Q. But it was lost? A. The same as the Hawthorne.

Q. Your father did not get it back? A. No, sir, and he did not get it back from the Hawthorne. They had a great deal more than I did.

Q. I asked you the last time to produce your books and show what, individually, any of these boys received. A. I cannot show my books; the Hawthorne books will show what the boys got; I agreed to show my books for the moneys that I received from my dad that went through my business.

*Redirect-examination by Mr. Vanderbilt:*

Q. Was the note your father signed on December 16, a renewal of an earlier note? A. For a few years the same note reduced.

Q. Is that true of the other notes that Mr. Gourley referred to? A. Yes, sir, the First National Bank notes.

Q. Have you made payments in repayment of these original notes of your father to the Gary



Company? A. Yes, sir, we reduced them at the bank; they totalled about $15,000, and we reduced them to the amount that they are standing today. I went to Mr. Smith, of the First National Bank, and he said, "We cannot take a Gary note as they are out of business, and you will have to make it a personal note with your dad's endorsement.

Q. With respect to the time your brother Dwight passed your father and you in the train, you were asked if you called it to your father's attention; was it necessary for you to do that? A. No, sir, he brushed right in front of me.

Q. Did your father see Dwight? A. Yes, sir, he made some remark, and I know he was not pleased.

Q. The Hawthorne concern is in bankruptcy? A. Yes, sir.

Q. Did not the bankruptcy of the Hawthorne irritate your father? A. I think it helped to shorten his life.

*Redirect-examination (continued) by Mr. Benson:*

Q. In reference to Mr. Gourley showing you some notes; Mr. Gourley showed you some notes and checks; the proceeds of these, what were they used for? A. Absolutely the business; the Gary Silk Company, of which my dad was a stockholder and held an office, I think it was Vice-President. —yes, Vice-President.

Q. At the time of your father's death did you personally owe him any money? A. Not one dollar.

*By Mr. Gourley*:

Q. No salaries were paid to the officers of the Savoy; you never heard of that? A. I know it has been talked about.

Q. What? That they did not get it, or that they did? A. That they would like to have salaries.

Q. You don't know that they got any money, salaries? A. No, sir.

Q. You had an equal holding in stock in the Hawthorne with them? A. Yes, sir, but not a penny did I ever get from the Hawthorne; they received large salaries and bonuses.

*By Mr. Benson*:

Q. How much? A. I understand it totals $50,000.

*By the Court*:

Q. Do you know? A. Yes, sir, I do; my brother told me.

Q. Which brother? A. Charles.

Q. What did he tell you? A. He told me it would total somewhere near $50,000.

*By Mr. Gourley*:

Q. What was this $50,000 for? A. Bonuses, that is a gift.

Q. You mean the company gave the officers $50,000? A. Yes, sir.

Q. Is this the first of April he told you that?

The Court: Never mind that; call the next witness.



WILLIAM H. ASHLEY, being duly sworn, testified as follows:

*Direct-examination by Mr. Vanderbilt*:

Q. You are a brother of Mr. Dwight Ashley, Senior? A. Yes, sir.

Q. You were accustomed to visit him very frequently at his farm? A. Yes, sir.

Q. How often? A. Once a week, on Sundays, sometimes not so much, but two or three times a month.

Q. And were you familiar with his business affairs? A. Only in conversation.

Q. I mean, did he tell you of his business affairs? A. Yes, sir.

Q. Discuss them with you at different times when you met him? A. Yes, sir.

Q. He was a man who was very much interested in business? A. Very much.

Q. Did he talk over with you his relationships with his boys? A. Yes, sir.

Q. After April, 1924, Mr. Ashley, did Mr. Dwight Ashley, Senior, at any time discuss with you his children, his boys? A. Yes, sir.

Q. What did he say with reference to them? A. I don't know what you are driving at.

Q. What was his attitude towards the three boys, as he expressed it, about from April, 1924, from then on? A. He did not feel good over the treatment of Dwight and Charlie.

Q. Did he ever object—Before the hearing of the will contest at the Orphans' Court, did not Mr. Dwight Ashley, Jr. come to see you? A. Yes, sir.

Q. What was his conversation with you on that occasion? A. He rather objected to my testifying in the Orphans' Court.

Q. Did he or didn't he ask you to get a physician's certificate, saying you were not competent to testify? A. In substance, yes.

Q. What was that conversation? A. He asked me not to testify, and I said I would have to if I was subpoenaed.

Q. Who was with him on the occasion of that visit? A. His wife.

Q. Did or did not Dwight Ashley, Sr. ever speak to you about the personal life of Dwight Ashley, Jr.? A. Some years ago, yes, sir.

Q. Did he ever speak to you about his son's Dwight Ashley, Jr. and mention the name of the person whose name I have written on this slip; if you can read it? A. Am I obliged to answer that question?

The Court: If it is proper.

Mr. Gourley: We have had no date of this thing; what date are you speaking about; what date is this you are speaking about?

*By the Court*:

Q. How many years ago is it that your brother spoke to you about the personal habits of his son Dwight, how many years ago? A. Nine years ago.

*Further Direct*:

Q. Now, can you answer the question?

Mr. Gourley: Objected to as too remote.

The Court: I shall take it and note your objection.

A. Yes, sir.

Q. In connection with the person whose name is mentioned on that slip?



Mr. Gourley: Objected to.

A. I don't remember the name.

Q. Did he ever speak to you in connection with the name that is written on that slip? A. Yes, sir.

Q. What did he say? A. He was exercised over it, of course.

Q. What caused him to be exercised over it? A. Naturally, fear of what it would drift to.

Mr. Gourley: We object to this.

Q. What did he say? A. I cannot remember; he was concerned about the boy.

Q. What did he say; do you remember; do you remember what he said? A. In substance, he deplored that these boys were drifting off.

*By the Court*:

Q. All his boys? A. No, sir, he referred to this one.

Q. You do recall his mentioning that name? A. Yes, sir.

Q. Was there more than one name mentioned by him? A. No, sir.

(Counsel evidently showed the witness two different pieces of paper with the names of two girls on them).

Q. Did your brother in his lifetime, for the last fifteen or twenty years of his life, live with his wife as husband and wife?

Mr. Gourley: I object to this.

The Court: I don't know what the object is.

Mr. Vanderbilt: The codicil was made be-

cause the father was dissatisfied with the way Irving and Charles were conducting their married lives, and I want to show, if I may, that the father had similar experiences himself; that Dwight Ashley had had similar experiences, and that he did not hold it up against any of the boys.

The Court: I will allow the question.

Mr. Gourley: Under my objection.

Q. (Question read.) A. I prefer not to answer that question, Judge.

Mr. Vanderbilt: I think we are entitled to an answer to the question.

The Court: Answer the question.

A. No, sir; let me answer in a different way; they lived in the same house.

Q. Did they live as husband and wife?

Mr. Gourley: How does he know?

Q. Do you know, Mr. Ashley, for a good many years, whether or not your brother lived with other women? A. No, sir, I don't know it.

Q. Do you know whether he was ever on intimate terms—

Mr. Gourley: I object to this testimony.

The Court: I am noting your objection; I don't see how it can affect this codicil.

Q. Did your brother ever discuss with you the relations of his son Irving and his wife? A. Yes, sir.

Q. Can you fix the time of those conversations?



A. He died in 1925; up until about July, 1924, I should say.

Q. What did he say, if anything, about the relations of Mr. Irving Ashley and his wife? A. He felt very badly over it.

Q. About what? A. About their domestic troubles.

*By Mr. Gourley*:

Q. Who is this—Irving? A. Yes, sir.

*Further Direct*:

Q. Did he after that say that he loved his boys equally?

Mr. Gourley: Objected to as leading.

Q. Did he after that say what was his affection for his different sons? A. He loved Irving very much, because Irving stood by him.

Q. That continued up to the time you last saw him? A. Yes, sir.

Q. When was that? A. Sometime in July, 1924.

Q. Did Mr. Dwight Ashley, Sr. state anything to you about the affairs of the Hawthorne Company? A. Yes, sir, he often discussed it.

Q. What did he tell you? A. That they were wasting money.

Q. Did he ever say how much he had loaned the company? A. The last story he told me was, that he had endorsed notes for $88,000, and he had had to pay it.

Q. Did he say anything to you about his expulsion from the company? A. Yes, sir.

Mr. Gourley: Objected to.

Q. About his being retired or severing his con-

nection with the company? A. Yes, sir, he did.

Q. What did he tell you? A. He was very much exercised over it and pained.

Q. In his last sickness, did Dwight Ashley, Sr. write you a letter? A. Yes, sir.

Q. When was that? A. It was about a month before his death.

Q. Do you recall what the letter was about, or the contents of the letter? A. It was a general letter, and a very rambling letter, so that I realized from the letter that he was in very bad condition.

Q. When he was his usual self did he write a rambling letter? A. No, sir.

*Cross-examination by Mr. Gourley:*

Q. You were rather an infrequent visitor the last two or three years? A. No, sir, very nearly every week; nearly every Sunday I would go up there.

Q. But you did not see him for seven or eight months before he died? A. That is right.

Q. How was that? A. There were no differences between us; my boys went away, and I could not drive an automobile, and walking was very bad.

Q. Was any note made of these conversations of which you have spoken? A. No, sir.

Q. You have mentioned this name on this paper here; we don't know that name and never thought anything about it—don't know who it referred to; tell us something about that. A. Letter came to Dwight Ashley, and Dwight Ashley, Sr. opened it; that was all.

Q. Where is the letter? A. I presume my brother had it.



Q. That was nine years ago? A. Yes, sir.

Q. Can you possibly remember nine years ago the name of the woman who wrote that letter? A. I certainly can.

Q. Do you know anything about the woman yourself? A. Absolutely nothing, only the name.

Q. Where that person lived you don't know? A. No, sir.

Q. Your brother was a good business man? A. I always regarded him so.

Q. Do you remember saying one time to me that you wished you had the head on you that Dwight Ashley had? A. That is true.

Q. You and Irving are very friendly? A. Friendly with all the boys until this case.

Q. You are specially friendly with Irving now? A. Yes, sir.

Q. It is no pleasant thing for you to come here to testify? A. I was subpoenaed.

Q. You would rather not have come? A. Certainly, but I was subpoenaed.

Q. What did Dwight say to you about not coming here? A. I told him if I was subpoenaed I would have to testify.

Q. But you had not been subpoenaed at that time? A. I don't think I had at that time, but I said if I was subpoenaed I would have to testify.

Q. Did Dwight Ashley tell you to disobey the subpoena? A. By a doctor's certificate that I was incompetent.

Q. Did he say anything about disobeying the subpoena? A. No, sir, no more than to get a certificate from the doctor.

Q. Did you say anything about what you could testify to? A. No, sir.

Q. You did not tell Dwight what you knew? A. No, sir.

Q. Dwight knew you would be reluctant? A. I presume so.

Q. He said, if you were not well and got a doctor's certificate, you would not have to go? A. That is it.

Q. He did not ask you to state what was not so? A. No, sir.

Q. These silk failures were very common in 1920? A. Yes, sir.

Q. Your firm went under, also? A. Yes, sir.

*By Mr. Vanderbilt*:

Q. You were not ill at the time Dwight came to see you? A. No, sir.

*Further Cross*:

Q. Now, about loans, you testified you had borrowed considerable money from Dwight Ashley, too? A. I don't know that I had; I did not bother with money; the concern that I was connected with borrowed it; you said it was $800.00.

Q. Didn't he hold your note for thousands of dollars? A. No, sir.

---

WHITFIELD SMITH, being duly sworn, testified as follows:

*Direct-examination by Mr. Benson*:

Q. You are connected with the First National Bank of Paterson? A. I am the president.

Q. Do you recollect having certain notes that were endorsed by Dwight Ashley, Sr., made by Irving Ashley? A. Yes, sir.

Q. Do you recall their falling due? A. Yes, sir.



Q. And do you know whether Dwight Ashley communicated with the bank expressing his willingness to re-endorse those notes? A. We always had his endorsement; I don't know how we received the note; he never communicated with us direct. We have surplus collateral covering all his endorsements.

Q. Do you recollect Mr. Dwight Ashley, Sr. asking the First National Bank to send the notes to him so that he could endorse them? A. No, sir, not personally.

Q. Have you any information relative to that? A. No, sir; I know that Irving Ashley secured the endorsements on them.

Q. On the last three notes do you know whether Irving Ashley procured the endorsements? A. I know in one instance the last note was sent to Dwight Ashley, Junior's house.

Q. There was a note that he endorsed without the request of Irving Ashley? A. I don't know about that.

Q. Do you recollect, Mr. Smith, having a conference with me in reference to the notes? A. I remember your being in there.

Q. You had a note endorsed in blank by Dwight Ashley, Sr., and you asked me to have Irving come in so that he could sign the note? A. I remember something about the last note; you had that note.

Q. And you had the note in the bank with Dwight Ashley, Sr.'s endorsement? A. You brought it in; I remember your being there, and I remember the note, and I remember you knew all about it.

Q. Do you recollect you had at that time a note endorsed by Dwight Ashley, Sr.? A. That is my recollection.

*Wilfred Riley—Direct.*

Q. Do you recollect my saying to you, that Irving Ashley was not anxious to have his father endorse his note? A. I don't recollect that.

Q. You won't say that was not said? A. No, sir, any notes that Dwight Ashley, Sr. endorsed were discounted.

Q. Do you recollect any conversations at that time in which Irving Ashley did not want his father to endorse any further notes? A. No, sir.

Q. You don't recollect that? A. No, sir.

*No Cross-examination.*

---

WILFRED RILEY, being duly sworn, testified as follows:

*Direct-examination by Mr. Benson:*

Q. What position do you hold in the First National Bank? A. Assistant cashier.

Q. Do notes pass through your hands? A. Not necessarily.

Q. Did Ashley notes pass through your hands? A. They may have.

Q. Did you receive any communication or any word from Dwight Ashley, Sr., of his desire to continue the endorsement of Irving Ashley's notes around December 19, 1924? A. No, sir.

Q. Did you receive any communication from him? A. No, sir.

Q. Did he ever come in the bank and endorse a note in your presence of Irving Ashley? A. Over what period of time?

Q. Around December, 1924. A. Not to my knowledge.

*No Cross-examination.*

Mr. Vanderbilt: We rest.



NEW JERSEY PREROGATIVE COURT.

---

In the matter of the Appeal from the Decree of the Orphans' Court of the County of Passaic Admitting to Probate Certain Paper Writings as the Last Will and Testament of DWIGHT ASHLEY, deceased.

On Appeal. Testimony.

---

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-fifth day of November, 1925, before HON. VIVIAN M. LEWIS, Vice Ordinary.

APPEARANCES:

WILLIAM B. GOURLEY, ESQ.,
For the Proponents-Appellees;
VANDERBILT & HEDDEN, ESQS., associated with JOHN O. BENSON, ESQ.,
For the Caveators-Appellants.

Caveators Rest.

---

DWIGHT ASHLEY, JR., being duly sworn for the proponents-appellees, testified as follows:

*Direct-examination by Mr. Gourley:*

Q. You are a son of the late Dwight Ashley? A. Yes, sir.

Q. You have two brothers, Charles and Irving? A. Yes, sir.

Q. Your mother is living with you now? A. Yes, sir.

Q. How old are you? A. 48,

Q. How old is Charlie? A. 45.

Q. How old is Irving? A. Irving is 38.

Q. Were you originally employed by the Ashley and Bailey Company? A. Yes, sir.

Q. What age did you go to work? A. At the age of 18 or 19.

Q. At what,—what did you do? A. At practically everything of the company in a small way.

Q. Ashley and Bailey were silk manufacturers? A. Yes, sir.

Q. And you continued until when? A. About 1910 or 1911, at the time of the liquidation.

Q. When were you married? A. October 18, 1900.

Q. Are Charles and Irving married? A. Yes, sir.

Q. After the liquidation—when was that liquidation? A. It started about 1910, and about finished in 1912.

Q. Was the mill at work during the period of liquidation? A.At some times.

Q. When did you finish with Ashley and Bailey Company? A. About 1913.

Q. What was the next thing taken up by you? A. Forest Silk Company.

Q. Who organized that? A. Salesmen of the Ashley and Bayley Company, and the four Ashleys; that was a silk corporation, incorporated, at 329 Fourth Avenue, New York.

Q. How long were you with them? A. About two years.

Q. That took you up to when? A. About 1924.

Q. After that what was your business? A. With the Hawthorne Silk Company.

Q. Who organized the Hawthorne? A. The proceeds of the liquidation of the Ashley and Bayley Company.



Q. I think your father gave you three boys a share in the Ashley and Bayley Company before its liquidation? A. Yes, sir.

Q. Just roughly speaking, how was the stock distributed; what was the capital? A. I could not say the capital of that; the four of us received an equal amount in addition to four others having a small amount.

Q. The principal amount was divided among the four Ashleys, your father and you three boys? A. Yes, sir.

Q. And then there were some outstanding shares for four others? A. Yes, sir.

Q. What was your business in that company? A. I was connected with the New York end of the company.

Q. Who was the manufacturer? A. The President, Charles E. Ashley.

Q. What office did you hold? A. Vice President, and my father was a director, and Irving was a director.

Q. When was that company concluded, or when was it ended—the Hawthorne Silk Company? A. December 3, 1924.

Q. A bill was filed for a receiver? A. Yes, sir.

Q. And the company then went into bankruptcy? A. Yes, sir.

Q. Mr. Parmlee, of the Hamilton Trust Company, was trustee? A. Yes, sir.

Q. Have you done anything since that time? A. Yes, sir.

Q. What? A. What is the date?

Q. Since the bankruptcy of the Hawthorne? A.

In connection with the Savoy, and other personal matters.

Q. Now, the Savoy is a land company to which your father gave the land? A. Yes, sir, and other securities.

Q. So that all the property that the Savoy ever had came from your father? A. Yes, sir.

Q. We have gone over the whole of it; is this statement substantially right—about six or seven hundred acres at Hawthorne, New Jersey? A. Yes, sir.

Q. Four acres at Haledon? A. Yes, sir.

Q. 30 acres at Prospect Park? A. About.

Q. And about 1700 acres at North Carolina? A. About that, with dwellings.

Q. These dwellings are one-family shanties or houses, without any cellars? A. Four and five room houses.

Q. Is that a fair statement of the land of the Savoy? A. There was 494 River Street.

Q. Is that your old home? A. Yes, sir; and 469 River Street, and two lots on Eleventh Avenue, Paterson, N. J. That is practically the entire holding.

Q. Any property sold in Haledon? A. No, sir.

Q. Any property sold in Prospect Park? A. No, sir.

Q. Some of the Hawthorne property has been sold? A. Yes, sir.

Q. Has any of the North Carolina property been sold? A. One piece.

Q. What was realized for that? A. $2500.00.

Q. What was your office in the Savoy? A. President.

Q. What was Charles Ashley's office? A. Originally Secretary, and later, Treasurer.



Q. What was Mr. Irving Ashley? A. He took no active interest; he was a director and stockholder.

Q. Was he a director up to the present time; is he a director now? A. Yes, sir.

Q. Was he a director originally? A. I think so; I would not be positive.

Q. Is your father a director? A. Yes, sir.

Q. Something has been said here about your father being put out or expelled, of something of that kind, in one of these companies; what is the fact about that?

Mr. Benson: I object to that. Which one? The question is kind of double.

Q. Tell us how your father came to leave the directorship of the Hawthorne, if he did? A. At a meeting there was a resolution passed in regard to buying batons, if I remember correctly, or a discussion with regard to the width of these batons, and because more voted than he favored he walked out with Irving.

Q. Was there any expelling? A. Nothing different from that.

Q. He did not return after that? A. No, sir.

Q. Now, then, about the Savoy—

Mr. Benson: What was the date of that?

The Witness: That is on record, sir.

Q. How long ago? A. About 1914.

Q. How long did he continue as a director of the Hawthorne? A. December, 1913, he started out as a director; he was a director up to the time he left:

*Further Direct*:

Q. What about the Savoy? A. There was a difference in the Savoy; at that time he was treasurer and Charles was secretary.

Q. Who was the treasurer? A. Father was treasurer, and at that time there was a difference between Father and Charlie, and we talked it over, and Charlie was made secretary and treasurer of the Savoy Realty Company.

Q. When did your father cease to be a director of the Savoy? A. Up to the time of his death he was a director.

Q. And was a stockholder up to the time of his death? A. According to the codicil.

Q. Except the shares later, of which you are going to speak about? A. Yes, sir.

Q. Was there any estrangement between you and your father in any way? A. At the time of the Savoy there may have been a slight estrangement for a short time.

Q. For how long? A. I would not want to say.

Q. You know more about it than we do? A. True; it might be six months.

Q. What did the estrangement spring from? A. From the change of the office of the Savoy from treasurer.

Q. You have heard this incident today about your passing your father in the aisle of an Erie Railroad car in Jersey City on your way to Paterson; was there any such incident? A. Not to my memory.

Q. Did Irving ever speak to you about it? A. Not to my memory.

Q. During this time, except during this temporary estrangement, what has been the relationship



between you and your father? A. I should think it would be about as well as it could be.

Q. Did he call to see you? A. Very often.

Q. Where did you live? A. 414 Ellison Street, up to 1918, and 628 East 27th Street from that date on.

Q. Did you live there with your wife? A. Yes, sir.

Q. Who composes your household now? A. My mother and my own two boys and my wife and myself.

Q. Where does Charlie actually live? A. 571 East 25th Street, Paterson, New Jersey.

Q. What has been the relationship between your father and Mr. Charles Ashley? A. That started back about the time of the Savoy meeting, about that time; there was an estrangement there up to the time he died.

Q. Well, did Charles Ashley live with his father at the River Street house? A. He did for a time.

Q. Part of the family? A. Yes, sir.

Q. For what period of time? A. From 1902 to 1917, or 1918.

Q. About fifteen years? A. Yes, sir.

Q. What was the relationship there between them —at the home? A. Well, not living there—only from what I have heard—

Q. Do you know whether Charlie and your father spoke to each other? A. They did not.

Q. Do you know how long that continued? A. For fourteen years they did not speak, except for one day.

Q. What day was that? A. June, 1922.

Q. Did Charles visit your father's house? A. Not at my house.

Q. I mean, at your house? A. No, sir.

Q. Did he make inquiries about your father? A. No, sir.

Q. Did he call to see him? A. No, sir.

Q. How did he know of his death? A. He was telephoned to.

Q. By who? A. By my mother.

Q. When? A. February 21, 1925.

Q. That was the morning of his death? A. Yes, sir.

Q. Did he come? A. He did.

Q. What time did he come? A. Between ten and eleven o'clock, if I remember the time.

Q. When was the funeral? A. Monday evening following; the ceremony was Monday evening following.

Q. He was there then, of course? A. Yes, sir, he was there.

Q. Did he come back to hear the will read? A. No, sir.

Q. He has not been in your house since that time? A. No, sir.

Q. Then he visited your mother? A. No, sir.

Q. When your father came down from the country to stay with you, what was that date? A. He was taken with a stroke in August, 1924; I would say he was with me for five or six weeks.

Q. He was at your house at that time? A. Yes, sir.

Q. Who attended him first? A. Dr. Todd.

Q. Did he recover from that? A. He did by November.

Q. Did he go to the country then? A. He went before that date to the country.

Q. When did he next come back? A. November 26th he was back.



Q. How long did he stay? A. He stayed to be examined by Dr. Evans.

Q. How long did he stay? A. I would say a week.

Q. Then he went back to the country? A. Yes, sir.

Q. Did he come back for the last time the next time? A. He was there up to Christmas and left a day or two following.

Q. Was he a week or two there; what time did he come there? A. It has been testified to that he came there December 17th, and I should say that was about right.

Q. When did he return? A. A day or two after Christmas; then he came back again Sunday, January 4th.

Q. Did you go for him? A. Yes, sir, to the Broadway station in Paterson, and I drove him to my house.

Q. And he remained there until he died? A. Yes, sir.

Q. During those days, from that time in January what date was it he returned? A. January 4.

Q. From January 4 until his death on the 21st of February, will you describe his condition? A. His condition at all times, except when he had the stroke, was normal; weakened to a certain degree by valvular heart trouble.

Q. How old was he? A. 77.

Q. Had he been a healthy, robust man during his lifetime? A. Up to the spring of 1923 he was.

Q. Now, tell us about January and February, what his mental and bodily conditions were. A. It was all about the same; he died on the 21st, at 6 A. M., upstairs.

Q. When, before that, did he go downstairs? A. He was down to the dinner table at 6 o'clock at night on the Thursday preceding.

Q. Thursday was what day of the month? A. The 19th.

Q. He was not down the stairs after 19th? A. No, sir.

Q. Did he require any aid going up and down the stairs? A. No, sir.

Q. Was he dressed on these occasions? A. Yes, sir.

Q. Did he exhibit any change of demeanor from his usual habit? A. No, sir.

Q. Did you notice any difference in his talk or in ability to remember things? A. A little weak on account of the breathing.

Q. Was there anything noticeable about his mind? A. No, sir, he read his papers every day and commented on them with me or with others; he was rather a silent man.

Q. He would be reading unless he had something special to say? A. He was not a man given to conversation.

Q. He was rather a silent man? A. He came to the point very rapidly.

Q. Were you present when the will was executed? A. I was in the building.

Q. Did you go down with your father or come with your father? A. Yes, sir.

Q. Was it in my office at the First National Bank Building that the will was executed in April, 1924? A. Yes, sir.

Q. What was done with the instrument? A. That instrument was given to me by my father.

Q. Where? A. At 628 East 27th Street.



Q. Were any instructions given with it? A. To put it in the safe.

Q. What safe? A. My safe.

The Court: How many witnesses have you, Mr. Prosecutor?

Mr. Gourley: Four or five.

The Court: I will adjourn the matter over to the 10th of December, 1925.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| In the matter of the Appeal from the Decree of the Orphans' Court of the County of Passaic Admitting to Probate Certain Paper Writings as the Last Will and Testament of DWIGHT ASHLEY, deceased. | On Appeal. Testimony. |

SECOND DAY.

Transcript of testimony taken in the above entitle cause, at the Chancery Chambers, Paterson, New Jersey, on the tenth day of December, nineteen hundred and twenty-five, before HON. VIVIAN M. LEWIS, Vice Chancellor.

APPEARANCES:
WILLIAM B. GOURLEY, ESQ.,
For the Proponents-Appellees;
VANDERBILT & HEDDEN, ESQS., associated with JOHN O. BENSON, ESQ.,
For the Caveators-Appellants.

---

DWIGHT ASHLEY, JR., resumes the witness stand.

*Direct-examination (continued) by Mr. Gourley:*

Q. When we adjourned at the last hearing, you were speaking about putting the will in the safe; where was the safe? A. In my house.

Q. Whose safe was it? A. My safe.

Q. In your own safe? A. Yes, sir.



*Dwight Ashley, Jr.—Direct.*

Q. Did anyone tell you to put it there? A. Father told me to put it there.

Q. How long did it remain there? A. To January 9, 1925.

Q. That is the date of the codicil? A. Yes, sir.

Q. What was done with it then on that day? A. Father instructed me to take the will to Dr. Gourley and have the codicil drawn as it is.

Q. Did you go to my office? A. I did.

Q. Did you give me those instructions? A. I did, yes, sir.

Q. What was done there, if anything? A. I don't know—at that time.

Q. What do you mean by "at that time?" A. After giving you the instructions.

Q. I don't understand. A. I gave you the instructions to have the codicil made.

Q. What was done then, if anything? A. (No answer).

*By the Court:*

Q. What time was it? A. It was on the 9th of January.

Q. What year? A. 1925.

*Further Direct:*

Q. What was done in consequence of those instructions? A. Mr. Gold and I—

Q. Did I talk to anybody? A. Yes, you did.

Q. What was done in sonsequence of those instructions? A. You 'phoned to father.

Q. Was anything said to you at the time? A. Yes, sir.

Q. Did I receive those instructions from you? A. Yes, sir.

Q. Did I accept them from you? A. No, sir.

Q. What occurred? A. I left the room, and you had a telephone conversation.

Q. Was anything said by me in relation to not accepting instructions? A. Yes, you told me you would not accept those instructions from me; and I went out of the room, and you had your conversation.

Q. With whom? A. With my father.

Mr. Benson: How does he know?

A. I telephoned my house and asked Mrs. Ashley to have father come to the telephone, and I did not hear his voice, but I left the room.

Q. Were you told to leave the room? A. Yes, sir.

Q. Who told you to leave the room? A. You did.

Q. Were the doors closed? A. Yes, sir.

Q. What is your next connection with the matter? A. Mr. Gold and I left your office and went downstairs.

Q. Mr. Gold is an attorney at law? A. Yes, as I understand it, and Mr. Gold asked me if there were any witnesses.

Q. What did you do? A. I took Mr. Gold to Clay Street, and I met Mr. Dudley on the steps of the First National Bank and asked him if he would stop at my house before he went home. Then I drove Mr. Gold to Clay Street; he had some personal matters, and from there to my house, 628 East 27th Street.

Q. What occurred then? A. I opened the door and Mr. Dudley was in the front room; and I said, "How are you?" etc., and I went upstairs and introduced Mr. Gold to my father, and left the room. room.



Q. What was your next connection with the matter? A. Taking Mr. Gold home.

Q. Were you in the room while the paper was executed? A. I was not.

Q. Were you present in the room when Mr. Gold and your father were there, except the introduction? A. No, sir, I was not, except the introduction.

Q. Where did you go? A. I went in the next room and talked with Mrs. Ashley.

Q. I notice that the signature to the codicil is signed by Marie Uhlig, who is she? A. She is a maid in my employ.

Q. And Edwin E. Dudley? A. He was the other witness.

Q. Was Mrs. Dudley there at the time? A. Yes, sir, she was in conversation with Mrs. Ashley and myself on the second floor.

Q. That is a different room? A. Yes, sir.

Q. Do you know whether the door was closed from the room in which your father was? A. The portiere was closed part way, if not all of it.

Q. Then, who called Marie Uhlig? A. I did.

Q. Did anyone request that? A. Mr. Gold wanted the witnesses.

Q. Where was she? A. On the third floor.

Q. When she came down, did you follow her into the room? A. I did not.

Q. Did you see her when she came out, do you remember? A. I did.

Q. Now, then, what happened after that? Tell us in your own way the incidents in their chronological order. A. After that Mr. Gold came out and put on his hat and coat on the first floor, and I drove him back again to the office—

Q. To the First National Bank? A. Yes, sir.

Q. Was Mrs. Dudley and Mr. Dudley there, were they there? A. They were there when I left.

Q. On which floor was that? A. At that time I think they were on the first floor.

Q. After you drove Mr. Gold to the First National Bank, what was done? A. Mr. Gold was to take the will and put it in the safe.

Q. Which safe? A. Your safe.

Q. The safe in my office? A. Yes, sir.

Q. Did he do that? A. No, sir, because it was locked; it was about 5:45, I should judge, or 6 o'clock.

Q. What was done in consequence? A. Then he said, "Who has had charge of this paper?" and I said, "My father had requested me to put it in my safe;" he handed it to me, and I saw it was open, and then I said, "Seal it," which he did, and I put it in my safe when I got home.

Q. On the day that your father signed this codicil, state to the Court what was his condition physically or mentally, as far as you observed? A. On that 9th day I had a good many things to do, and he asked me if I would telephone to William H. Ashley, of Hackettstown, that is his brother, my uncle, which I did; after he had drafted the conversation he wanted me to telephone; he wrote it down.

Q. He wrote out the details himself? A. Yes, sir.

Q. On that day? A. Yes, sir.

Q. What he wanted you to telephone his brother? A. Yes, sir.

Q. Have you that memorandum? A. It is amongst the papers.



Q. Come down here and point it out. A. (Witness steps down from the witness stand and gets it.)

Q. I show you a paper, and ask you if that is the paper to which you refer? A. Yes, sir.

Q. Do you know your father's handwriting? A. Yes, sir.

Q. Did he give that to you on the day the codicil was signed? A. On January 9, 1925.

Q. Is it dated? A. I dated that.

Q. What evidence is there that it was on that day? A. My telephone bill.

Q. You mean you telephoned to your uncle? A. Yes, sir.

Q. Where does he live? A. Hackettstown.

Q. Is that the memorandum of the telephone company of that call on that day? A. Yes, sir, it was a telephone bill.

Q. Did you on that date telephone the substance of these written instructions from your father to his brother—your uncle? A. I did just as that paper is.

Marked "Exhibit G-1."

Q. Also the telephone memorandum showing January 9, Hackettstown, 70 p? A. That means "personal call, 70 cents."

Q. Did you have any conversation with your father or make any proposal to him after the signing of this codicil? A. I did.

Q. Did you submit that to him in writing? A. I did.

Q. Is this the paper that you submitted to your father? A. Yes, sir.

Mr. Benson: I object to that; that is inadmissible.

The Court: It has not been offered yet.

Mr. Benson: I understand that is an instrument drawn by the executor of the will, and it is sort of self-serving; it is some paper that is drawn by him.

Mr. Gourley: This is a proposal of what he would do with that stock which his father gave him in the codicil; it is offered—

Q. Did you submit that to your father? A. I did.

The Court: Your objection is noted, Mr. Benson.

Q. Did he have it in his possession? A. Yes, sir.

Q. How long did he have it in his possession? A. Over a week, and he returned it to me.

Q. Was that in this envelope? A. Yes, sir.

Q. Addressed to your father? A. Addressed to myself.

Q. And was this paper in the envelope? A. Yes, sir.

Q. Whose writing is the lead pencil on that? A. My father's.

Mr. Gourley: I will offer this in evidence. Marked "Exhibit G-2."

Mr. Gourley: (Reading "Exhibit G-2"):

"January 23, 1925.

I understand that my father has left me by will 140 shares of stock in the Savoy Realty Company; if this remains so at the time of my father's death, I shall assign the income from 23-1/3 shares of said stock to V. Emma Ashley for the term of her natural life; also the income from 23-1/3 shares of



said stock to William H. Ashley for the term of his natural life; also the income from 23-1/3 shares of said stock to Florence Dilleston Ashley for and during her natural life; and also the income from 23-1/3 shares of said stock to Robert Brown Ashley for and during the term of his natural life, as received by me from the company." The envelope has on it in pencil, the word "Rejected."

Mr. Benson: I will make further objection that the envelope does not refer to the paper, and it is dated after the making of the will.

The Court: I will note a general objection to it and will admit it.

Q. I show you a small piece of yellow paper with some figures on it, and I ask you if those figures are in your father's handwriting? A. Yes, sir, my mother gave me that paper.

Q. When did you get it? A. About a month ago.

Q. Do you know when she received it? A. A long time ago.

Q. About how long? A. Last fall.

Q. Fall of 1924? A. Yes, sir, it was found in her letters.

*By the Court*:

Q. Has it to do with the Savoy stock? A. Yes, sir.

Mr. Benson: It is very important as to the method in which this memorandum was secured; it may be a private memorandum; I mean, so far as the mother secured it from the father, the testator. I think it is very

important, because we don't know what the purpose is. If he can explain the paper it may be helpful to the court.

The Court: I will receive it for what it is worth. As I understand, Mr. Gourley will contend that sets forth the holdings and the distribution of the stock as intended by the testator; and this witness has set forth what he gained from his conversation.

Mr. Gourley: It shows the father was calculating on this division of the stock.

The Court: I will note the objection.

Yellow sheet is offered in evidence and marked "Exhibt G-3."

Envelope, which reads: "Mr. Dwight Ashley, Jr.," "Personal", is offered in evidence and marked "Exhibit G-4."

Q. Have you a letter of your father dated May 10, 1924? A. Yes, sir.

Q. Come down and get it for me. A. (The witness does so).

Q. I show you a letter dated 5/10/24; is that letter in your father's handwriting? A. It is.

Q. When did you receive it? A. Mother received it.

Q. When did you receive it? A. I received these letters about a month ago from my mother.

Q. Is that your father's handwriting? A. Yes, sir.

Mr. Gourley: I offer that letter in evidence.

Marked "Exhibit G-5."

Mr. Benson: I make the same objection.

The Court: Your objection will be noted.



Mr. Gourley: I desire to read part of this letter.

Mr. Benson: There is no proof on the record showing the delivery of this letter to the mother.

Mr. Gourley: It is the father's writing.

The Court: He received it. It is a document in the father's handwriting. I don't know whether it is in evidence in this case or not, until it is disclosed to the court. Is this something new, or was it in the court below?

Mr. Benson: It is something new.

Mr. Gourley: We were stopped by the court below.

Mr. Gourley: (Reading): "As Charles is trying to break up his home we must not let him do anything to make matters worse. Some will say, leave him; I say, go slow; as not long ago Florence was told the same; I said 'No, don't be in a hurry; the boy is out of his mind, and now they seem to be all right again. I look upon Charles' acts as a great offense—but he is our boy and we must do all we can to save him—so you and Vi take hold of the keep of the house—buy only the food you require and let Chas. see that you can run the house. I will send you the money when you get short. With care we may be able to keep our heads above the water—the future is not in sight.—As to business,—Charles family can get part of the income—but I do pray he will recover and try and pull together, build himself up in business as well as not desert his family and stop his drink; it means suicide in the

end; it put Irve. on his back for six weeks, and it was fortunate he was insured so he got paid to be sick."

Q. Have you a letter there of May 24, 1924? A. Yes, sir.

Q. Look at that and tell me if that is in your fathers' handwriting? A. Yes, sir.

Q. Where did you get that? A. From my mother.

Q. When did you get that? A. About a month ago.

Mr. Benson: I want to make the same objection.

Mr. Gourley: I desire to read an extract from that. (Reading): "So long as the boy does not abuse Vi she should not drive him out of her room I think—My, what a terrible life it would be if he got rid of Vi and got that hell cat on his hands; it would be a lasting sore for him and his life would be thrown away—same with Irve, the whiskey got him in shape so he did not want the woman that done all she could to nurse him back to health—and now he seems a changed man—that was all the rum he got into him, and it's the same with Charley. Let us hope and pray he may soon see daylight and come to his senses again."

Q. Is that letter in your father's handwriting? A. Yes, sir.

Q. When did you receive it? A. About a month ago, from my mother.

Mr. Gourley: I offer this letter.



Mr. Benson: I make the same objection.

Q. I call attention to this extract (marked 5/28/24): "I shall help Dwight to pay his expenses until there is some change. Don't give him"—who is "him" there? A. I cannot say.

Q. (Continuing reading) "When it comes to a lawyer, Tom McCran is the best one to go to."

Mr. Gourley: I offer that in evidence.

Marked "Exhibit G-6."

Mr. Gourley: Give me letter of June 5th.

The Witness: Here it is.

Mr. Gourley: I offer the letter marked 6/5/24.

Marked "Exhibit G-7."

Mr. Gourley: (Reading) "It is a good thing Vi is not to come home at present, as Vi is the kind of woman Charlie will need before long."

Mr. Benson: Objected to—

The Court: The objection will be overruled.

(Note that "Exhibit G-5" is dated 5/10/24?)

("Exhibit G-5½" is dated 5/24/24.)

("Exhibit G-6" is dated 5/28/24.)

("Exhibit G-7" is dated 6/5/24.)

Recess to 2 P. M.

After Recess.

DWIGHT ASHLEY, JR., resumes the witness stand:

*Direct-examination (continued) by Mr. Gourley:*

Q. Who is Vi? A. Mrs. Charles E. Ashley; her name is Viola.

Q. Who is Billy? A. That is William Ashley, her son.

Q. The only child of Charles? A. Yes, sir.

Q. I show you some other letters, and ask you what is the next letter in order of date that you have before you? A. June 16th, 1924.

Q. Is that in your father's handwriting? A. It is.

Q. When did you receive that? A. I received that from mother about a month ago.

Q. Are there envelopes for those letters of which you have spoken? A. They are amongst the papers.

Q. Pick out the envelope that goes with each letter. A. Yes, sir.

Q. And whose handwriting is the address on the letters? A. My father's.

Q. Bearing the stamp? A. Yes, sir.

Q. And also "Blairstown" postmark? A. Yes, sir.

Q. And where is Blairstown? A. New Jersey.

Q. You can later connect those with the respective letters? A. Yes, sir.

Q. Give me that letter; is this in your father's handwriting? A. Yes, sir.

Mr. Gourley: This is the letter marked 6/16/24.

Mr. Benson: I want my general objection to the letters.



The Court: Yes.

Q. Will you read this part that I call your attention to? A. "Charles will injure himself and in time this woman will turn him down, and then he will think of Ma and Vi. Now I told Vi what I thought of divorce, and let me say I never heard of a case so ridiculous as what Charles is putting up to his wife. Now, Vi is a good wife and would stick to him in times of distress, and this woman will not when his cash is low."

Q. What is the next letter you have? A. This one is the same date—June 16, 1924.

Q. Those dates are figures? A. Yes, sir, 6/16/24.

Q. Is that in your father's handwriting? A. Yes, sir.

Q. When did you receive it? A. This I received from Mrs. Charles E. Ashley.

Q. This was written to Charles' wife? A. Yes, sir.

Q. (Reading): "Dear Viola: Yours received. Now, if you should give Charles a divorce, it would look as if you consented on account of him having some evidence against you. Again, the boy would get someone not of the kind that would stick to him in times of adversity. I regret that he has gone mad and lost his best judgment and has caused anxiety for us all, as he is our son and we only want to rescue him from future perils." It is a very lengthy letter.

Mr. Gourley: That is enough of that. Marked "Exhibit G-9."

Q. I show you another letter; what is the date of that? A. 7/6/24.

Q. Is that letter in your father's handwriting? A. Yes, sir.

Q. When did you get it? A. A month ago.

Q. To whom is it addressed? A. My mother.

Q. Have you there the clause that I abstracted? A. Yes, sir.

Q. I have temporarily lost my typewritten note of the letter, and I ask it for that purpose. Read it. A. "I hope you will get some encouragement from 25th Street."

Q. Who lives there, if anyone, at this time? A. Mother lived there and Mrs. Charles E. Ashley and son, my brother. "I hope you will get some encouragement from 25th Street and Charlie will make up with Vi, as his future is ruined if he will pursue in his present course. We should do our part to change it if we can." That is the abstract.

Marked "Exhibit G-10."

The Witness: This is 11/13/24.

Mr. Vanderbilt: I don't think it is fair for the witness to read short excerpts this way.

The Court: It is quite evident what these letters are offered for, and that is to show the attitude of the father towards his children. Is not that what it is for, Mr. Gourley?

Mr. Gourley: Yes.

Mr. Vanderbilt: We have never seen these letters before.

The Witness: 11/13/24 is the date of this letter; it is in father's handwriting; received from my mother.



Q. When did you get it? A. About a month ago.

Q. Read that extract. A. "I think if the courts would open the house and if Viola went in and Billy I would like to see if Charlie would recover and be a man. I think Vi is the one not to object to go back providing Charles will treat her right and keep the woman out of his house."

Marked "Exhibit C-11."

Q. Are there any other letters there? A. No, sir.

Q. After this codicil was signed, did you have any conversation with your father about the stock? A. I did.

Q. I think we have the apportionment of the holders of the Savoy; at the time of your father's death, what were the holdings—of the shares of stock—represented, the company? A. All together 500; father had 140 shares; Charles E. Ashley, 90 shares; Irving D. Ashley, 90 shares; Mrs. D. Ashley, that is Mrs. Dwight Ashley, Sr., 90 shares, and Dwight Ashley, Jr., 90 shares.

Q. Then, if there had been no codicil, Charlie and Irving would have got one-third of your father's holdings? A. Yes, sir.

Q. Would those one-third of your father's holdings, added to what they had, given Charles and Irving a majority of the stock of the company?

Mr. Benson: I object; I think the purpose of the question calls for a conclusion.

The Court: How much stock is there?

Mr. Benson: 500 shares.

Mr. Gourley: And 251 shares is a majority of the company?

The Witness: Yes, sir.

Q. Did your father speak to you at any time about that condition? A. Yes, sir.

Q. State when? A. A short time prior to the codicil.

Q. State what, if anything, he said. A. He stated that he could not trust them.

Q. Could not trust whom? A. Charles and Irving, concerning the stock of the Savoy.

Q. Did he give any reason for that; give us the whole conversation. A. The main conversation was, that they would put me out of the company; there were several conversations, though, but that was the main one.

Q. Anything else that you recall? A. Not that I recall.

Q. How many times did he speak to you on that subject? A. Half a dozen times, at least.

Q. Was that before or after the codicil was drawn? A. Before the codicil.

Q. How lately did he speak to you about it before January 9th, the date of the codicil? A. A few days prior.

Q. Did you have any conversation with him that morning before you went down with instructions concerning the codicil? A. Not in regard to the Savoy.

Q. Did he speak of the stock afterwards to you? A. Yes, sir.

Q. Did he do anything about the stock afterwards? A. Yes, sir, he gave me the stock.



*By the Court*:

Q. Handed it to you, eh? A. Yes, sir.

*Further Direct*:

Q. Will you just come down and get that; was that in one certificate or more? A. One certificate.

Q. Is this the certificate? A. Yes, sir.

Q. Now, state to his Honor just what happened, the whole affair, when he handed you that. A. One morning, late in the morning, I went upstairs after breakfast. We had a general conversation, reading the morning newspapers, and he handed me the stock, signed.

Q. Is that your father's signature? A. Yes, sir.

Q. On this stock? A. Yes, sir.

Mr. Gourley: I offer this in evidence.

Marked "Exhibit G-12."

Q. Did he say anything to you at this time concerning the conduct of Irving and Charles, or either of them? A. Not at the time of handing me the stock; the conversations took place in the fall of 1924; he was telling me of the attitude that Irving and Charles were acting at home, and I asked him who told him, and in each case he told me he was—I had no direct—

Q. Tell us what he said; was anything said about why things were that way? A. He said that they were drinking and not living as they should do.

Q. How many times was that the subject of conversation during that period? A. On that subject at least a dozen times.

Q. Was your mother present at any of these talks? A. She may have been; I don't remember.

Q. When did your father go to your house to live? A. August, 1924 was the time he had the stroke; and he was at my house then for about five or six weeks straight.

Q. Then he went back to the farm? A. Yes, sir.

Q. When did he come down after that? A. In one or two weeks; he went back and then came down again in about a week or two, and would stay three or four days or a week; sometimes he would go to Irving's, and then come down to my house the next day.

Q. When was the last time he stopped at Irving's? A. I think he was there one day in December.

Q. Before that, when? A. Prior to August, I think.

Q. With that exception, when he came down did he stop at your house? A. Yes, sir.

Q. When did he come down the last time? A. January 4, 1925.

Q. When was he examined by the physician? A. By two physicians—by Dr. Evans on November 26, 1924, and by Dr. Flitcroft, in consultation with Dr. Todd, on February 1, 1925.

Q. Which physician remained in attendance? A. Dr. Todd.

Q. How frequently did he go there? A. Some weeks three or four times, other weeks about once, or when we called him.

Q. Were there any restrictions placed by you or anyone in your household, against visits to your father? A. No, sir.

Q. How frequently did Irving come there? A. Not very regular up to November, 1924, and after that he came quite regularly, at least four or five times a week, just for a few minutes each day.



Q. Was there any restriction placed upon that? A. No, sir.

Q. Was there any time on any of these visits, that you were asked to leave the room; were you ever asked to leave the room by your father when Irving was there? A. No, sir.

Q. Did you ever come in while Irving and your father were together, and remain there against the desire, so far as you knew, of either? A. I never came in the room if Irving was there.

Q. Was there any reason for that? A. No, sir.

Q. Do you remember the morning of your father's death? A. Yes, sir.

Q. Who sent word to Irving about it? A. Mrs. Ashley telephoned to Mrs. Irving Ashley, Jr.; my father died at six o'clock, and Irving came about ten o'clock.

Q. Tell the court his condition at that time. A. I was sitting in the sun parlor talking with my wife about ten o'clock, and Mrs. Charles' son Billy, came in and spoke to me.

Q. What did you do in consequence of that? A. I went upstairs and I found Irving in the bedroom with father, and in such a condition that I begged of him not to saturate his father with his breath.

Q. What was his condition? A. Very bad condition in regard to drink.

*By the Court*:

Q. You could smell drink on him? A. Yes, sir.

Q. Was he reeling, or anything? A. Yes, sir, and I begged of him to go to bed and put him to bed; and then I went back to the sun parlor and completed the arrangements for telegrams to be sent off and telephones. About 12:45, or in that

neighborhood, Irving came downstairs and could not walk steady to his car to make a deposit in the First National Bank, which he asked me to make for him, when I begged of him to go to bed.

Q. Did you make the deposit? A. No, sir, he made the deposit later in the day.

Q. Did you see anything of this bottle of whiskey that has been spoken of? A. I have it at home.

Mr. Benson: It is not relevant, because it all occurred after the man's death.

The Court: I will allow it. Mr. Irving Ashley said for one thing, that his brother sat around in the room when he was there with the father.

Mr. Benson: But that was during the lifetime.

The Court: And this witness says he was never in the room when Irving was in there. I will allow it.

*By the Court*:

Q. Where did you get it? A. The bureau drawer in my house in father's room.

Q. Did you see anyone put it there? A. No, sir.

*Further Direct*:

Q. Is Mr. Charles Ashley's son here in court now? A. Yes, sir.

Q. Did your father say anything about Charles, or about your mother leaving Charles' house?

Mr. Benson: I object to this until the date is fixed; it covers a broad period.

The Court: He may answer "Yes" or "No".



*By the Court*:

Q. Did he, "Yes" or "No?" A. Yes, sir.

Q. When? A. July, 1924.

*Further Direct*:

Q. What was it? A. Father told me that mother had been asked to leave his home, and she came to my house.

Q. Before that time was she living with Charles? A. She was.

Q. Did he say who had asked her to leave? A. Yes, sir.

Q. Who? A. Charles asked her to leave.

Q. Did he give you any reason why Charles asked her to leave?

Mr. Benson: Objected to as hearsay; it comes from the mother and then from the father; it came from the father what the mother had told him.

The Court: I think it is evidential.

Mr. Benson: It would seem to me the mother ought to be produced to testify.

Mr. Gourley: There is trouble enough without bringing the mother.

The Court: I will note your objection to this, on the ground that it is immaterial and incompetent, but I will take it subject to your objection. I think we had better know exactly what the attitude was. I will allow it; you may note an objection.

Q. (Question read). A. No.

Q. Where is the dining room in your house? A. In the rear, on the other side, on the first floor.

Q. Where did your father have his meals during

this period of time, say, in the month of December? A. Breakfast was generally taken upstairs, so that he did not have to go down the stairs more than once of twice a day. His lunch he would come down for at some time or other; but he was down mostly every evening to his dinner at six o'clock.

Q. That began and ended when? A. Off and on up to the Thursday night prior to his death.

Q. What day of the week did he die? A. Saturday morning.

Q. Was he down on Thursday night? A. Yes, sir, at six o'clock.

Q. Had he been down that day for luncheon, on that day? A. I would not say.

Q. Was he down for dinner? A. He was down for dinner that night.

Q. That Friday was he down at all? A. No, sir, he was on the second floor; and he died Saturday morning.

Q. What was his condition during that time, physically; did he need any help to go up and down stairs? A. No, sir.

Q. What was there about his mental condition during this period of time; was there any mental decay of his faculties, so far as you observed? A. Nothing. On Friday night, Dr. Todd came in at six o'clock while he was having his dinner in his room that night, and conversed with him and said he would see him the next morning. As late as 9:30 on Friday night, he and I ate a pear together, and then he retired for the evening.

Q. On January 9th, what was his condition then as to going up and down the stairs alone, unaided? A. He did not need any help at all.

Q. What about his conversation? A. It was just the same.



Q. Was there anything noticeable at all about his conduct mentally? A. Not mentally.

Q. Either in speech or reply, or question, or anything in that respect? A. No, sir.

Q. Anything different to what you observed was characteristic of him generally? A. Nothing at all in the way of weakness of the mind.

Q. What was the last day Dr. Flitcroft saw your father? A. The Wednesday before he died.

Q. Do you know that William Ashley sold his place at Budd's Lake? A. Over ten years ago.

Q. Something has been said about the Savoy property here. I want to ask a few questions about it. Was your father a director in the Savoy at the time of his death? A. Yes, sir.

Q. Was he a director in the Hawthorne at the time of his death? A. Yes, sir.

Q. Were any salaries paid to the management of the Savoy? A. No, sir.

Q. Did your brother ever say anything, your brother Irving, ever say anything as a stockholder or director, concerning the Savoy property? A. No, sir.

Q. Did he attend any meetings of the directors? A. Very rarely.

Q. Was your father present at the Savoy meetings? A. At some of them.

Q. How do you distinguish? A. Because he would be at the farm, maybe, at the other meeting times.

Q. What office did your father hold in the Savoy? A. He was treasurer when it was formed, up to about 1914; and he was a director and stockholder from then on.

Q. Something was said about his being secre-

tary; was he ever secretary of the company? A. No, sir.

Q. Now, something was said about the bankrupt sale of the Hawthorne Silk Company; can you say whether your father advised the filing of papers in bankruptcy? A. He did.

Q. Why did he do that? A. Owing to the conditions of the company.

Q. How long were those conditions known to your father? A. From March 15, 1924.

Q. Who was President of the Hawthorne Company? A. Charles E. Ashley.

Q. Did Irving remain as a director of the Hawthorne? A. He was a director up to February, 1916.

Q. You worked for the Hawthorne Company up to when? A. December 3, 1924.

Q. When was the application made for the receiver? A. December 3, 1924.

Q. You were an employee up to that time? A. We were under extension from March 15, 1924, to December 3rd.

Q. But you were not operating? A. No, sir.

Q. You were waiting to see what would be done in the market, I presume? A. Yes, sir.

Q. These Savoy statements, how frequently were they made? A. Once a year, for the income tax.

Q. Was there any secrecy about that company at all in any way? A. I would not say so.

Q. When was the last meeting had before your father's death? A. I cannot remember that.

Q. Did you meet more frequently then having an annual meeting? A. No, sir.

Q. You had a meeting of the directors since your father's death, didn't you? A. Yes, sir.

Q. How many members of the Board of Directors were there after your father's death? A. Four.



Q. After your father's death, was there another meeting? A. Yes, sir.

Q. Where was that meeting? A. In the office of the company, which is at my house.

Q. Did Irving and Charles change the officers of the company?

Mr. Benson: Objected to; it is not relevant to this inquiry.

The Court: What is the object of going into that?

Mr. Gourley: They joined together to effect this witness' holdings of the Savoy. The contest in this case is about giving the Savoy stock to Mr. Dwight Ashley. They did the very thing the father feared that they would do.

Mr. Benson: After his death, we endeavored to get an account, or some idea of the condition of the Savoy, and were refused. During the proceedings in the Orphans' Court we endeavored to get permission, and we were refused; and in this actual proceeding we had to apply to the court for permission to use the books or records of the Savoy. So, the very fact that the father anticipated that these boys would take—

The Court: The objection will be overruled.

A. To the best of my memory they changed the Savoy Realty Company.

Mr. Benson: The books are the best evi-

dence; he has the books, and he refuses to give them up.

The Witness: I was not the secretary.

*By the Court*:

Q. Did they elect new officers? A. Yes, sir.

Q. Who is the secretary? A. Irving D. Ashley.

Q. What took place at the meeting? A. The resolutions were changed in regard to the officers, and a real estate agent was put in at a salary of $3500.00 a year to manage the company.

Q. Who was put in there? A. Stanley Mortlock.

Q. Where is he from? A. Paterson.

*Further Direct*:

Q. Then they put the counsel out? A. Yes, sir.

Q. Whom did they elect as counsel? A. Vanderbilt and Hedden, of Newark, and John Benson.

Q. Anything else;! was there a change in the officers at all? A. From Charles E. Ashley as secretary and treasurer, to Charles E. Ashley, treasurer, Irving D. Ashley, secretary.

*By the Court*:

Q. And so it remained? A. Absolutely.

Q. Did you ever meet again? A. No, sir.

*Further Direct*:

Q. When meetings were held, were notices sent to all the directors, or not? A. Yes, sir.

Q. On page 111 of the testimony, something was said about you ordering Irving Ashley out; was there anything in that? A. No, sir, nothing.

Q. This safe that is in Irving's house, who owned it? A. Father.



Q. Who had the combination? A. Father, Irving and myself.

Q. Was it after you read your father's will that you went down—

Mr. Benson: Objected to as leading.

Q. Was it before or after that you went down to this safe; was it before or after you read your father's will? A. It was before.

Q. What time? A. Wednesday afternoon.

Q. When was the will read? A. Thursday night.

Q. Did you know at that time that you were one of the executors of the will—at the time you went down? A. Yes, sir.

Q. How did you happen to go to the house on that day? A. Taking my wife and mother for a drive; and we stopped for Mrs. Irving Ashley to take her for a drive.

Q. Was anything said by Mrs. Irving Ashley about the safe? A. Yes, sir.

Q. In consequence of that, did you go up to the safe? A. She asked me to open the safe, and I did.

Mr. Gourley: Strike that out.

Q. In consequence of what she said, did you open the safe? A. Yes, sir.

Q. Did you take the papers out? A. Yes, sir.

Q. Have you them here? A. Yes, sir.

Q. These cancelled notes; were they found there? A. Yes, sir.

*By the Court*:

Q. Whose are those? Irvings? A. Yes, sir.

*Further Direct*:

Q. I show you some notes, which I think I called

the attention of Irving Ashley to when he was on the witness stand, fastened together with a clip; some signed "Irving D. Ashley;" are those notes all signed by the Gary Silk Compony, or by Irving Ashley, personally; how many are there? A. Seventeen.

Q. Do you know how much they make in the aggregate? A. $23,661.64.

Q. Can you tell us the amount of the Gary Silk Company notes, and the amount of Irving Ashley's? A. I have not figured it.

Q. Call out the amounts. A. Gary Silk Company, $579.00.

The Court: Wasn't he over those notes the other day?

A. (continued) $579.71; $575.64; $2828.93; $525.00; $1522.50; $505.00; $1752.06; $2981.16; $2832.98; those are all Gary Silk Company.

Q. The rest are Irving D. Ashley? A. Yes, sir.

Q. Those are the years 1915, 1916, 1917, 1918? A. Yes, sir.

Q. Give us separately the notes that Irving signed. A. $489.90; $904.48; $464.23; $3,487.69; $429.26; $597.33; $1680.00; $1505.77.

Q. The stock, the certificate of which is offered in evidence, the 140 shares of Savoy stock; do you know that this stock is listed by me in the inventory? A. I do.

Q. As administrator pendente lite? A. Yes, sir, under protest.

Q. Do you protest against my asserting that? A. Yes, sir.

Q. There was something said, Mr. Ashley, about some gifts of your father, or some loans of your



father, to you young men some years ago—

Mr. Gourley: I don't want to go into this except to contradict what they say. It was back in 1910, 1911, 1912. I would like your Honor's view about it.

*By the Court*:

Q. Do you know anything about those loans? A. Yes, sir.

Q. How much? A. 1910, 1911, 1912, roughly, there was given me about $14,000; Charles Ashley, $17,000; Irving, $12,000.

Q. Gifts? A. Yes, sir, but there were demand notes taken by my father for them.

*Further Direct*:

Q. Was any claim made by your father at any time for those moneys? A. No, sir, never.

Q. How long was that? I mean, this co-called gift, how long was that after the Ashley and Bayley litigation? A. Some was just prior, and some just after.

Q. Do you know the amount of the Ashley and Bayley paper on which your father was endorser? A. Yes, sir.

Q. About how much? A. $840,000.

Q. Were any blank checks given to you by your father to sign? A. No, sir, never.

Q. Did you ever hear your father say that he did not know at any time what he was signing in relation to any transaction? A. No, sir.

Q. These moneys of the Savoy Company, or stock securities of the Savoy Company that was to be paid, what was that for? A. The First National Bank do you refer to?

Q. Yes. A. Income tax, Hawthorne Silk Company.

Q. For what period of time? A. 1919 and 1920 taxes.

Q. What was the amount of the tax claim by the government? A. Roughly, about $45,000 to $48,000.

Q. Did you employ an expert to have that revised? A. The President of the Hawthorne Silk Company, Charles E. Ashley, did.

Q. Was that decided at first against you? A. Yes, sir.

Q. Was an appeal taken? A. Yes, sir.

Q. Were the stocks and securities of the Savoy pledged with the First National Bank, or its President, for a guarantee that that sum would be paid to the Government in case it was affirmed? A. That is correct.

Q. Was some of it paid? A. Yes, sir, it was.

Q. How much? A. $3,000 first offer; $12,000 additional, second offer.

Q. Do you know that Mr. Parmlee, as Trustee in Bankruptcy, went to Washington about two weeks ago with Mr. Comstock from my office, for the purpose of getting it adjusted? A. Yes, sir, I do.

Q. Do you know that that is still pending? A. I know it is, yes, sir.

Q. Those securities were pledged with the consent of what stockholders? A. All the stockholders.

Q. Did Irving consent? A. He did.

Q. I think he claims otherwise; was there anything in writing? A. There was.

Q. Signed by him, do you mean? A. Yes, sir, not for the full amount.



Q. Not for the full amount? A. No, sir.

Q. Now, Mr. Ashley, have you in any way attempted during this period of time, or at any time, to influence your father to make this codicil in your favor?

Mr. Benson: Objected to as asking for a conclusion.

The Court: Yes, there is nothing in the evidence to indicate that he has.

Mr. Gourley: There are insinuations of it.

Mr. Benson: It is for the court to determine.

*By the Court*:

Q. Have you ever asked your father to make any disposition of his property in your favor? A. No, sir.

Q. Have you had any conversation with him regarding the disposition of his property? A. No, sir.

*Cross-examination by Mr. Benson*:

Q. Mr. Ashley, how old are you? A. 48.

Q. You were born in Paterson? A. Yes, sir.

Q. Were you connected with the Ashley and Bayley Company? A. Yes, sir.

Q. In what capacity? A. In different branches when I first started.

Q. When you left, in what capacity were you engaged? A. What year?

Q. When you left the Ashley and Bayley Company? A. I cannot answer that question, because I did not leave Ashley and Bayley.

Q. Ashley and Bayley liquidated, didn't they? A. Yes, sir.

Q. At that time didn't you sever your connection with them? A. We all severed on liquidation.

Q. What were you doing at that time? A. At that time I was in the credit department of the Ashley and Bayley Company, principally.

Q. When you left the Credit Department from there where were you employed? A. We formed the Forest Silk Company.

Q. Who is "we"? A. The four Ashleys; R. H. Moxham; E. B. Colby; Tracey O'Hara, formed the Forest Silk Company.

Q. What business was the Forest Silk Company engaged in? A. A selling organization.

Q. How long did the Forest Silk Company continue in business? A. About one and a half years.

Q. What happened to the Forest Silk Company? A. It was taken over by Moxham-Colby Silk Company.

Q. From there, where did you go? A. Hawthorne Silk Company.

Q. Was your father engaged in business at that time? A. He was engaged with the Forest Silk Company.

Q. In what capacity? A. Directing the Fayetteville mill at North Carolina.

Q. What was he doing there? A. He was conducting the mill from New York.

Q. Had the Hawthorne Silk Company acquired the Forest mill when it went into business? A. About that time.

Q. After the incorporation of the Hawthorne Silk Company can you tell us how much the three boys contributed to the capital of that corporation? A. The Hawthorne Silk Company was incorporated about 1900 by the Ashley and Bayley Company; it was acquired by the Ashleys in 1913, in liquidation.



Q. How much did Irving Ashley, Charles Ashley and Dwight Ashley, Jr., contribute to the capital of the Hawthorne Silk Company? A. They contributed their equal shares from the liquidation of the Ashley and Bayley Company.

Q. And the shares they did contribute came from what source? A. Father's money.

Q. So, as a matter of fact, the three boys did not contribute anything to the capital of the corporation? A. Yes, sir, they did.

Q. How much did you contribute? A. My 1000 shares given to me by the Ashley and Bayley Company.

Q. But they originally came from your father? A. Correct.

Q. And so, from your own private estate you did not, nor did Charles or Irving put any money in the Hawthorne Silk Company? A. They did not in the purchase—

Q. The Ashley and Bayley interest that you put in there came from your father? A. Yes, sir.

Q. Now, when you left the Forrest Silk Company to go with the Hawthorne Silk Company, what office did you hold? A. When I first went there, I did not hold any office, that I remember.

Q. Who was the president of the corporation at that time? A. Charles E. Ashley.

Q. What position did your father have? A. Vice President.

Q. Was he actively interested in the business at that time? A. He was in the Hawthorne Silk Company, but not in the Hawthorne mill.

Q. What did he do, if anything, in connection

with that business in the beginning? A. With Mr. Moxham, they directed the mill's course.

Q. At that time was your father receiving any salary from the Hawthorne Silk Company? A. Not that I remember.

Q. After you went in the Hawthorne Silk Company, what position did you first hold there? A. It was at the New York end.

Q. Were you an officer? A. Not when it first started.

Q. When did you first take an office in the Hawthorne Silk Company? A. About the end of 1914.

Q. Was your father an officer at that time? A. He was.

Q. Do you recollect what office he held? A. Vice President.

Q. What office did you take at that time? A. I took the office of Vice-President.

Q. Did you receive the same salary at that time? A. Father never received any salary.

Q. Did you receive any? A. I did, after I went with them.

Q. At that time, in 1914? A. Yes, sir.

Q. Do you recollect what salary you received at that time? A. No, sir.

Q. Have you a record of it? A. I might have.

Q. Did your father continue as Vice President of the Hawthorne Silk Company, to about what time? A. To the end of 1914.

Q. Then what office did he hold in the Hawthorne Silk Company? A. He did not hold an office outside of being a director.

Q. After 1914, was he actively interested in the business? A. No, sir, not in the Hawthorne business.



Q. And you and Charlie ran the business? A. In connection with others.

Q. To whom do you refer? A. I refer to the selling company.

Q. But you and Charles had charge of the business after 1914? A. I believe that is right.

Q. You had meetings of the directors after 1914? A. Yes, sir.

Q. Did you invite your father and Irving to those meetings? A. According to the Secretary—

Q. Were they ever there? A. They were.

Q. Irving in charge? A. Yes, sir.

Q. From 1914 was the Hawthorne Silk Company prosperous? A. Not up to 1916, about.

Q. And from 1916 was it prosperous? A. Yes, sir, up to a certain period.

Q. Did you give information to your father, or inform him of the extent of that prosperity? A. Yes, sir, he knew of it.

Q. Did he participate in any part of it? A. Not that I know of.

Q. As a matter of fact, you know he did not participate? A. No, sir, I don't know.

Q. You were an officer of the corporation; anyway, you did not pay any dividends, did you? A. No, sir.

Q. Did you, to your knowledge, pay to your father anything for his interest in that business by way of dividend, or any other manner? A. I cannot remember that end.

Q. Your father, during the years 1914 to 1916, loaned large sums of money to the corporation, didn't he? A. No, sir.

Q. Did he at any time loan any moneys to the Hawthorne Silk Company in addition to his original investment and the gifts that he had made to

his boys, in the beginning, say— A. No, sir.

Q. Did he, between 1914 and 1916, loan any money to the Hawthorne? A. Not to my knowl edge.

Q. You were one of the officers of the Hawthorne? A. I was Vice President.

Q. And you were familiar somewhat with the business of the Hawthorne Silk Company? A. Only at the New York end.

Q. You had nothing to do with the financial side of the Hawthorne Silk Company? A. No, sir.

Q. You did not make any inquiry? A. No, sir.

Q. And you made out income tax returns for the Hawthorne Silk Company? A. No, sir.

Q. Who had charge of that? A. The treasurer and president; W. W. Cook was the treasurer.

Q. You at no time inspected the record to find out if your father had loaned any money to the Hawthorne Silk Company? A. No, sir.

Q. And you don't know to this day whether your father loaned any money to the Hawthorne Silk Company? A. No, at that time.

Q. I show you check dated August 24, 1914, to the Hawthorne Silk Company— A. I never saw it before.

Q. And you don't know whether that was loaned or not to the corporation? A. No, sir.

Mr. Benson: It is a check to the Hawthorne Silk Company for $1,000.

Q. I show you a check dated March 23, 1915, payable to the Hawthorne Silk Company for $5529.00; do you know whether that was a loan to the corporation or not? A. I never saw it; I know nothing about it.



Q. I show you a check of March 19, given for $5820.00, payable to the Hawthorne Silk Company; do you know of any record of the Hawthorne Silk Company that would indicate that was a loan? A. That is his writing, but I never saw it before.

Q. I show you check dated February 9, 1915 for $3,880.00? A. Same thing.

Q. What do you mean? A. I never saw it before and don't know anything about it.

Q. Would you say at no time after you and your brother Charlie took charge of the Hawthorne Silk Company, that there were not loans of money from your father? A. I would not say so—I say I don't remember it.

Q. Would you say that you don't remember that even a dollar was loaned by your father to the Hawthorne Silk Company? A. I don't remember.

Q. You were not sufficiently familiar with the Hawthorne Silk Company to know whether there were any liabilities? A. I did.

Q. When did you first determine there were some liabilities of the Hawthorne Silk Company? A. Liabilities from the organization.

Q. What were they? A. For everything.

Q. What were the liabilities? A. Purchase of raw silk and other things.

Q. What were the other things—loans of money? A. I don't know of any.

Q. You won't say positively there were no loans of the Hawthorne Silk Company? A. No, sir.

Q. In 1916, and up to 1919, the Hawthorne Silk Company made considerable profit, didn't it? A. Yes, sir.

Q. They made such a profit that the Federal Government taxed them $45,000? A. Yes, sir.

Q. Do you recollect what the income tax showed as profit for the year 1918 or 1919? A. No, sir, I don't know the figure.

Q. You were Vice President? A. Yes, sir.

Q. And you did not attend any meetings of the directors? A. All of them.

Q. You saw statements? A. In the yearly statements.

Q. Will you say you did not see any statements except the yearly statements? A. I will say I saw monthly statements, but not complete.

Q. How were they incomplete? A. Only the monthly workings of the company.

Q. What was left out? A. They gave the expenditures and receipts for the month.

Q. Did you look in the books to see what moneys were paid out and what was received? A. No, sir.

Q. In 1916 or 1917, did you receive any additional sum besides your salary? A. Yes, sir.

Q. How much? A. $17,500.

Q. Did your father receive a like amount? A. No, sir.

Q. Did you tell your father you had taken out $17,500 from the Hawthorne; did you tell your father you had received $17,500? A. No, sir.

Q. Your father was quite a letter writer? A. Occasionally he wrote.

Q. And you wrote to him? A. Yes, sir.

Q. Did you communicate with him that you had been successful that year, so that you had taken $17,500 out of the business? A. Charles E. Ashley took out $17,500; and W. W. Cook took $5,000; George Purdy, $5,000; W. Pross, $5,000.

Q. And that taking out of $50,000 was first communicated to your father when? A. I never told him.



Q. Didn't you think he might be interested to know, as an officer and a stockholder of the corporation, that he might be interested in this? A. He was not an officer at that time; he was merely a stockholder.

Q. But he was the one person who had placed all of the capital stock in that corporation, hadn't he, originally? A. Originally, yes, sir.

Q. And you did not think that he, as a stockholder—how many shares of stock did he hold in 1917? A. I could not tell you.

Q. About? A. The same as I did.

Q. Did Irving get anything? A. No, sir.

Q. Was $50,000 the net profits of the business for that year? A. I don't know.

Q. Well, it was a profit, wasn't it? A. I don't know that.

Q. Did you divide it as a dividend? A. No, sir, I did not have anything to do with it.

Q. You accepted it? A. Yes, sir.

Q. And you knew it was not a dividend? A. Under protest.

Q. Another protest, eh? A. Yes, sir.

Q. But you kept it? A. Yes, sir.

Q. How did you get this $17,000 under protest? A. By a check.

Q. And did you sign your name on the back of that check under protest? A. No, sir, I did not.

Q. You took the money, and gladly took it, didn't you? A. Yes, sir, as I told you before, under protest.

Q. Did you, after you received the $17,500, did you go before the board and say, "I want it on the record, I protest the receipt of this money?" A. I did to the president.

Q. Did you have it on the record? A. That I don't know.

Q. You were an officer? A. That is right.

Q. Did you request it to go on the record? A. I don't remember.

Q. Did you write a letter? A. I don't remember.

Q. That was in 1917, approximately 1917? A. I can give you the date in a second, if you wish me to.

Q. All right; let me have the date. A. February 11, 1920.

Q. Prior to that time had you received any extra money from the Hawthorne Silk Company? A. I received salary.

Q. How much? A. I would not want to say, at that time, I have no record.

Q. You cannot tell what the salary was in 1920? A. No, sir.

Q. What was it just prior to the liquidation of the Hawthorn Silk Company? A. About $135.00 a week.

Q. How much does that amount to a year? A. About $5500.00, roughly.

Q. Had you drawn approximately that amount in 1920? A. I don't remember.

Q. For salary? A. I don't remember the amount.

Q. I am saying, approximately? A. I cannot say; it changed.

Q. How much did it change? A. It would fluctuate according to the year.

Q. What year, for instance, did it fluctuate? A. 1918 and 1919; it was the business conditions that fluctuated.



Q. In 1918, what was it as compared with 1919? A. It was not as much.

Q. How much was the difference? A. I could not tell you without the record.

Q. And you don't know at any time, except that you received on one occasion $135.00 weekly? A. You asked me that just prior to liquidation.

Q. Going back, then, from 1924, the date of the liquidation? A. That was the extension, March 15, 1925.

Q. Going back from that time, what was your salary, 1924, that is, the rate of your salary per year? A. I gave you that.

Q. 5500.00? A. Yes, sir.

Q. Now, 1923? A. Maybe a trifle more.

Q. How much? A. I don't know.

Q. Did you have a contract to receive salary or commission? A. No, sir.

Q. You had a fixed salary, didn't you? A. According to the conditions and the year.

By the Court:

Q. Did you have a definite salary, whether the business was good or bad? A. No, sir, it was changed according to the directors' views of the business; they fixed my salary at each annual meeting.

*Further Cross*:

Q. At the 1923 annual meeting, what was your salary fixed at? A. I would not say; the records will show it. I can get them for you.

Q. Will you produce them? A. Yes, sir.

Q. And from there back? A. Yes, sir.

Q. The only extra money you received outside of salary was the $17,500? A. As far as my memory goes.

Q. Are you sure? A. No, sir, I am not sure.

Q. Have you a record of that? A. Yes, sir.

Q. Will you produce it? A. I have the entry at home.

Q. You will produce it? A. Yes, sir.

Q. Now, when did you tell your father that the Hawthorne Silk Company was beginning to get into difficulties? A. I could not give you the date.

Q. After you took $17,500, and you saw Mr. Cook take $5,000, and you saw Charles take $17,500, did you think it was fair? A. No, sir, I objected to the President.

Q. Can you fix, approximately, the date that you told your father; did you at any time tell your father the Hawthorne Silk Company was in difficulties? A. Yes, sir.

Q. When? A. I could not give you the date.

Q. Now, you say that Charles was not on speaking terms with your father? A. Yes, sir.

Q. So you had to do all the communicating with him? A. Yes, sir.

Q. Didn't you speak to your father about loaning money to the Hawthorne Silk Company? A. Yes, sir, and he loaned the Hawthorne Silk Company money, a total of about $48,000.

Q. And during these occasions when you told him the Hawthorne Silk Company was in trouble, he gave you blank checks? A. No, sir, he did not.

Q. He did not give you at any time a blank check? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. That is, the sum was left in blank? A. The sum was blank; yes, sir, he made it out to the Hawthorne Silk Company and left the sum in blank.



Q. Then you filled in the sum later on? A. According to the need.

Q. Did he give you a check leaving the sum in blank? A. Not that I ever remember.

Q. Would you say he did not? A. No, sir.

Q. Did you, or anyone, on account of the Hawthorne Silk Company, repay the $48,000? A. No, sir.

Q. Do you recollect seeing your father and talking to him several times about the condition of the Hawthorne Silk Company? A. Yes, sir, quite frequently.

Q. And he complained rather bitterly, didn't he, about your management? A. Did he?

Q. I am asking you? A. Not to me.

Q. He never complained? A. Not to me.

Q. He never said a word? A. I won't say not a word—"Bitterly," you said.

Q. Did he at any time criticize you? A. Not extensively.

Q. In what way did he criticize you? A. Very little.

Q. Tell us any one criticism. A. Yes, sir, that I did not go into the mill end of it more thoroughly than I did.

Q. How did he know that? A. Because he knew I went to the New York end.

Q. Did he visit the mill occasionally? A. No, sir.

Q. He never went near it, did he? A. No, sir.

Q. And he never went in the New York department at any time, did he, in the department where you were? A. No, sir.

Q. You recollect at the meeting when the resolution was passed concerning the buying of batons,

where you had some stock and your mother's stock, and you voted him out? A. Mother was never a stockholder of the Hawthorne Silk Company.

Q. Did you vote against him on the occasion which you referred to in your testimony on page 8? A. I may have.

Q. And wasn't he at that time rather severe with you for doing it? A. No, sir, he was not.

Q. What did he say? A. He did not say very much.

Q .He was very much disappointed? A. I don't know; he did not say it to me.

Q. He walked out of the place, didn't he? A. Yes, sir.

Q. And he did not come back again at any time? A. No, sir, not at any meeting.

Q. And he never went to the New York office where you were after that? A. He never did.

Q. But he had, previous to that time, visited the mill quite frequently, hadn't he? A. No, sir, only once at meetings.

Q. Didn't he at any time say to you that that was rather unfair? A. He may have.

Q. Did he? A. I won't say.

Q. You say he criticized you slightly? A. He might have said that; I don't remember.

Q. You know, as a fact, that he did criticize you? A. He may have; not to me.

Q. You said previously that he did criticize you, but not severely? A. Yes, sir.

Q. What was the criticism? A. The criticism was on account of not going into the mill end of it; I was at the New York end.

Q. That was the only time that he ever criticized you with reference to the Hawthorne Silk Company? A. What I would call criticism, yes, sir.



Q. When you went and asked him for a loan of money, didn't he then tell you something about the way the business had been managed? A. The mill end of it principally.

Q. He was very much displeased? A. Yes, sir.

Q. And when it came to a question of insolvency, he was hurt? A. Absolutely.

Q. And he criticised you for your part in that failure? A. No, sir, not to me.

Q. Was he pleased about that? A. No, sir.

Q. What did he say? A. He did not say anything to criticise me.

The Court: Come in on Tuesday and I will see when I can fix a day.

Adjourned to a date to be fixed.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| In the matter of the Appeal from the Decree of the Orphans' Court of the County of Passaic Admitting to Probate a Certain Paper Writing as the Last Will and Testament of<br><br>DWIGHT ASHLEY, deceased. | On Appeal. Testimony. |

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-eighth day of January, nineteen hundred and twenty-six, before HON. VIVIAN M. LEWIS, Vice Ordinary.

APPEARANCES:
WILLIAM B. GOURLEY, ESQ.,
For the Complainants-Appellees;
VANDERBILT & HEDDEN, ESQS., associated with JOHN O. BENSON, ESQ.,
For the Caveators-Appellants.

---

DWIGHT ASHLEY, JR., resumes the witness stand.

*Cross-examination (continued) by Mr. Benson:*

Q. I think you were discussing the question at the last hearing in reference to records that you had of your salary from the Hawthorne Silk Company; can you produce them? A. Yes, sir.

Q. Where did you secure that memorandum from? A. My record.



*Dwight Ashley, Jr.—Cross.*

Q. Where is the record? At my house.

Q. You did not produce the record, then? A. Only a copy of it.

Q. I asked you to produce the original record? A. My check book is my record.

Q. Will you produce the check book? A. Yes, sir; I misunderstood you.

Q. In the year 1914, can you tell me what your salary was? A. Yes, sir, from this copy.

Mr. Gourley: I think my objection is on the record to all this class of testimony.

The Court: Yes.

A. $3,266.62.

Q. And in 1915? A. Less—$2,309.97.

Q. And in 1916? A. $3,601.88.

Q. And in 1917? A. $4,192.85.

Q. And in 1918? A. $12,384.10.

Q. Was that $12,000 voted to you at the beginning of the year 1918? A. I couldn't tell you.

Q. Do you say that that $12,000 was all salary; was not part of it bonus? A. My records show it was received from the Hawthorne Silk Company.

Q. You were an officer of the Hawthorne Silk Company? A. Yes, sir.

Q. Cannot you tell us whether, in 1918, you received part bonus and part salary? A. No, sir.

Q. You have no way of finding that out? A. No, sir.

Q. You have no means of refreshing your recollection? A. No, sir.

Q. But you will say that you received $12,000? A. $12,384.10.

Q. In 1919? A. $16,692.94.

Q. Now, in that year did you receive that as a

salary or as salary and bonus, or salary and bonus and dividend? A. No dividend.

Q. Never any dividend, was there? A. No, sir, salary and bonus, maybe.

Q. In 1920, what was the amount? A. $30,756.-25.

Q. Now, was that all salary? A. Bonus and salary.

Q. How much bonus? A. $17,500.

Q. How much was it in 1921? A. $8,531.25.

Q. And in 1922? A. $6,825.00.

Q. And in 1923? A. $6,824.48.

Q. Now, during that time did your father attend any of the meetings of the Hawthorne Silk Company? A. What year?

Q. In the year 1918 to 1923? A. No, sir, not to my knowledge.

Q. So far as you know, he had no knowledge of the amount of moneys withdrawn by you and Charles, so far as you know? A. So far as I remember, no.

Q. In looking over your records you find no record where Irving received any salary or bonus or dividend on his interest in the Hawthorne Silk Company? A. No, sir.

Q. He had an equal share in the Hawthorne Silk Company the same as you? A. As a stockholder, yes, sir.

Q. Now, your father during those years from 1918 to 1923, received no benefit from the Hawthorne Silk Company? A. Not that I recall.

Q. Don't you know, as an officer of the corporation, that he did not receive any dividends or any financial benefits from the Hawthorne Silk Company? A. I cannot say from memory, no.



Q. During that time he had advance something like $48,000 to the corporation, hadn't he? A. He advanced $48,000, but I don't know the time.

Q. And during that period of prosperity of the Hawthorne Silk Company, was any part of it paid back to your father? A. Not that I know of.

Q. What office did you hold? A. Vice President and Director.

Q. And in the capacity of Vice President and Director, you know of the indebtedness to your father? A. Yes, sir.

Q. You knew before you withdrew the various sums, and the one sum in particular, $30,000, that there was a large debt due to your father? A. Not at that time.

Q. Will you say in 1919, your father was not a creditor of the Hawthorne Silk Company? A. Not to my memory.

Q. Will you say you did not know in 1919 that he was a creditor? A. Not to my memory on that.

Q. You did not take much interest, then, in the indebtedness of the Hawthorne Silk Company to your father— A. I did, what they owed him.

Q. You were very familiar with that? A. On the notes, yes.

Q. How much was it? A. $48,000.

Q. And that was due to him in 1923, wasn't it? A. In 1923, yes, sir.

Q. And you and Charlie took out six or seven thousand dollars each that year, 1923? A. On salary, yes, sir.

Q. Did you make any repayment to your father? A. Not to my memory.

Q. Well, now, Mr. Ashley, don't you know? A. No, sir, I am not positive.

Q. Will you say the books of the corporation have not been in your possession since 1919? A. I could have had access to them, but I did not.

Q. Did you make any effort to find out? A. No, sir.

Q. During that time your father spoke about this indebtedness, didn't he? A. No, sir, he did not.

Q. He never said a word? A. No, sir.

Q. The notes ran back two or three years? A. No, sir; I don't think so—about a year and a half.

Q. After he had given the Hawthorne $48,000, his investments in the Hawthorne were something like $200,000? A. I have not figured it that way.

Q. How much did he put in originally? A. One-quarter of the amount.

Q. How much was that? A. I don't know.

Q. Have you the records? A. I can get them.

Q. Will you get them? A. Yes, sir.

Q. You did not put in a dollar, did you? A. My share, yes.

Q. Where did that come from? A. From my father originally.

Q. You did not put in a dollar of your own private money? A. No, sir, not originally.

The Court: None of these boys did.

Q. How much was his investment in the Hawthorne Silk Company? A. I have not figured it; I can figure it.

Q. How much was the capitalization of the Hawthorne Silk Company? A. Originally $150,000; and I don't know the exact figures later on.

Q. How many shares of stock did you have? A. I had about 300 shares.

Q. 300 shares. A. Some of the property belonged to the Savoy, and was transferred to the Hawthorne.



Q. What property? A. It was sold to the Ashley and Bailey Company.

Q. And wasn't it transferred later over to the Hawthorne Silk Company? A. The Hawthorne Silk Company belonged to Ashley and Bailey at that time.

Q. Now, Mr. Ashley, you recollect at the meeting that you may have voted against your father, a meeting of the Board of Directors of the Hawthorne Silk Company at the time he resigned from the office which he held in the Hawthorne Silk Company. Do you say that you may have voted. A. I may have voted.

Q. Are you positive you don't know at this time? A. I am posititve I don't know; the records will show it.

Q. I show you a record of the minutes of December 21, 1925, wherein it states an amendment to this amendment was offered and passed, "that the President be given the power to appoint a committee of two, to act in conjunction with him on the organization that shall sell our goods in the future: Messrs. C. E. Ashley; Dwight Ashley, Jr.; George F. Purdy; W. L. Pross and W. W. Cook, voted in the affirmative." Do you recollect that; "and Messrs. Dwight Ashley, Sr. and Irving D. Ashley voted in the negative." Signed "W. W. Cook, Secretary." A. (Witness looks at a book) I remember the meeting, yes, sir.

Q. And you recollect your father being provoked, and he left the meeting? A. Yes, sir.

Q. That was on December 21, 1915, and he never attended another meeting of the Hawthorne Silk

Company of which you were the Vice President? A. I think you are right.

Q. Do you recollect that on May 7, 1917, a letter was placed in the minutes of the Hawthorne Silk Company dated December 22, 1915, from Dwight Ashley, Sr., tendering his resignation as Vice President of this Company—"upon motion this resignation was duly accepted;" do you recollect that? A. Yes, sir.

Q. Why was not that letteracted on before May 7, 1917? A. I don't know.

Q. Did you try in any way to induce your father to come back?

Mr. Gourley: Objected to; what is the value of this testimony?

The Court: I don't know how far afield Mr. Benson desires to go.

Mr. Gourley: Ten years ago there were some difficulties.

The Court: I will note your objection.

Q. At that time you voted to accept your father's resignation? A. I believe so.

Q. Do you know? A. I am not positive.

Q. Look at the record. A. (Witness looks). The letter was held over, I remember now.

Q. Did you vote? A. Yes, sir.

Q. And you were elected Vice President in your father's place? A. Yes, sir.

Q. Now, then, from that time on your father was not friendly with you? A. He was.

Q .And he continued to be friendly right from the date of that meeting, right down to the time of his death? A. With the exception of a short time.



Q. Now, Mr. Ashley, don't you know he walked out of that meeting very angry? A. Yes, sir, I know it.

Q. And who went with him? A. Irving.

Q. And he condemned you most severely for taking his position in the Hawthorne Silk Company? A. He did not.

Q. He was quite content? A. Yes, sir.

Q. Can you give any reason why he walked out in the manner he did if he was contented?

Mr. Gourley: Objected to.

The Court: Objection overruled.

A. It was against Charles.

*By the Court*:

Q. Did he tell you? A. No, sir.

*Further Direct*:

Q. And you continued to be Vice President right down to the time of the insolvency? A. Yes, sir.

Q. Have you the letters and documents you removed from the safe in Irving's house after your father's death? A. Yes, sir.

Q. Will you get me a diary A. (Witness goes and gets it).

The Court: As I understand, practically they are in evidence now.

Mr. Benson: only excerpts.

The Witness: There is no diary.

The Court: Have you got excerpts written out?

Mr. Benson: Yes, sir, but we want to identify them.

The Court: These are a voluntary offer

made by the counsel for the proponent, are they not?

Mr. Gourley: They asked to see these papers, and I invited them to my office and showed them to them—

Mr. Benson: The executor of the will, before the will had been read, went down there and got the papers.

The Court: That is all it is. As I understand it, these papers were produced in the office of Mr. Gourley and you got excerpts of them.

Mr. Benson: That is right.

Q. I show you a letter dated November 16, containing three pages; is that in your father's handwriting? A. Yes, sir.

Q. Will you find the place where it says: "As time rolls on;" will you read from there on?

The Court: It is all in evidence, isn't it?
Mr. Benson: No, it is not, your Honor.
The Court: Read it, then.

A. "November 16, As time rolls on I thought the bitterness of life so made by the liquidation might to some extent wear off but I find there is no wear-off to it—the results have gone so far beyond the liquidation that it becomes intense as the days draw on to winter days—long and dreary and idleness staring me in the face."

Mr. Gourley: What is the object of this; what is the relevancy?

The Court: He speaks about the objects of his bounty through the letter, and of his



disappointment; dated November 16—it does not say the year.

The Witness: 1912, it was—Ashley liquidation.

*By the Court*:

Q. Did you ever see that document before? A. Yes, sir.

Q. This man died when? A. In 1925.

*Further Direct*:

Q. Do want to say under oath that this is 1912? A. No, sir, I say it referred to the liquidation in 1912.

Q. Now, then, it refers to the liquidation of the Hawthorne Silk Company, and refers to Irving and him being kicked out of the Hawthorne Silk Company? A. No, sir.

Q. What does it say? A. It does not refer to that.

The Court: Read it.

A. (Witness continues reading): "And what to turn to that my time may be made of some value is a question, had the Hawthorne Silk Company given me a job and give a job to Irv and not thrown the jobs into the hands of men who did not invest their money, it would have been a great relief to the situation and to me—the rejection was a most cruel act I could ever dream of—many men would soon mend it all and give the coroner a job, but I don't wish to desert a few relatives I know will stand by me—there is the youngest boy needs someone to hold fast to him—we are now living through a world's war, and the reconstruction days may call for my—"

Q. You have made the statement to the Court that this refers to the Ashley and Bailey liquidation. Now, where does it say so? A. It comes later on: "We are now living through a world war and the reconstruction days may call for my recommendation of strict economy and a need of forced economy. I will come in good on that line, but with two of my oldest boys that has pushed me further down and taken all power from me that has held me up in active life for 40—"

Q. Whom does he refer to? A. I am the oldest and Charles is the next.

Q. Proceed. A. "Has pushed me further down and taken all power from me that has held me up in active life for 40 years, is a hard, hard blow to me—I have set days and weeks thinking, thinking what is best to do; myself interest dictates to leave the wreck behind and go in seclusion on farm; where I can see my income making some advance, and not pay out more than I am getting—but this move would not be understood. I am aware there is only one way to recover and go through this war, and that is desert my expenses and make the sacrifice of cheaper living—you two boys are backed up by your mother, who has told me to my face I never had the brains to run the mills—it was the brains of the boys. God grant wisdom may follow my boys; but the one mistake was the liquidation that has repudiated all of my 40 years of energy and built up a complete and strong organization—your mother says she wants nothing to do with me, dead or alive, therefore what matter is it; I am only one out of 1,000 of men who is turned over to the care of servants soon as there is money enough to pay servants—sick or well the average man is



more dependent upon servants than his wife in these days where money is king. I regret I am going down in finances, it worries me, but it's not drink or expenses outside of my home, it's a big house and the pay and feed of servants, and just for my wife and self—where is the manhood to see me stand it all—after taking the business and absorbing it all for the benefit of 2, and the other 2 true to me try and shift for ourselves."

Mr. Benson: That is all I ask you to read. I offer it for identification.

Q. You know that letter is in the handwriting of your father?

The Court: Put it in evidence.
Marked "Exhibit B-G 1."

Q. I show you a memorandum; is that in your father's handwriting? A. It is, yes, sir.

Q. Will you look at the letter and read from the point "Few can realize?" A. "Few can realize that how I am disappointed when I find I am rejected as not able to work in the selling department, and while I am told to get away I am left without any tools to work with—I have been in the struggle now since August, 1912, and there is at this day no relief—I will do my best to master the problem and if success is mine will be the only vindication of my not being able to manage the department at N. Y.

Mr. Benson: I offer that in evidence.
Marked "Exhibit B-G 2."

Q. At the time of the insolvency of the Hawthorne Silk Company it owed Mr. Dwight Ashley,

Sr. $55,000; is that true? A. $48,000 is my memory.

Q. Your father invested certain moneys in the Gary Silk Company in which Irving was interested? A. I don't know anything about it.

Q. You kept your father's records, didn't you? A. No, sir.

Q. You had nothing to do with them? A. His check book, no, sir.

Q. I show you a memorandum, Mr. Ashley; is that in your father's handwriting? A. It is.

Q. Will you read from that part of the statement which says, on the back of the first page where it says: "Expenses that went into business with Irving?" A. "There was nothing left for Irving or me; I was glad the Hawthorne Silk Company was forced to give Dwight a position—I was then put in this position—myself and Irve to look for business—and I went in with a spirit to see what could be done—thinking I would have my time and my mind occupied and something earned to even up my income."

Q. Now, turn to page 2: "When the roll is called;" read from there. A. "And when the roll is called and the undertaker is busy, I do not want flowers—I have done all I could to make my boys, strong—in their ability to know how to use money and let them handle money while I lived and did not wait until I was gone and then not know what they would do—but this seems to be not understood. I am legislated aside without a request—without my consent even—I want to burn a little tar on the land I bought and surrendered to my dear boys—I am pushed aside and not allowed this small privilege—yet I will not complain—I will



say 'Beware lest these misguided thoughts may come back to you and when I am gone you may suffer some rebuke from the children you love as surely as I do mine'—I would fight for my own—no matter what stood in the way—and any offence against you is an offence against me—I want to be understood."

Marked "Exhibit B-G 3."

Q. Do you know, Mr. Ashley, what salary, if any, your father drew from the Gary? A. I do not.

Q. You don't know what salary Irving drew from the Gary- A. No, sir.

Q. Do you recollect, Mr. Ashley, when the Savoy Realty Company was organized? A. In 1910.

Q. And you and the rest of the boys and your father had the stock in that corporation? A. Yes, sir.

Q. You did not put any of your own finances in it? A. No, sir.

Q. What position did you hold in 1910? A. President.

Q. What position, if any, did your father hold? A. Treasurer.

Q. And how long did he continue from 1910 as treasurer? A. I don't remember the time.

Q. Did he continue to be treasurer of the Savoy Realty Company up to the time of his death? A. No, sir.

Q. Have you any recollection as to about the time he severed his connection with the Savoy? Sometime about 1916 or 1917.

Q. You had some difficulty, or the boys had some difficulty with him at that time, didn't they? A. Yes, sir, they did.

Q. And the result was, he quit? A. Yes, sir.

Q. And did he ever, as a stockholder, attend any stockholders' meetings after that? A. I don't remember.

Q. You attended them? A. Yes, sir.

Mr. Gourley: My objection still goes to all of this.

The Court: The objection is noted.

Q. Will you say he ever attended a meeting after 1916? A. I cannot say.

Q. Will you say that he did? A. No, sir.

Q. You don't know? A. No, sir, I am not positive.

Q. And did he ever, after he left the Savoy, did he complain to you? A. No, sir, he did not.

Q. Did he ever complain in your presence to anyone about his severance or connection with the Savoy? A. He did not complain—he argued.

Q. What do you mean? A. Father and I argued.

Q. But he did not criticize you? A. Slightly.

Q. What was the first criticism he made of any of your acts in reference to the Savoy? A. The fact of changing office was the criticism.

Q. And didn't you, Mr. Ashley, in your arguments with your father lead him to believe that Charles was responsible for your father being ousted? A. No, sir.

Q. Did you ever at any time say to your father that it was Charles who connived this, or words to that effect? A. No, sir.

Q. Who was responsible for him leaving the Savoy? A. Charles.

Q. And your father did not know that at that time? A. No, sir.



Q. Did you ever tell him? A. I did.

Q. Then you did tell him who engineered it? A. I told him the results of not being able to work together.

Q. When did you tell him that? A. A day or two after the meeting—

Q. In 1916? A. About that time.

Q. He was living with Charlie at that time? A. He was living at his own house.

*By Mr. Gourley*:

Q. Charlie was living with him? A. Yes, sir.

*Further Cross*:

Q. They were together at the house? A. Yes, sir.

Q. Under the same roof? A. Yes, sir.

Q. Now, at that time he was treasurer, wasn't he? A. Father was, yes, sir.

Q. Didn't you have a conference with Charlie about the fact that your father was treasurer? A. Not what you call a conference; we talked incidentally.

Q. And your father was incidentally thrown out? A. He was voted out.

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

*By the Court*:

What did you do that for? A. Because Charlie and father did not speak.

*Further Cross*:

Q. And because of the conditions, as you thought, Charles and your father, you voted your father out of the Savoy Realty Company or Society? A. I voted, yes, sir.

Q. And you had the shares of your mother, did-

n't you? A. I don't remember that.

Q. Will you say you did not vote those shares? A. I will not say.

Q. Have you the Savoy minute book here?

The Court: Is there a minute book of the Savoy?

The Witness Yes, sir, Dr. Gourley has it.

The Court: He says the reason he was moved is because Charles did not get along or speak to his father; he says he voted for the resolution to remove him. I think it is evidential. I would like to see it.

Mr. Gourley: Then I will get it.

The Court: Now you want the resolution by which your father was removed.

Q. 1916? A. I said about that time—between April 5, 1915 and April 3, 1916, evidently.

Q. Where is the minute in which your father was ousted from the Savoy Realty Company as treasurer? A. It is all here.

Q. Where is it? A. I don't see it just now.

Q. Is it there? A. The minute book is here.

*By the Court*:

Q. Can you find it? A. No, sir.

Mr. Benson: I would like to have secretary, Mr. Charles Ashley, now.

The Court: I think, Mr. Benson, that you had better proceed with the cross-examination of this witness and finish with him.

Q. Who kept the book? A. I kept the book and the secretary forwarded the minutes to me to be put in; I pasted them in.



Mr. Benson: We have had great difficulty and have made repeated demands to look over this book and inspect it, and it is very odd that Mr. Gourley has some anxiety about even looking at the cover of this book; so, therefore, I ask if there is anything in this book that would throw any light on this controversy; it might be well to investigate it. I will ask for an inspection of the entire book.

Mr. Gourley: I have asked for so-called minutes of a meeting held in the office of Mr. Ashley when I was away, changing the date of the meeting and the place of the meeting, and the change of counsel, and I cannot get a word from them about it.

Mr. Hedden: The secretary of the company was Mr. Charles Ashley, and later Mr. Irving Ashley. This minute book was taken from Charles Ashley by Dwight Ashley, Jr., at a meeting of the company.

The Court: The only ground for denying an inspection is that it will obstruct the defense in the preparation of their case.

Q. Now, then, did your father ever complain about his ouster from the Savoy? A. Yes, sir, to a certain degree.

*By the Court*:

Q. As treasurer, you mean? A. Yes, sir.

*Further Cross*:

Q. Now, at that time, you had a conference with Charles Ashley, and didn't you tell him at that time that you were afraid your father might clean

out the treasury of the Savoy? A. No, sir.

Q .Did you ever have any discussion with Charles Ashley concerning that? A. No, sir.

Q .Did you ever disucss with Charles Ashley a proposal of having your father displaced? A. In conversation, yes, sir.

Q. What was that conversation?

Mr. Gourley: I object to it.

The Court: Objection overruled.

A. The conversation was in regard to Charlie and father not speaking; and to run the affairs of the Savoy Realty Company they would have to be on speaking terms.

*By the Court*:

Q. Is that your reason for voting to oust your father? A. Yes, sir.

Q. And the only reason? A. Yes, sir.

Q. Will you read the first five lines of "Exhibit V-4," just the first few lines where it says: "Dear Irve, Now the Savoy?" A. "Dear Irve: Now the Savoy is to pay 90%, but here is the situation; I put in every dollar; the Savoy has not one cent was contributed by any of you; I was one of its officers, and in the cold blood at a meeting I was thrown out of office by D. A. Jr., C. A. and your mother."

Mr. Benson: That is all.

*By the Court*:

Q. Your mother did not have any voting stock, then? A. It was at her house.

Q. Who had the proxy to vote for your mother?



A. Either Charles or myself.

Q. Does it show in the minutes? A. It should do.

Mr. Gourley: Your Honor will see that I am protected in getting these later minutes.

The Court: I will make an order that they be produced before the court.

Mr. Hedden: I offered to produce it.

Q. Was it true that your father put all the money into the Savoy Realty Company? A. Yes, sir, money and land.

Q. None of the boys contributed to that? A. No, sir.

*Further Cross*:

Q. After 1916, what office did you hold in the Savoy Realty Company? A. President.

Q. And did you have charge of the affairs of the Savoy from that time on? A. With Charles Ashley.

Q. And you were the person actively managing the corporation? A. I handled its affairs, yes.

Q. And you called meetings? A. When necessary.

Q. How often did you call meetings? A. About once a year.

Q. And who was present at these meetings? A. The records will show.

Q. Who was present at these meetings? A. I don't remember.

Q. Was your father ever present? A. I would not say.

Q. Was he ever notified to appear at these meetings? A. He was—

Q. How do you know that he was notified to appear? A. By the Secretary.

Q. Did you yourself call his attention to the fact that there was going to be a meeting of the Savoy at any time? A. I may have.

Q. You won't say that you did? A. No, sir.

Q. During that period of time you were the President all the time? A. Yes, sir.

Mr. Gourley: What concern has this to do with the case? This is not an accounting of the Savoy.

The Court: It is quite a little bit far afield, but I will allow it.

Mr. Gourley: What significance has all this?

Q. Did you at any time submit a statement of the condition of the Savoy Realty Company in 1916 to your father? A. Not in writing.

Q. Did you at any time pay any dividends? A. Yes, sir.

Q. How much? A. The records will show everything.

Q. Approximately? A. Over 100%.

Q. You sold some property as an officer of the company? A. Yes, sir.

Q. Didn't he complain that you never told him anything about it? A. No, sir.

Q. Never said a word about it? A. No, sir.

Q. You did not tell him about it? A. Yes, sir, I told him we sold the property at Columbia, Pennsylvania; the records will show what we got for it; Coatesville, Pennsylvania; and Hawthorne, New Jersey.

Mr. Gourley: They have examined it.



Q. You never gave him a written statement; what did you tell him was the condition of the Savoy Realty Company? A. The actual condition.

Q. What did you tell him was the condition of the Savoy Realty Company? A. Very good.

Q. How many times did you tell him that? A. Any number of times when the conversation was brought up.

Q. He requested information? A. Always.

Q. You never gave it to him voluntarily from 1916 on? A. I talked to him, yes, sir.

Q. When was the first time you spoke to him voluntarily about the affairs of this Savoy? A. Every year.

Q. Only once a year? A. Every year.

Q. How many times a year? A. Whenever I met him and talked to him about it—whenever the subject came up.

Q. Did you tell him what the total worth of the company was then? A. Yes, sir, $200 to $250 per share.

Q. When did you tell him that? A. As late as December, 1924.

Q. Did that arise out of an inquiry from him? A. It was during a conversation.

Q. At any time did you have charge of your father's financing? A. Only part.

Q. What part? A. I kept the stocks and bonds.

Q. And any other securities? A. Well, what securities he had he gave me.

Q. What did he give them to you for? A. To keep them. Some I kept in the safe deposit box, and some in my home.

Q. Did he keep any other securities at Irving's house? A. All I know is what was in the safe.

Q. Did he keep any securities at Irving's house? A. Not that I know of.

Q. Now, in 1923, did you borrow any money from your father personally? A. No, sir.

Q. And in 1924? A. No, sir.

Q. You received a check regularly from your father, didn't you? A. Yes, sir, I received a check regularly in 1924.

Q. How much was that check? A. From $200 to $250.

Q. Per month? A. I would not say.

Q. How much was it on an average per month? A. I don't know the average.

Q. Have you a record of that? A. Yes, sir.

Q. Where is that? A. I think we have it in the papers here.

Q. Will you get it? A. I can. (Witness steps down from the witness stand to get it).

Q. Did you borrow from time to time certain moneys from your father; September 27, 1912, $5700.00? A. I did not borrow it.

Q. You did not get it? A. I got it: he gave it to me.

Q. November 14, 1910, you drew all of his money out of the Corn Exchange Bank? A. No, sir, only on his order.

Q. How much? A. Various amounts, as he ordered it.

Q. What were those amounts? A. I can give you some items.

Q. Mention them? A. I bought the farm at Blairstown with the checks; paid Mrs. Bennett different items.

Q. Your father was capable of doing business in 1910? A. Yes, sir.

Q. You say that in spite of that fact that he gave



you the money so that you could spend it for him? A. I drew the checks and he signed the stubs of the book.

Q. And that was the method of business? A. That was that end of it.

Q. Did you receive any moneys at all for your own account out of the Corn Exchange Bank? A. No, sir.

Q. Never a penny? A. No, sir.

Q. Did your father ever talk to you about it? A. No, sir.

Q. Did he ever write you a letter about it? A. Not to my memory.

Q. On August 8, 1912, did you borrow money from your father? A. No, sir, he gave it to me.

The Court: He was giving money to these boys all the time.

Q. You signed a note dated August 8, 1912, for $1308.27? A. I signed that.

Q. Did you owe him that? A. No, sir, he gave it to me.

Mr. Gourley: I have demanded these notes from them, but never got them.

Q. On demand? A. Yes, sir.

Q. On September 27, 1912, for $5700—was that a gift? A. Yes, sir. On the Corn Exchange Bank it was paid out and included in these demand notes.

Q. Did you receive $5700 from your father? A. About that, yes, sir.

Q. After September 27, 1912? A. Yes, sir.

Q. And you kept it as your own personal estate, didn't you? A. No, sir.

Q. What did you do with it? A. It was there

subject to his order for a time.

Q. And then after a time? A. He did not demand it.

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

Q. He never demanded it and you never paid it back? A. That is it.

Q. Now, on December 23rd, 1911, did he have an account in the Corn Exchange Bank then? A. I think he had; he had an account there.

Q. Did he give you $5000? A. He may have, as a gift.

Q. Note dated November 23, 1911, signed "Dwight Ashley, Jr." for $5000 on demand; was ever any demand made on you for the payment of that? A. No, sir.

Q. You never repaid it? A. No, sir, not to my memory.

Q. On June 4, 1910, a note for $1617.50; did you receive any moneys from your father on that date? A. I would say so.

Q. Was that a gift? A. Yes, sir.

Q. Where did he give you this money? A. I could not say, either in Paterson or New York at his home, or in the office.

Q. Where did he give you the $5000? A. I could not say.

Q. Where did he give you the $1308.27? A. I don't know.

Q. Where did he give you the $5700? A. I don't recall.

Q. Did he give it to you by check or cash? A. By check.

Q. Was that deposited in your account? A. Yes, sir.

Q. On June 4, 1910, you signed a note, "Dwight Ashley, Jr.?" A. Yes, sir .



Q. Which you promised to pay, $1617.50? A. Yes, sir.

Q. And that has not been repaid? A. No, sir.

Q. On August 8, 1912, did you receive any moneys from your father? A. I don't say from memory.

Q. Note dated August 8, 1912, signed "Dwight Ashley, Jr., on demand $1,000;" was ever any demand made by your father for the return of that? A. No, sir.

Q. Every time your father gave you any money did he extract from you a demand note? A. No, sir.

Q. You had charge of his check book? A. No, sir.

Q. I show you a paper with a list of securities on; is that in your handwriting? A. That is, yes, sir.

Q. How do you distinguish, Mr. Ashley, from the moneys that your father gave you and for which you gave promissory notes; and the ones that he gave you without the promissory notes? A. The Corn Exchange Bank was in my name for his use.

Q. And you held that as trustee? A. I held it for that purpose.

Q. I show you check dated May 2, 1910 for $1,000, payable to Dwight Ashley, Jr.; is that you? A. Yes, sir.

Q. Did you receive that money? A. I did.

Q. Did you repay it? A. It is included in these demand notes, to the best of my memory.

Q. I show you check for $750, dated July 15, 1910, payable to Dwight Ashley, Jr.? A. That is mine.

Q. Was that repaid? A. I could not say from memory.

Q. Was it a gift? A. It was, or repaid through the Corn Exchange Bank.

Q. October 30, 1909; I show you a check of $1,000, made payable to you, Dwight Ashley, Jr.? A. That is my check.

Q. Did you repay that? A. Not that I remember.

Q. I show you a check dated February 2, 1909, for $1,000? A. Same thing.

Q. Was that ever repaid? A. No, sir.

Q. Ever any demand for it? A. No, sir.

Q. December 27, 1909, $1500? A. Yes, sir.

Q. Did you receive that? A. Yes, sir.

Q. And one October 7, 1908? A. Yes, sir.

Q. Did you receive that money? A. Yes, sir.

Q. I show you a check for $10,000, April 26, 1913; did you receive that? A. The Savoy Realty Company received that; I received it and deposited it for the Savoy Realty Company.

Q. In other words, the Savoy Realty Company borrowed this from your father? A. No, sir, it was given to the Savoy Realty Company.

Q. $10,000? A. Yes, sir.

Q. Did he make any memorandum at the time he gave you this check for $10,000? A. I don' know.

Q. You have since examined his records, haven't you? A. No, sir.

Q. You don't know anything about it? A. No, sir.

Q. Now in 1914, I show you a check for $664.25, payable to Dwight Ashley, Jr., signed "Dwight Ashley;" did you receive that? A. Yes, sir.

Q. I show you another check, dated September 30, 1914, "Dwight Ashley, Jr." for $2728.00; did you receive that? A. Yes, sir.



Q. I show you another check January 30, 1917, for $2750.; did you receive that? A. Yes, sir.

Q. Did I understand that these were gifts to you? A. Yes, sir, except the Corn Exchange account.

Q. November 10, 1913, for $228.59; did you receive that? A. Yes, sir.

Q. A gift? A. Yes, sir.

Q. How do you account for your father giving you $228.50? A. I don't remember; the larger amounts were gifts.

Q. I show you check June 20, 1913, for $8,000? A. Yes, sir.

Q. Did you receive that? A. Yes, sir.

Q. That has not been repaid? A. No, sir.

Q. I show you a check December 23, 1911, for $5,000? A. Yes, sir.

Q. Did you receive it? A. Yes, sir.

Q. Has it been repaid? A. No, sir.

Q. November 14, 1910, for $400? A. I received it.

Q. May 2, 1910, $250.00; did you receive that? A. Yes, sir.

Q. Repaid? A. I don't remember.

Q. Would you say it was repaid? A. I don't remember.

Q. December 24, 1908, $1,000; was that received by you? A. Yes, sir.

Q. It was not repaid? A. No, sir.

Q. Did you ever give your father any money? A. From the Corn Exchange Bank, yes, about $12,000 or $14,000, roughly—money that father gave me to put in the Corn Exchange Bank.

*By the Court*:

Q. Have you repaid any money to your father out of your own funds? A. No, sir.

*Further Cross:*

Q. Now, then, Mr. Ashley, your father was in the habit of giving checks in the form I have just indicated, to each one of you? A. Yes, sir.

Q. When he gave those checks they were usually gifts? A. Yes, sir.

Q. And he never expected the return of any of these moneys from you? A. No, sir, not from me.

Q. Nor from Charlie nor from Irve? A. Only on certain checks.

Q. On what certain checks? A. On the demand notes he did not expect any return; on the demand notes of all of us he did not expect any return.

Q. And on the checks he did not expect any payment back? A. No, sir.

Q. From the three of you? A. For that time, in those years.

Q. Did he expect repayment of the moneys that he gave you for the Hawthorne Silk Company? A. He did not give me any.

Q. He never gave you any checks for the Hawthorne Silk Company? A. Yes, sir.

Q. Did you give him any note for the Hawthorne? A. Yes, sir.

Q. Where are those notes? A. Filed with the referee in each instance except $10,000.

Q. Did you ever buy any Japenese bonds, personally? A. Yes, sir.

Q. From whom? A. From somebody in town; I don't remember.

Q. Did you buy any Japanese bonds? A. Yes, sir.

Q. About how long ago? A. About 1919, I think.

Q. About how many did you buy? A. I don't remember just now.



Q. About? A. Two or three thousand, something like that.

Q. Your father had bonds, too, didn't he? A. Yes, sir.

Q. Did he have any Japanese bonds? A. Yes, sir.

Q. How many? A. The records will show it; I don't know.

Mr. Gourley: You mean the inventory.

Mr. Benson: I object to your making any comment at this psychological moment.

Q. Did your father have any Japanese bonds when he died? A. Yes; they show in the First National Bank.

Q. What do you say, if ever—you were the executor— A. He did have Janpanese bonds when he died.

Q. How many? A. I don't know.

Mr. Gourley: I could not tell you myself.

Q. You have looked at the inventory? A. I have glanced over it.

Q. You did not make it up? A. No, sir.

Q. You had it inventoried by Mr. Dudley? A. The appraisers, yes, sir.

Q. Russell West? A. Yes, sir.

Q. And you assisted them? A. I gave them what I had, yes.

Q. And you made all inquiries about all property belonging to your father? A. Yes, sir.

Q. You wanted this inventory to be a true inventory? A. Yes, sir.

Q. So, far as you know, on the date of this inventory you did not call their attention to the fact

that there were Japanese bonds in the First National Bank? A. It is so specified in the inventory what is in the First National Bank.

Q. Did you refer to any bonds with the First National Bank, Japanese bonds?

The Court: Better confront him with the inventory.

Q. Is that a copy of the inventory? A. This is a copy, I presume, of the inventory.

Q. Do the Japanese bonds appear there? A. No, sir, they do not.

Q. You knew at the time there were some in the First National Bank? A. At a time.

Q. At the time you assisted in making the inventory? A. I am not certain in regard to the time.

Mr. Gourley: If you have any securities that are not in the inventory, ask him about it.

Q. Mr. Ashley, you spoke a few minutes ago that there were certain bonds in the First National Bank as collateral? A. Yes, sir.

Q. When did you have them? A. From the time they were placed there; that was during the time of the Hawthorne Silk Company notes.

Q. So far as you know, they were continued there? A. Yes, sir, they were placed there in escrow as collateral.

Q. When were they sold? A. I don't remember the date.

Q. About what year? A. Maybe some in 1923 and some in 1924.

Q. Were they ever in your possession? A. They were.



Q. How many? A. I don't remember the amounts.

Q. I show you a recipt "Received bonds as per List 28;" did you receive them? A. That is my signature.

Q. It refers to 28 Japanese bonds? A. Yes, sir.

Q. Did you receive them? A. I received those at that time.

Q. What did you do with them? A. It all depends on the issue; I cannot tell by the numbers.

Q. You only had about $3,000 of your own Japanese bonds? A. About that.

Q. Can you tell us what you did with the rest of them? A. The Japanese bonds that matured were deposited in father's account.

Q. How many matured? A. About fourteen thousand, if I remember rightly.

Q. What happened to the remaining— A. All that matured were deposited; the rest went in as collateral.

Q. And there they are now? A. Or were sold.

Q. You owed the Second National Bank certain moneys personally? A. Only on the indorsement.

Q. How much was that for? A. The total note was $15,000.

Q. How many Japanese bonds did you deposit as collateral stock? A. About $2,000. They come in pounds; they don't come in dollars.

Q. Now, in the summer of 1924, and later on, you had disucssions with your father over his financial affairs, didn't you? A. I think so.

Q. He was in your house then? A. Yes, sir, from August, 1924.

Q. And at that time he believed that he was rather impoverished, didn't he? A. No, sir.

Q. Did he think he was rich? A. From his own books which he has.

Q. From his statements to you, would you say that he led you to believe that his fortune was still intact? A. Except what he spent, yes.

Q. You know of a conference at your home on a Sunday night when you and your father and Charles and Irving were there, and he discussed the question of the Savoy and the Hawthorne Silk Company? A. No, sir.

Q. Just before it went into insolvency? A. No, sir.

Q. And you left and went downtown? A. Charles Ashley was not there; I was there and Irving was there.

Q. Didn't he at that time say that "You boys have ruined me?" A. No, sir.

Q. He never said that? A. No, sir.

Q. Did he ever complain that you had taken from him? A. No, sir.

Q. Never said a word? A. No, sir.

Mr. Benson: I want "Exhibits G-9" and G-11" Mr. Gourley.

Q. I show you "Exhibit G-9;" is that in your father's handwriting? A. Yes, sir.

Q. Will you read on the back sheet there towards the bottom, "Now my income was cut;" do you find it there?

Mr. Benson: It simply shows that he thought at the time that his resources were gone; this was in June; and one is in November, 1924. Our contention is, that they gave him the impression and let him continue that impression, that he did not have



any money; that is why I have asked him about these statements. It would be quite important where one party knew they were of great value, and the testator did not.

Q. Can you find that here: "Now my income was cut?" A. "Now my income was cut; my income was cut when I paid $80,000 to pay the money I borrowed for Hawthorne Silk Company, and what I have left the income will go to you, Ma, Dwight and Irving."

Q. Next line. A. "I don't think it will go far enough to keep the present expenses but the problem we all face is to do with what we have left."

Q. Mr. Ashley, what is the date of your father's will? A. April, 1924.

Q. And the relationship at that time with the boys was about the way it always had been? A. About.

*By Mr. Gourley*:

Q. What do you mean "the way it had always been?" A. In April, 1924, when the will was made, the feeling was about the same, the same as it had been.

*Further Cross*:

Q. Was there any reconciliation? Charlie was not reconciled at that time? A. No, sir.

Q. He was not on speaking terms with your father? A. No, sir.

Q. Irving was friendly with him at that time? A. Yes, sir.

Q. And you were friendly with Irving? A. Yes, sir.

Q. Did he discuss with you the making of the

will of April, 1924—your father? A. No, sir.

Q. When did you get the first intimation that he was going to draw a will in 1924? A. I don't remember.

Q. Had he discussed it in your presence with anyone before April? A. Not that I remember, no.

Q. How did you come to go with him when he made that will? A. Because he was atmy house.

Q. Staying there? A. He was at my house a certain time.

Q. Living there? A. Temporarily, yes.

Q. He was just visiting? A. He was visiting there from the farm.

Q. You know at that time your father had executed wills giving the boys all alike? A. No, sir.

Q. But you knew that afterwards? A. I never saw it.

Q. Did you know at that time that he had a will? A. Yes, sir.

Q. Did he show it to you? A. No, sir.

Q. Did he tell you about it? A. No, sir.

Q. You say you went with him? A. I took him; I drove him.

Q. What was the condition of his health at that time? A. Very good.

Q. And he gave directions then to make the will in equal shares? A. I don't know anything about that.

Q. Who drew the will? A. The Prosecutor (Dr. Gourley).

Q. You were present at the time? A. I was in another office in the building.

Q. You went with your father into Mr. Gourley's office? A. No, sir, I went in the business office.

Q. You were in Mr. Gourley's office? A. I was



in one of his offices, but I was not with the Prosecutor and my father.

Q. Did you get lost in all these offices? A. No, sir.

Q. Which office did you go in? A. I went in the business office.

Q. Who else was there when you went in? A. During the time I was there I met three or four.

Q. Who? A. Mr. Force, Mr. Boyle, Dr. Gourley, and I think Mr. Comstock.

Q. Was Mr. Gold there, too? A. I don't remember—when the will was made.

Mr. Benson: I just want to show the credibility of the witness on one point.

Q. Now, will you say whether or not, positively, whether Mr. Gold was there? A. I won't say.

Q. Will you say he was not there? A. I won't say either one.

Q. Did you hear Mr. Boyle testify in the Orphans' Court? A. Yes, sir.

Q. And did you hear the question: "Ques. Who were present at the time?" and his answer was: "Ans. Dwight Ashley, Sr., Munson Force, Mr. Gourley, myself and Dwight Ashley, Jr." A. I don't remember that.

Q. You have not any reason to question that testimony? A. No, sir.

Q. Were you then in the office when the instructions were given to draw the will? A. No, sir, I went in another office.

Q. Now, how long was Mr. Ashley, your father, in the office? A. I would say all together about three-quarters of an hour.

Q. And you were called back in the office again?

A. I drove Mr. Force and father home.

Q. Your father gave you the will? A. Yes, sir.

Q. Did he tell you the contents? A. No, sir; he told me to put it in the safe, and I did so.

Q. When was the first time you knew of the contents of this will of April, 1924? A. After father's death.

Q. That was the first intimation? A. Yes, sir.

Q. Did your father talk to you about this will before his death? A. No, sir.

Q. Did he say he had given the boys equally? A. Not to my memory.

Q. He gave you the will to take down to Mr. Gourley's office? A. Yes, sir, and it was sealed when he left the house.

Q. How do you know it was the will? A. He told me to take it out of the safe and take it to Mr. Gourley's; the will was in the safe up to January 9th—in my safe.

Q. You had access to the safe? A. Yes, sir; it was sealed.

Q. The codicil was likewise sealed at the house? A. No, sir; Mr. Gold sealed the codicil, which was attached to the will.

Q. At your house? A. In the car; he sealed the envelope.

Q. Did you have the custody of the will made by your father, marked "Exhibit C-1" and dated the 27th of June, 1910? A. No, sir.

Q. Do you know where that was? A. It was in 469 River Street, Paterson; I know that because I have opened the safe many a time and gone in it, and seen it marked "Will."

Q. Did you know anything about the contents of it? A. No, sir.



Q. It was there and you never read it? A. I did not read it.

Q. And it was there? A. Yes, sir.

Q. Your father expressed to you and to others in your presence, that he wanted to treat the boys all alike, didn't he? A. Yes, sir, at a time.

Q. He thought a good deal of the boys? A. Yes, sir.

Q. Regardless of what they did? A. Up to a certain date.

Q. I say to you, he thought a great deal of the boys regardless of what they did? A. Yes, sir, up to a certain date.

Q. What date was it? A. The fall of 1924, when he changed his viewpoint.

Q. How did you know he had changed? A. In his conversation to me he expressed himself.

Q. Had you, up to that time, knowing your father's affection for the boys, favored an equal division of the property? A. Certainly.

Q. I show you a paper dated October 29, 1918; is that in your father's handwriting? A. Yes, sir.

Q. Will you read it? A. "I here attach this to my last will and testament that the executors of my will shall be Dwight Ashley, Jr., and William B. Gourley; that any money or loans made to any one of the boys, Dwight Ashley, Charles Ashley and Irving Ashley that exceed more than an equal loan to each and is not returned or not paid back, the same unequal amount must be deducted from their share of distribution in said estate, and as the intention of the will is to have share and share alike, as above directed, in event of either of the above executors will not qualify, I will have them name one more executor as they choose. (Signed) September 29, 1918." It does not correspond with the

top.

Q. It is all in the same handwriting? A. Yes, sir.

Mr. Benson: I offer it in evidence.

Marked "Exhibit B. V-7."

Q. Up to April, 1924, at the time of the execution of the will, your father and Charlie were estranged? A. Yes, sir.

Q. And there had been no reconciliation at that time? A. He met him once.

Q. That was all? A. Yes, sir.

Q. That one occasion was where? A. In my house.

Q. And your father and Charlie met rather affectionately, didn't they? A. No, sir.

Q. Did you see your father kiss Charles? A. Yes, sir.

Q. And they were there for some time? A. No, sir.

Q. How long at that time? A. A very short time, half an hour.

Q. You say your father and Charlie were estranged for 14 years? A. I don't say 14 years.

Q. How many years do you say? A. About eight or nine.

Q. Now, you are sure it is eight or nine? A. Yes, sir.

Q. On examination in December you said it was 14 years; how did you determine it then to be 14 years? A. I don't remember saying 14 years.

Q. Was it untrue then? A. I would not say; I cannot give the exact time.

Q. But now you say eight or nine years? A. Yes, sir.

Q. You talked to your father about the differences between Charlie and your father? A. No, sir.



Q. Never said a word about it? A. Very rarely.

Q. Did he ever say anything about it? A. Very rarely.

Q. That was prior to the will? A. Yes, sir.

Q. Then in 1924 he began to talk to you about it, didn't he? A. With business, yes, sir.

Q. What do you mean? A. With business conditions.

Q. Wasn't he rather broken up about the Hawthorne Silk Company? A. Naturally.

Q. At that time you were an officer of the Hawthorne Silk Company? A. Yes, sir, Vice President.

Q. And he at that time was very friendly to Irving? A. I don't know.

Q. He visited Irving? A. I was not there.

Q. You know he visited Irving as late as December, 1925? A. No, sir, I do not, in 1925.

Q. You say you have no information regarding that? A. You mean 1924, December, 1924 he may have seen him.

Q. Did he visit him in the summer of 1924? A. Yes, sir, I think so.

Q. He went to his summer place at Hawthorne Park? A. I think so.

The Court: Who did?

Mr. Benson: The father.

Q. Your mother stayed at Irving's house in 1924? A. She moved.

Q. You don't remember? A. No, sir.

Q. You say, then, in 1924, the latter part of 1924, your father talked about Charlie, didn't he? A. Business connections, in connection with it.

Q. He did not say anything about Irving? A. About business conditions.

Q. Wasn't he very anxious to save Irving? A. Yes, sir.

Q. And he still had a great affection for Irving? A. In the fall of 1924, yes, sir.

Q. And that continued right on up until January 4th, didn't it? A. No, sir, I would not say so.

Q. He endorsed Irving's notes just in December? A. About the middle of December, yes, sir.

Q. He did not complain about endorsing those notes? A. Yes, sir, he did complain.

Q. What made him complain? Did you have anything to say about it? A. No, sir, he told me; he said at different times whatever the occurrence was.

Q. He was not a man given to very much talk? A. As the conversation opened—yes.

Q. Who opened it? A. It all depends on the conversation.

Q. Did you ever open it regarding Irving? A. No, sir.

Q. Your father suffered a paralytic stroke in August, 1924? A. Yes, sir.

Q. And he stayed at your house for six or eight weeks? A. Yes, sir.

Q. And he was sick during that entire time? A. Not the entire time, no, sir.

Q. Was he able to be around all the time? A. Not all the time.

Q. Then he went back on the farm? A. I think so.

Q. Then he came down again? A. Yes, sir.

Q. Four times, didn't he? A. I don't know the number of times.



Q. Just before his death? A. I don't know the number of times.

Q. On one occasion you went to the station to pick him up? A. At different times when he asked me to.

Q. You only went there when he asked you? A. Yes, sir, otherwise I would not know when he was coming.

Q. Would he write you letters when he was coming? A. He may have.

Q. Now, in 1924, in the fall, were not you on friendly terms with Charlie? A. Business terms, yes.

Q. Answer my question. Were you on friendly terms with Charlie in the fall of 1924? A. Yes, sir, I would say so, personally.

Q. You hesitated; were you on affectionate terms? A. No, sir.

Q. For how long had you not been on affectionate terms with your brother Charlie? A. I don't know.

Q. Were you on affectionate terms with your brothers? A. No, sir.

Q. Were you on friendly terms with Irving in 1924,—the latter part? A. Yes, sir.

Q. Affectionate? A. What date?

Q. Around November and December. A. No, sir.

Q. You were not on friendly terms then with Irving? A. No, sir.

Q. You at that time requested him to consent to the transfer of $50,000 of the Savoy Realty Company to the Hawthorne Silk Company, as a stockholder? A. He had already consented to part.

Q. And he refused to assent to the balance? A. Yes, sir.

Q. Do you recollect telling him that if he did not sign a paper he need not come around? A. Yes, sir, I do.

Q. And he did not sign the paper? A. No, sir.

Q. But he came around in spite of that to see his father? A. His father was dead when I told him that.

Q. In November, 1924, when you presented to him a paper to be signed and he said he would not do it, didn't you tell him, "Don't enter my house until you sign it;" or words to that effect? A. No, sir.

Q. You were very much provoked? A. I was.

Q. You said, "It is just an ordinary little matter, just a matter of form?" A. It was a legal paper.

Q. You had secured no authority from the Board of Directors— A. Yes, sir.

Q. And you tried to induce Irving to sign a paper, the effect of which you said was purely formal? A. I did not say that.

Q. I show you a letter dated March 4, 1924, addressed to "Dear Irve;" is that in your handwriting? A. Yes, sir.

Q. You requested him at that time to sign the original paper, didn't you? A. I shall have to read it.

Q. Read it. A. "Father returned me enclosed not signed; this is a form only between ourselves; Charles and I signed a guarantee to Perley Morse & Company. If we do not sign for Perley Morse & Company, then the Savoy is tied up that much longer; don't think I am not willing to talk at any time when you will on anything for benefit of all. Hope to receive this by return mail, signed, and I can guarantee all signatures. This amount to be



paid out of Savoy and not individually." This was a guarantee.

Q. Did you have a meeting before you sent this letter? A. No, sir.

Q. Did you have any assurance from anyone that the others were going to sign? A. Charles had signed, father had signed; I was willing to sign, and Irving was sent to for his signature, and he signed that bill.

Q. And at that time, on March 4, 1924, the money had already been withdrawn? A. I cannot answer that question.

Q. Didn't you pledge the Savoy property without the consent of the stockholders, to guarantee the Hawthorne debt— A. No; this is a bill of Perley Morse commissions.

Q. How much did you get Irving to consent to take out of the Savoy on this paper you requested him to sign? A. That paper does not refer to it.

Q. How much was taken out? A. I don't remember the exact amount.

Q. I show you a paper signed by Dwight Ashley, Jr., Charles Ashley and Dwight Ashley, dated October 25, 1924; will that refresh your memory as to the amount? A. This is the paper that he did not sign.

Q. How much is that for? A. For $51,000.

Q. And from that time on you were displeased very much with Irving? A. Correct.

Q. You told your father that Irving refused to sign? A. Yes, sir.

Q. And what did you tell him? A. That he refused to sign that.

Q. Did you tell him the reason that he gave? A. He said Irving told me that he would not sign the paper.

Q. Did you tell your father the whole statement that Irving made of his refusal to sign? A.I don't remember the statement.

Q. But he did tell you that he would not sign for certain reasons, didn't he? A. Yes, sir, on advice of counsel; that is what he told me.

Q. And he told you what reasons had been given, too? A. No, sir, I don't remember.

Q. Will you find while you are here the authority to take out the $51,000 from the Savoy Realty Company? A. You have the records.

Q. October, 1924? A. The one prior to this.

Q. Where is it? A. I have possession of it.

Q. Where is it? A. Right here.

Q. I want the resolution that authorizes the payment of $51,000 as security— A. There is no resolution in here.

Q. When was it paid out? A. It is in escrow.

Q. When was it taken from the Savoy and placed in escrow? A. In 1922, I think.

Q. Did you speak to your father about that? A. Yes, sir.

Q. When? A. When the paper was signed and before.

Q. When before? A. Some time before.

Q. As a matter of fact, you did not tell your father anything about it until the first paper was signed? A. Yes, sir, I did.

Q. That was drawn in 1922? A. About.

Q. And you say your father knew all about it? A. Yes, sir.

Q. I show you a paper dated the 25th of October, 1924, marked "Exhibit V-10;" is that the time that your father first knew of the withdrawal of $51,000? A. This is a copy of the other.



Q. In 1924, when your father signed this consent, that was the first intimation he had of the withdrawal of the $51,000? A. No, sir.

Q. When did you first tell him? A. In 1922 he knew of it.

Q. And was he pleased with that? A. Not any more than I was, no.

Q. Did he at any time say it was illegal for you to do that? A. No, sir.

Q. Did he consult counsel regarding it? A. I don't think so.

Q. Why did you, in 1924, endeavor to put it in writing? A. We had previously had it in writing—

Q. Where is that? A. It was taken from me.

Q. And that original writing was the first time your father knew anything about it? A. I think so; or a little prior to that.

Q. How much prior to that? A. In 1922.

Q. Now, when the Hawthorne Silk Company went into bankruptcy, your father was much exercised over the loan of the $51,000? A. It was not a loan.

Q. Did he comment about it? A. He commented about it being tied up.

Q. Now, in 1924, while the Hawthorne Silk Company was in difficulties, you knew that Charles had made a demand against Irving for payment of a certain debt that the Gary owed to the Hawthorne? A. That was quite a few years ago.

Q. Do you know since that time whether Charlie and Irving had been on friendly terms? A. I knew they had been unfriendly.

Q. And that had continued right up until after the death of your father? A. Yes, sir.

Q. And your father knew it and you knew it? A. Yes, sir.

Q. And your father, in order to protect Irving from that alleged claim, gave a note of the Hawthorne Silk Company for $10,000 in December, 1924? A. Prior to that time, yes.

Q. When did he give him the note? A. In May of that year, 1924.

Q. Are you sure of that? A. Quite sure from memory.

Q. The purpose of giving that note was purely to protect him against any claim of the Hawthorne Silk Company? A. Yes, sir.

Q. So at that time he was very friendly with Irving? A. What do you mean was very friendly with Irving?

Q. I mean your father. A. Yes, sir, father was friendly with Irving.

Q. When did your mother come to live with you? A. In July, 1924.

Q. Did you know she was writing your father about the domestic affairs of Charles? A. No, sir.

Q. Did she talk to you about it? A. No, sir.

Q. Did you at any time discuss the matter of Charles' domestic affairs with your mother? A. No, sir.

The Court: We will take a recess now.

Recess to 2 P. M.



After Recess

DWIGHT ASHLEY, JR., resumes the witness stand.

*Cross-examination (continued) by Mr. Benson:*

Q. Do you recollect, Mr. Ashley, recounting at your home in the presence of your family how you had detained Charles at a meeting of the Board of Directors of the Hawthorne Silk Company to enable his wife to get into Charles' home to remove their belongings? A. No, sir.

Q. There was no such conversation? A. No, sir.

Q. Do you recollect having a conversation with Charles over the telephone shortly after? A. I remember him calling me.

Q. And criticizing you severely about interfering in his domestic affairs? A. That is what he said, yes.

Q. Did you deny it then? A. Yes, sir.

Q. Did you offer any other explanation than a denial? A. No, sir.

Q. You did not interfere in the slightest degree? A. No, sir.

Q. Charles' wife came to live at your house? A. Yes, sir.

Q. You were familiar with her side of the case? A. Thoroughly.

Q. She told you about it? A. Some things.

Q. You did not know Charles' side of it at all? A. No, sir.

Q. He did not discuss it with you? A. No, sir.

Q. So you could not take sides? A. No, sir.

Q. You were not sufficiently familiar with their affairs to take sides? A. No, sir.

Q. Did you detain him at a meeting of the Board

of Directors at the Hawthorne Silk Company? A. No, sir.

Q. Did you ask him to stay a little later at any time? A. No, sir.

Q. I show you a letter dated May 28, 1924; is that in your father's handwriting? A. Yes, sir.

Q. It is marked "Exhibit G-6? A. Yes, sir.

Q. Will you read from the beginning? A. "My dear Ma: Lots of time on my hands, so will write a few lines. Received letter from Dwight and he incidentally said Charles had gone to Washington and would write me the results, as there is $50,000 held up with Government, and said he, Charles, was bound to get rid of Vio. It sounds so bad I can hardly believe the boy is in his right mind."

Q. Did you write such a letter to your father? A .I don't remember any such letter.

Q. Did you express any such sentiments that Charles was bound to get rid of his wife? A. Not that I remember.

Q. Will you say you never said that? A. I will not.

Q. You did talk to your father about Charles and his wife? A. In conversation with him.

Q. You did believe that Charles wanted to get rid of his wife? A. From what was told me.

Q. And you conveyed that to your father? A. Indirectly.

Q. You had no basis for such a conclusion, had you? A. Only what was told me.

Q. By the one side? A. Yes, sir.

Q. And notwithstanding that, you led your father to believe that it was Charles' fault? A. Not me.

Q. Did you lead your father to believe it was



Vi's fault? A. No, mother wrote letters to father.

Q. Where are those letters? A. They are in evidence.

Q. You had discussed this thing with your mother before your father's death, hadn't you? A. No, sir, I would not say I had.

Q. Do you mean to say when Mrs. Charles Ashley came to your house before your father's death, your mother went there, too; do you mean to say that these two people coming into your home, your mother and your sister-in-law, that there was not any direct conversation about it, the reasons for their coming there? A. Outside of being locked out, no.

Q. There was not anything else said? A. No, sir.

Q. The only thing you knew was, that they were locked out? A. There were other things discussed with Mrs. Charles.

Q. You got rather familiar with the reason for their separation? A. Later on.

Q. When was that; when were these conversations? A. In July, 1924.

Q. Then your father came there, too, didn't he? A. Yes, sir, occasionally.

Q. And he asked the reason why Vi was there, didn't he? A. He asked her.

Q. And he asked you? A. No, sir, I did not know, not directly.

Q. You just said that they had told you that they had been put out; didn't you know that? A. Yes, sir.

Q. Then you knew why they were there? A. Yes, sir.

Q. You told your father they had been put out, didn't you? A. I would not say.

Q. You don't know? A. No, sir.

Q. Did you hear Mrs. Charles Ashley say anything about it to your father? A. No, sir.

Q. Did you hear your mother talk about it to your father? A. No, sir.

Q. Did you try to correct the impression and try to get the true facts to your father? A. No, sir, I had nothing to do with it.

Mr. Gourley: What do you mean by "true facts?"

Q. You say you got these facts indirectly to your father? A. Indirectly in conversation.

Q. What did you say? A. I told him what I knew.

Q. But you did not know all the facts? A. No, sir.

Q. Did you make it clear to him that it would be well to hear both sides before you came to a conclusion? A. I did not say that to him.

Q. You only told him what you knew? A. Yes, sir.



Q. But you did not know them as facts? A. Not all.

Q. You knew that this was a serious matter, didn't you, between the families, your mother being there and your sister-in-law being there? A. Yes, sir.

Q. And you made no effort to find out the truth? A. That was not my affair.

Q. Notwithstanding that they were living in your home? A. For a short time at that time.

Q. And then later on continuously? A. Yes, sir.

Q. You assisted your sister-in-law? A. In what way?

Q. Financially? A. No, sir.

Q. You never gave her anything? A. Not to my knowledge.

Q. And you are as sure you did not tell your father that you were assisting Vi financially? A. If I did, it was repaid me.

Q. But you told your father you were assisting her? A. I may have.

Q. Did you tell him that it was repaid? A. He repaid it.

Q. I show you a letter, "Exhibit C-11;" will you read from "Vi's letter?" A. "Vi's lawyer advised her to leave home; it was a bad advice; it cost someone one hundred dollars or more; Dwight gave her the money and I paid Dwight."

Q. You know Carrie Clark? A. Yes, sir.

Q. She was up at what is designated as the farm? A. Yes, sir.

Q. And your mother wrote letters to your father — A. I never saw any.

Q. Did she give you any letters when you were there? A. Only what you have here.

Q. Did she give you any letters? A. Yes, sir.

Q. What else did she give you? A. The letters put in evidence.

Q. Did Carrie Clark give you any letters—letters written by your mother to your father? A. No, sir, she did not.

Q. Are you sure of that, Mr. Ashley? A. Yes, sir, I am quite sure.

Q. You have not those letters in your possession? A. No, sir.

Q. Now, then, do you recall a conversation at your home towards the end of 1924 when your father, in answer to a statement by Mrs. Charles Ashley that she had told her husband he was a failure, said to her that she ought to get down on her knees and apologize to her husband; will you say that was not said? A. It was not said in my presence.

Q. You are sure of that? A. I am sure it was not said in my presence.

Q. Now, then, did not Mrs. Charles Ashley and Mrs. Irving Ashley visit your home considerably sometime in the latter part of the year 1924? A. Yes, sir.

Q. Did you hear their different versions of their affairs? A. No, sir.

Q. They never complained about anything done by their husbands, to you? A. Just conversations.

Q. In those conversations did they complain; what was the substance? A. The substance was in Mrs. Charles' case that she was at my house to the latter part of 1924.

Q. Was not the chief topic in the home at that time the domestic difficulties? A. No, sir.

Q. Infrequently? A. Yes, sir.



Q. You did not consider them serious? A. No, sir, it was not my affairs.

Q. Now, you have heard your father say and commend Irving for his loyalty to him? A. Yes, sir, at times.

Q. He made quite a point of it? A. Yes, sir.

Q. Did he ever comment upon the loyalty of Charles? A. No, sir.

Q. You never heard him say anything about that? A. No, sir.

Q. You never heard him comment about your loyalty to him? A. No, sir.

Q. But it was fixed in his mind concerning the loyalty of Irving?

Mr. Gourley: I object to that kind of question.

The Court: Yes, withdraw that question.

Q. He made that comment more than once concerning the loyalty of Irving? A. Yes, sir.

Q. He made it right down in January, 1925? A. Not that I know of.

Q. Didn't he talk to you about it? A. No, sir.

Q. He made it in December, 1924, or the latter part of 1924? A. No, sir.

Q. Never made any comment? A. Not that I remember.

Q. Do you recollect that during the summer of 1924, that the Gary Silk Company was obliged to liquidate? A. I heard so; Irving told me so.

Q. And he came to see your father frequently about it? A. Yes, sir.

Q. And your father was very much interested? A. Those conversations took place with him.

Q. Were you ever present? A. Very rarely.

Q. At any time when he had any conversations

with his father, were you present? A. If I was there, yes; if I was not there, no.

Q. And he was very anxious to get Irving back on his feet again? A. He tried to.

Q. And that continued right down to December, 1924? A. Yes, sir.

Q. Now, so far as you observed, Mr. Ashley, Irving was having a rather strenuous time during the summer of 1924, in order to avoid a financial crash? A. I knew nothing of his affairs.

Q. He talked to you about it? A. No, sir.

Q. You were on friendly terms? A. Yes, sir.

Q. He came to your house quite frequently? A. Whenever he cared to.

Q. Stayed overnight? A. He might have; I would not say either way.

Q. And he sought advice from his father during that time? A. I believe so.

Q. So far as you know, his father assisted him as much as he could? A. I think so.

Q. You never saw Irving come into your home to visit your father under the influence of liquor? A. No, sir, I did not see him.

Q. You have never seen him under the influence of liquor? A. Yes, sir, once under the influence of liquor.

Q. In his entire lifetime? A. Yes, sir, during his whole life.

Q. And that was the day of your father's death? A. Correct.

Q. Your father was very much opposed to drink? A. Very much.

Q. You had liquor in your house? A. For medicinal purposes.

Q. Do you remember having a little still in your house? A. No, sir.



Q. Do you remember asking Irving to brew some beer? A. That was simply a try-out.

The Court: What is this for?

Mr. Benson: They made much ado about the drinking habits of these boys.

The Court: There is no conviction in the Court's mind that they were drunkards.

Q. Did you indulge? A. No, sir.

Q. What did you have the try-out for?

The Court: Don't waste too much time on that line.

Mr. Benson: The three boys were identically alike, even in November and December, 1924; he just said the father was opposed to liquor.

*By the Court*:

Q. All his life? A. Yes, sir.

*Further Cross*:

Q. You say that you did not attempt to make any near beer or beer in your home? A. Years ago, yes, sir.

Mr. Gourley: I object.

The Court: I will note the objection, and let it stand.

Q. You took liquor to the farm for your father? A. Yes, sir, a long time ago; at least two or three years ago.

Q. And your father requested you to bring it? A. Yes, sir, to have it on hand.

Q. What was the quantity? A. Four or five ounces.

Q. Do you remember Irving bringing it to the house and stating that his father had requested him to bring a bottle of malt? A. I remember the incident.

Q. Do you remember Irving saying your father wanted some malt extract? A. Yes, sir.

Q. Do you remember him going out and getting it? A. Yes, sir.

Q. Some kind of beer? A. Yes, sir, on Dr. Todd's advice he had one drink.

Q. In 1923 you had real beer in your house? A. Yes, sir.

Q. You had it there? A. Yes, sir.

Q. You had eight or ten cases of it? A. That he sent there, because he could not get it delivered in Ridgewood.

Q. Did you use any part of it? A. Very little.

Q. Your father used some of it? A. He did not.

Q. Did he know it was there? A. I don't know.

Q. You drank with Irving and Charles in New York, didn't you? A. I don't remember.

Q. Did you tell your father that you were a teetotaller?

Mr. Gourley: Objected to.

A. I did not tell him that.

Q. Did you tell him you never drank? A. No, sir.

Q. Did you lead him to believe that Charles and Irving drank? A. No, sir.

Q. Now, in November, 1924, do you recollect the family being at your home on Thanksgiving? A. I do.

Q. They were all there? A. Yes, sir.

Q. And was Charlie there? A. No, sir.



Q. They were not all there, then? A. All except Charlie were there, as far as I recall.

The Court: Thanksgiving Day, 1924, is that, Mr. Benson?

Mr. Benson: Yes, sir.

Q. Now, then, after that meeting in November, did your father go back to the farm, after the Thanksgiving dinner? A. Yes, sir.

Q. He went immediately back to the farm? A. Yes, sir.

Q. He spent most of his time on the farm? A. Practically, in the last few years.

Q. Your mother still continued to live with him at that time? A. Yes, sir.

Q. And after November, the Thanksgiving of November, 1924, when was the next time you saw your father? A. Sometime in December.

Q. At your home? A. I think so.

Q. What was his physical condition then? A. Quite well.

Q. What did he come down for? A. A change.

Q. Did he come down to have an examination by Dr. Todd? A. He may have.

Q. Dr. Todd came to your house? A. Whenever he was requested to.

Q. Will you say he was not there at that time? A. I cannot say.

Q. When did he come again? A. He may have come two or three times in December, 1924.

Q. Don't you know? A. No, sir, I have no date.

Q. You have no idea? A. No, sir.

Q. Now, when he came down in December, did you have any discussion with him; the first time in December, 1924, did you discuss any business

with him? A. About the Hawthorne Silk Company—yes, sir.

Q. Did you at that time discuss the affairs of Charles and Irving? A. Not that I remember.

Q. Will you say that nothing was said about Charles and Irving? A. I won't say.

Q. Did you call up Irving to tell him that his father was at your house? A. I may have.

Q. Will you say you did? A. I won't say.

Q. The second trip down in December was anything discussed relating to Irving and Charles' affairs? A. I make the same answer to it; I don't know.

Q. Did you call up Irving to tell him that your father was there? A. I may have.

Q. Do you know that he came down to Irving's house as late as December, 1924? A. I don't know, he may have.

Q. At that time—that is, December—did you discuss with him the distribution of his property? A. I did not.

Q. Did he talk to you about it? A. He did not.

Q. Was anything said about the domestic difficulties of Charles at that time? A. It may be.

Q. What did you say? A. I don't remember; there may have been a conversation, but I don't remember.

Q. Now, you say you cannot tell how many times he came down in December, 1924? A. No, sir.

Q. Did he come to your house each time? A. I think so.

Q. What brought him down on January 4, 1925? A. He was not feeling well.

Q. What was his trouble? A. Heart trouble.

Q. Had he had any further stroke? A. No, sir.

Q. Was anything the matter with his kidneys?



A. From information—later I knew it.

Q. When he came down in January, 1925, he was a rather sick man? A. No, sir.

Q. Was he in good shape? A. He was in medium shape.

Q. And from January 4th, for the first week of his stay at your house he was in fair shape? A. Yes, sir.

Q. No question about his being all right; he was just resting? A. Outside of the heart trouble, he was resting the first day or two when he came down.

Q. And that continued right up to the second week? A. The change was after a day or two of rest—after the 4th.

Q. Would that make it the 5th or 6th? A. Yes, sir.

Q. What happened then? A. He was around.

Q. And he was all right then? A. Outside of the heart trouble. He had to be very careful.

Q. Was he up and downstairs? A. Yes, sir.

Q. Did he continue on the 6th to come downstairs? A. I believe so.

Q. And the 7th and the 8th and the 9th? A. Yes, sir.

Q. And you are sure of that? A. Yes, sir.

Q. He was not confined to his room at that time? A. No, sir.

Q. And you are sure of that? A. Yes, sir, quite sure.

Q. Are you sure, is what I asked you? A. Yes, sir, I am sure.

Q. And the fourth day when he arrived, did you go and get him at the station? A. I did.

Q. And was he in a condition to talk any busi-

ness at that time? A. It was late in the evening, he was in fair condition.

Q. So you took him home and he went to bed without any assistance? A. Yes, sir.

Q. How, on the 5th day of January, 1925, what time did he get up in the morning? A. I don't remember that.

Q. About what time? A. I don't know.

Q. You were home all the time? A. No, sir, I went to different places on business—personal business.

Q. What business? A. In connection with lots of things—silk business, Hawthorne business; Savoy business and other business.

Q. What part of the day were you home? A. In the evening, always. I might have been home sometime during the day.

Q. Now, on the 5th of January, did your father talk to you about his affairs? A. No, sir.

Q. Your mother was there? A. I think so.

Q. And Mrs. Charles Ashley was there? A. I would not say.

Q. Didn't she come back while he was sick—Mrs. Charles Ashley? A. I would not say whether she was there on the 5th or the 6th, or any time around that time.

Q. You recollect on the 6th he was able to dress himself and walk around? A. Yes, sir.

Q. And he did not discuss any financial affairs with you that day? A. Not that I remember.

Q. Well, he did not, did he? A. Not that I remember.

Q. Then on the 7th he was around just the same as he had been all the time? A. Yes, sir.

Q. And on the 8th the same? A. Right along;



he had been in condition to talk when there was any conversation to talk about, right along.

Q. Now, then, on the 7th there was no conversation about finances? A. I don't remember the date.

Q. And on the 8th? A. I don't remember the date; I don't know.

Q. You don't know what happened to your father on the 7th or 8th of January, 1925? A. I don't know what the conversations were, and I don't remember them except that he was there.

Q. Now, up to the 9th you had no business conversatoins with him? A. I don't remember any direct conversation.

Q. And you are pretty sure of that? A. Fairly.

Q. Now— (interrupted)

Mr. Gourley: As far as he can recollect, he says "No."

The Witness: I say "No."

Q. You say then that you had no conversation respecting his property in any form whatever up to the 9th?

Mr. Gourley: That is eight or nine times you have asked that question.

A. I would say "No" to that.

Q. When was the codicil made? A. On the 9th of January, 1925.

Q. Do you recall (page 24) being asked this question, on direct examination: "Ques. How many times did he speak to you on that subject (referring to the stock)? Ans. A half a dozen times at least. Ques. Was that before or after the codicil was made? Ans. Before the codicil was drawn."

A. The stock question is one, and the financial end of it is the other.

Q. How many times did he talk to you about the stock? A. He asked me to make a distinction on the stock.

Q. On the 4th did you talk to him about the stock? A. No, sir.

Q. On January 5, 1925, did you talk to him about the Savoy stock? A. I did not ask him anything about the stock.

Q. Right up to the 9th? A. No, sir.

Q. You had no conversations with him? A. He spoke to me.

Q. And you made no answers? A. He wanted to give me the stock.

Q. That was before the making of the codicil? A. Yes, sir.

Q. What stock do you refer to? A. The Savoy Company stock; that was in fathers' possession.

Q. Where? A. I don't know.

Q. You are sure you don't know? A. Positive.

Q. Later on you knew where it was? A. After he gave it to me.

Q. Where did he have it then? A. I don't know.

Q. You don't know where he kept it? A. He might have kept it, but I don't know where.

Q. Do you know where the stock was between the 4th of January and the 9th? A. No, sir.

Q. When did you see it first after the 9th? A. One or two days after.

Q. And did your father have it in his possession? A. Yes, sir.

Q. Have you handed it to him before that? A. Yes, in November, 1924.

Q. Where did you give it to him? A. I don't



know whether I gave it to him or mailed it to him.

Q. Where did you mail it to? A. If I mailed it it was to Blairstown.

Q. Why did he want it in November, 1924? A. He either asked me for it or wrote for it.

Q. Have you the letter? A. No, sir.

Q. Where is the letter? A. I don't remember that I ever had a letter; I say he either asked me for it at my house or wrote for it.

Q. You mailed it to him? A. I either gave it to him or mailed it to him; my records are marked.

Q. In November, 1924, Mr. Ashley, you had had a conversation with your father regarding the Savoy stock, hadn't you? A. I may have.

Q. What was that conversation? A. I don't remember it offhand.

Q. Why did you talk to him about the shares of the Savoy stock in November? A. He wrote for the stock, or he asked me for it.

Q. What did he say when he asked you? A. He did not say what he wanted it for.

Q. What did he say? A. I don't know whether it was by conversation or letter; I cannot remember.

Q. Do you remember the conversation with your father in Irving's presence about the equal division of his property? A. Stock or real estate?

Q. Stock. A. I don't remember that.

Q. That was in November? A. I don't remember that.

Q. Do you remember him saying to you, "I will give you 70 and Irving 70"— A. No, sir; he told me that he offered Irving 70; I remember that conversation.

Q. Did he tell you he was going to give you 70 at that time? A. He did not say that.

Q. Didn't he tell you that Irving told him that he did not want him to give it to him? A. No, sir, he said he did not make any answer.

Q. One way or the other? A. That is right.

Q. Now, after the 4th of January, 1925, did you notify Irving that your father was there? A. I did.

Q. You talked to him on the telephone? A. No, sir.

Q. Did you notify him? A. Yes, sir.

Q. In person? A. Yes, sir.

Q. Where? A. At his house.

Q. Did you talk to him personally? A. No, sir, to his wife.

Q. You did not know, from your own knowledge, whether Irving knew that your father was there or not, did you? A. No, sir.

Q. And you knew at that time that there was difficulty in the Irving Ashley home? A. To a certain degree.

Q. Why didn't you get hold of Irving; you knew his business address in January, 1925? A. He was not at business on Sunday, on January 4th.

Q. Is that the reason you did not let him know at his business address? A. Yes, sir.

Q. Then did you try him on Monday? A. No, sir.

Q. Did you try him on Tuesday? A. No, sir.

Q. Did you try him at any time after that? A. No, sir.

Q. Your father at that time was rather seriously ill, wasn't he? A. I did not consider it so on the 4th.

Q. Had not the doctors told you that the man



was likely to die at any minute? A. That was long afterwards.

Q. Are you sure? A. Yes, sir.

Q. And you are sure of that? A. Positive.

Q. Don't you know at the time your father came down for the first few days, that his life was despaired of? A. At that time.

Q. No question about that in your mind? A. No, sir.

Q. When did he first—what day after his return to your home after January 5, did he first speak of the Savoy stock? A. Prior to the 9th.

Q. When was that? A. A few days prior to the 9th.

Q. How many days? A. Maybe two or three days.

Q. You would not say it was four? A. No, sir.

Q. How did he come to discuss at that time the question of the stock? A. Father told me—he offered Irving the shares evidently the night before, because he told me the next morning; one-half his shares "if he would join me."

Q. What do you mean by that? A. That is his conversation.

Q. So, in other words, he did offer you 70 shares?

Mr. Gourley: I object to that; he is entitled to bring out what occurred.

A. Father told me that he had offered Irving one-half of his shares.

Q. And what else did you say? A. To join me in the Savoy business.

Q. What did that mean—to join you in the Savoy? A. To keep the company as it had been kept.

Q. He wanted the company at that time to continue in the family? A. Yes, sir.

Q. He did not want it to be a one man corporation? A. He never said so.

Q. Did he say he wanted it a one man corporation? A. No, sir.

Q. Didn't he want it right in the family so the boys would be together? A. Yes, sir.

Q. That was the only conversation you had on this evening respecting the stock? A. It was in the morning.

Q. Do you recollect hearing Dr. Todd testify in this case? A. I was there.

Q. You were there all the time Dr. Todd was there? A. Yes, sir.

Q. I will read to you from page 145: "Ques. Do you know it was the last time he came down? Ans. Yes, sir. Ques. When you first saw him he was in quite bad shape? Ans. Yes, sir. Ques. That was the early part of January, wasn't it? Ans. I have forgotten exactly. Ques. You know it was the last time he came down? Ans. Yes, sir. Ques. It was at that time that he was in a pretty confused state of mind and body? Ans. No, sir, he was physically very ill when he came down; so ill I thought he was going to die; I thought so for a period of 24 hours." Do you recollect that? A. Yes, sir.

Q. Did Dr. Todd tell you that? A. No, sir.

Q. Your father looked about the same to you? A. Yes, sir.

Q. He came up and down stairs during that entire time? A. Yes, sir.

Q. He ate his evening meal downstairs each day? A. A good many days.

Q. During that period, during the period from



January 4 to January 9? A. Occasionally during that period.

Q. When was the occasion that he did not come downstairs? A. When he was not feeling just right to come down these stairs.

Q. Did he come down on the 7th of January? A. I would not say.

Q. Could you tell whether he came down on the 8th? A. I could not say.

Q. Nor on the 9th? A. I could not say.

Q. You know at that time he was in bad shape and would vomit at times? A. Not at that time.

Q. Didn't he vomit later? A. Yes, sir.

Q. When was that? A. (No answer).

Q. Now, Mr. Ashley, I have forgotten the date, in the morning that he discussed the 70 shares he was going to give to Irving? A. The morning after his conversation with Irving; I cannot fix the date.

Q. Was it two or three days after he had been down? A. Yes, sir.

Q. He was still fond of Irving?

The Court: We will assume that he was.

Q. What did you say when he told you that he was going to give Irving 70 shares of the Savoy? A. I made no comment.

Q. Did he say anything further? A. That was his statement to me; he said nothing further to me and that ended the conversation.

Q. When was it after that he further broached the question regarding this stock? A. On the 9th.

Q. In the afternoon? A. I don't remember whether it was the morning or the afternoon, but I think it was the morning, but I am not sure.

Q. At that time did he talk to you about the distribution of the 140 shares of stock? A. Not outside of that conversation.

Q. That was the only time? A. Yes, sir.

Q. Did he at any time while he was there mention the grandchildren? A. Not that I remember.

Q. Did you mention it to him? A. No, sir, not that I remember.

Q. He was fond of the grandchildren, wasn't he? A. Absolutely.

Q. Did they come to see him? A. Yes, sir.

Q. Now, in November, 1924, he did discuss with you the disposing of the 140 shares at one time? A. I would not say; I don't remember it.

Q. I show you a paper dated November 28th; is that in your father's handwriting? A. Yes, sir.

Q. Will you read it? A. "I hereby annex a codicil to my last will and testament and hereby direct my executors to divide my shares in the Savoy Realty Co. and the Hawthorne Silk Co. equal between Dwight Ashley, Jr., Charles Ashley and Irving D. Ashley, and the same not to be sold." The rest of it is crossed off—no year.

Mr. Benson: I offer it in evidence.
Marked "Exhibit B-V-8½"

Q. Now, then, on the 9th of January, 1925, did you talk to your father in the morning up in his room or downstairs? A. I think it was upstairs.

Q. Was he in bed at the time? A. No, sir, he was in the chair, in a Morris chair.

Q. Did he request you to take a memorandum to Mr. Gourley? A. No, sir.

Q. What did he say A. He told me to take the will to Mr. Gourley.



Q. Where was that? A. In my safe.

Q. Did you go immediately and get the will? A. Yes, sir.

Q. And did you hand it to him or keep it? A. I got it and put it in my pocket and took it to Mr. Gourley.

Q. You had instructions to Mr. Gourley? A. Yes, sir.

Q. Did you tell Mr. Gourley what the instructions were? A. Yes, sir.

Q. Your father had given you those instructions? A. Yes, sir.

Q. He had given you these instructions when? A. On that day.

Q. In the morning? A. Sometime during that day; sometime after breakfast.

Q. Did you find Mr. Gourley there when you got there? A. I think so.

Q. Those were verbal instructions? A. Yes, sir.

Q. What were they? A. To have the 140 shares given to me.

Q. When your father told you that, did you say anything about it to him? A. I did not.

Q. You had heard him say more than once that he wanted his estate equally distributed? A. In the past, yes.

Q. And there was not any real occasion for him to change his mind? A. I thought there was—in my mind.

Q. You had discussed this matter with him before? A. Not outside of what has been testified.

Q. Had he talked to you before about that? A. Not outside of what I have testified to.

Q. Do you know why he gave you the 140 shares of the Savoy? A. He did not say; he simply told me to have those shares made out to me; to have

the codicil made to me of 140 shares.

Q. You knew the reason why he wanted them given to you? A. Not directly.

Q. Didn't you testify the last time, your father had stated that he was afraid that Charles and Irving would combine—"Yes" or "No?" A. Yes, sir. Yes, sir, according to the testimony.

Q. That is true, isn't it? A. Yes, sir.

Q. So you did know why he wanted to give it to you? A. In that way, yes, sir.

Q. Why didn't you say so? A. I thought you were looking for some other conversation.

Q. You knew at the time he told you that, that Charles and Irving were on bad terms with each other? A. I knew that, yes.

Q. Did you tell your father that? A. He knew it; I did not tell him.

Q. You did not know whether he knew it or not? A. I knew he knew it, because he told me so at different times.

Q. When was the first time? A. In 1919 or 1920.

Q. What did he say to you? A. It was all due to the business conditions, of the Gary Silk Company owing the Hawthorne Silk Company a bill.

Q. And that feeling continued right on down to his death, between Irving and Charles? A. I think so, as far as I know.

Q. Nevertheless, you want to state that your father was afraid that they might combine against you? A. Yes, sir.

Q. And you had not had any conversation with your father in respect to that? A. Only his conversation to me.

Q. You were more friendly with Charles than Irving was? A. Yes, sir.



Q. Your father knew that? A. Yes, sir.

Q. I show you "Exhibit G-3;" you have seen that before, haven't you? A. A short time ago, yes, sir.

Q. Where did you find that? A. It was given to me by my mother.

Q. Is that a correct statement, so far as you have observed, of the stock of the Savoy? A. Yes, sir.

Q. In your opinion that is correct? A. I think so.

Q. That is the way your father had figured it out? A. That is his figures.

Q. And that is the way he figured it out? A. They are his figures.

Q. What do they mean? A. I don't know; he had his own reasons.

Q. You had the proxy of your mother for the Savoy stock during the last four or five years? A. I had it in 1920 or 1921?

*By the Court*:

Q. Has it been revoked since? A. No, sir.

*Further Cross*:

Q. Has it ever been revoked? A. No, sir.

Q. And your mother is living with you? A. Yes, sir.

Q. She is friendly with you? A. Yes, sir.

Q. This memorandum shows "90 shares for Ma?" A. Yes, sir.

Q. What does the second name indicate there? A. "C. Ashley."

Q. What does that indicate? A. 90 shares.

Q. What is the next? A. Irving 90 shares.

Q. What does that total? A. 270.

Q. On the other side, what does that say? A. "D. 140."

Q. That was your father's holdings? A. He had 140 shares.

Q. And D. A. is your holdings? A. Yes, sir.

Q. Whose holdings are the next 90 shares? A. I don't know.

Q. Is the paper intelligible at all? A. Up to this point.

Mr. Gourley: I object to the question.

The Court: I will note your objection, Mr. Gourley.

Q. At the time your father discussed with you that he did not want any combination, thereby depriving you of your interest in the corporation, did you say that there would be a method, you could work out a method whereby that would not be possible? A. No, sir, not to my memory.

Q. You made no suggestion? A. No, sir.

Q. But that was in your father's mind; did he say that? A. No, sir, not to my memory.

Q. And you are sure of that? A. Quite sure.

Q. Did you tell him at that time what would be a minority and a majority of the stock? A. No, sir, I did not.

Q. Didn't you discuss it with him? A. No, sir.

Q. Did he discuss it with you? A. Statements he would make.

Q. And this "Exhibit G-3" is one of them? A. No, sir.

Q. When your father made this codicil your mother was living with you? A. Yes, sir.

Q. Did your father talk to you about the distribution of this stock at any time? A. No, sir.

Q. What is the greatest number of times he talked to you about it? A. I could not say.

Q. You testified the last time that it was a dozen times; is that true? A. It may be; I did not say this positively.



Q. Now, on the 9th of January, 1925, did you discuss with your father the value of the Savoy stock? A. No, sir.

Q. Did he discuss with you any time from January 4th to the 9th, the value of the stock? A. Not that I remember.

Q. Did you talk to him in November about the value of the stock? A. I would say "No."

Q. When was the last time you talked about the value of the Savoy stock? A. November, 1924, I should say, at my house.

Q. How did you come to discuss the value of the stock at that time? A. After my return from a trip to Fayetville.

Q. Now you had gone there for the purpose of trying to find out the value? A. Yes, sir.

Q. What value did you give your father—as to the value of the Fayetville property? A. I did not give him any value of the Fayetville property alone.

Q. Did you give him the value of the entire assets of the Savoy Realty Company? A. Between $200 and $250 a share I told him.

Q. In January, 1925, what was the actual value of the stock of the Savoy Realty Company per share? A. About the same as in December, 1924.

Q. Do you know Mr. Edwin E. Dudley? A. Yes, sir.

Q. And Raymond T. West? A. Yes, sir.

Q. Do you know them intimately? A. One of them.

Q. And do you know they have any idea of the value of property? A. They do.

Q. Did you give them the value of the Savoy

stock as indicated in the inventory? A. I did.

Q. And you estimated the value at $200 a share? A. Yes, sir, in round figures.

Q. And you considered that its full value? A. I did, yes, sir.

Q. Has the Fayetville property been improved from December, 1924? A. Not up to January, 1925, not in that short space there was not any improvement.

Q. When did you say you were down there? A. December, 1924.

Q. And there was a considerable boom going on? A. No, sir.

Q. Quiet? A. Real estate was quiet.

Q. Where is it? In North Carolina? A. Yes, sir.

Q. Did you estimate the value of the Fayetville property in determining the value of the stock of the Savoy? A. I did, through the taxpayers, yes, sir.

Q. And there were 50 acres in Fayetville, called the Mason tract? A. Yes, sir.

Q. What did you estimate the value of that? A. I did not value the property.

Mr. Gourley: He is not an expert on land.

Q. How did you come to get a value so that you could tell your father when you returned? A. From the listing which they do in North Carolina of the real estate.

Q. And so you had not a very clear conception of the value of that property when you returned? A. I did, from the listing; they list their property in North Carolina.

Q. That was the only method you pursued? A.



I pursued the agents' methods, also.

Q. Shortly after that you received an offer for $100,000 for a tract? A. Yes, sir.

Q. How large a tract was that? A. There is more than one deed to that; there are at least three or four tracts making up this one tract of the $100,000 offer.

Q. What was there left if you sold this $100,000 tract? A. From memory, I would say there would be about 1300 or 1400 acres.

Q. There were some houses? A. On the remaining tract there were—

Q. What would you say would have been the value from your investigation of the remaining property, except the property offered to Mr. Brower?

The Court: You are trying to show that he practiced a fraud on his father?

Q. (Question read). A. It was not offered to Mr. Brower in December, 1924; the Brower offer was not made until after father died. The value of the property, no, only from the listing.

Q. What would it be from the listing? A. $60,000 outside of the thousand acre tract, and one or two small tracts surrounding it.

Q. So the approximate value would be about $150,000? A. I would say roughly that is true.

Q. Did you talk to your father about the value of the property in this vicinity? A. At times.

Q. Did you give him an idea of the value of the property at Prospect Park? A. Yes, sir.

Q. What value did you give your father? A. I told him it was worth in the neighborhood of about $600 an acre.

Q. And how many acres? A. About thirty acres.

Q. Did you tell him what was the value of the Haledon property? A. Yes, sir.

Q. What was that? A. About four acres there would be worth about $350 to $400 a lot.

Q. How many lots in the four acres? A. About 36 to 40 lots.

Q. You presented those facts to your father when? A. In conversation in December, 1924.

Mr. Gourley: The counsel puts his case in a question.

*By the Court*:

Q. Did your father inquire about these facts in December, 1924? A. After my return my father inquired.

*Further Cross*:

Q. Now, I show you several sheets of paper showing streets and lot numbers; are they in your handwriting? A. The numbers are; there is some other writing besides mine; the lot numbers are in my handwriting.

Q. What are these? A. These are prices.

Q. Are they in your handwriting? A. Yes, sir. They are not all in my handwriting.

Q. Which are not in your handwriting? A. This list here, Prospect Park, 225.

Q. That is not in your handwriting? A. No, sir.

Q. Any other items there? A. Prospect Park. "s-59, s-225" is not mine; "North 16th Street s-250; North 12th Street, No. 4 and 6, $300; North 15th Street, No. 4 and 6, $300; and Prospect Park, 58-225."

Q. Otherwise they are all in your handwriting? A. Yes, sir.



Q. And they are an estimate or opinion of the value of the properties indicated? A. In Hawthorne, yes, sir.

Mr. Benson: I offer that memorandum in evidence.

Marked "Exhibit B-V-9."

Q. I show you two typewritten sheets, dated June 19, 1924, and ask you if that is not the statement of the property owned at Hawthorne by the Savoy Realty Company, and the value you placed upon them; didn't you make that? A. No, sir.

Q. Did you fill in any of those figures on there? A. No, sir.

Q. You made out a list similar to this? A. Right there.

Q. But you made out a typewritten list? A. No, sir.

Q. Are you quite sure of that? A. Yes, sir.

Q. Under this memorandum can you roughly give us the total valuation of the estimated value of these properties? A. No, sir.

Q. Just a rough estimate; how much did you tell your father they were worth? A. I did not go into the details.

The Court: Has he told his father? He does not say he told his father what they were worth.

The Witness: No, sir, I did not go into the details of each piece.

Mr. Gourley: His father knew more about them than any of the boys.

*Further Cross:*

Q. You own some property between North Eighth Street and North Fifteenth Street, Prospect Park? A. I don't think so.

Q. You don't know? About how many lots are there in the Prospect Park property? A. It is acreage; it has not been divided; so I cannot answer.

Q. These properties are all free and clear? A. Yes, sir.

Q. I show you a map, Savoy Realty Company, near Paterson, N. J. Is that a map of the property? A. Part of it.

Q. You never estimated the number of lots there were? A. No, sir; I never figured it out.

Q. Don't you own a plot along Prescott Avenue in Prospect Park?

Mr. Gourley: Is that relevant.

The Court: I think it is; I will allow it, and you may note an objection to it.

Q. Do you know, of your own knowledge, Mr. Ashley, whether the Savoy Realty Company owns any land between Prescott Avenue, North Fifteenth Street and over to North Eighth Street, not shown on this map? A. No, sir.

Q. They don't own any? A. No, sir.

Q. Did you own it or sell it at any time? A. I don't know of ever owning it.

Q. What is the extent of the sales on January 1, 1925, approximating it, in value? A. Lots and houses—

The Court: Don't go into that; it is not material.





Q. What other assets besides real estate had the Savoy in January, 1925? A. I have given you Hawthorne and Prospect Park and Haledon and North Carolina, and cash.

Q. How much cash? A. Certificates, I should say, certificates of deposit with the First National Bank in escrow, all together about $48,000.

Q. Any other property not in escrow in the First National Bank, personal property of the Savoy? A. Not that I know of.

Q. Are there any balances due on any property sold? A. Yes, sir.

Q. How much? A. Five or six thousand dollars, I would say.

Q. I am speaking now of January 1, 1925? A. Yes, sir.

Mr. Gourley: I fail to get the point; the father owned and bought all this property.

Q. What was the mortgage on the South Carolina properties, held by the corporation—held by the Savoy? A. The Savoy held a mortgage of $13,000 and some odd dollars against the Hawthorne Silk Company.

Q. Now, then, there are other mortgages, are there not, that the Savoy owns? A. Yes, sir, in escrow.

Q. What were the total debts of January 1, 1925, of the Savoy? A. Very little.

Q. Your father had not been down to South Carolina in a long time, had he? A. Not in quite a few years.

Q. Did he request access to the books? A. Not that I remember.

Q. Now, Mr. Ashley, on the morning of the 9th, was your wife present in the room when your

father was discussing his property? A. No, sir.

Q. Did your mother come in the room? A. No, sir, not at that time.

Q. Did anyone know about that conversation except you and your father and Mr. Gourley? A. I may have told my wife during the day; outside of that I would not say.

Q. No one else knew, then, that there was going to be a codicil drawn? A. Not that I know of.

Q. This was all done verbally? A. Yes, sir.

Q. And you are sure of that? A. Yes, sir, quite sure.

Q. Now, then, your father wanted to communicate with his brother William? A. Yes, sir.

Q. And didn't he give you that verbally? A. No, sir.

Q. Did he give that in writing? A. Yes, sir.

Q. So, as a matter of fact, was he rather feeble, so that he wanted to make it sure that the brother got the message; and he put it in writing? A. No, sir.

Q. Why did he put that in writing, and a very important matter not in writing? A. I asked him to make a memorandum of what he wanted to telephone; when I came back I got this in writing.

Q. Was it a long message? A. Quite long.

Q. Is that message here in court? A. Yes, sir.

Mr. Gourley: I put it in evidence.

Q. Did your uncle tell you when you called him up, that he had received a letter from your father? A. No, sir, I don't think so; I don't remember; I don't know.

Q. Did you attend your father on the 9th of January by giving him medicine? A. I may have.



Q. You did administer to his medical needs? A. When I was there.

Q. And he was given considerable digitalis? A. According to the doctor's orders I gave it to him.

Q. How frequently did you give him digitalis? A. Three or four times a day, according to the doctor's orders; not any more than they ordered.

Q. Now, you went down to Mr. Gourley's office with this will and the memorandum, or a mental note of 140 shares of stock? A. Yes, sir.

Q. Did you tell Mr. Gourley that? A. Yes, sir.

Q. And Mr. Gourley was not satisfied, was he? A. No, sir.

Q. And you had done business at Mr. Gourley's office for a long time? A. Father had.

Q. Mr. Gourley knew you were his accredited agent? A. I would not say I was an agent.

Q. You went in the office and told him about it; and then what did Mr. Gourley do? A. He took up the telephone conversation.

Q. You called up the house? A. Yes, sir.

Q. With whom did you talk first? A. With my wife.

Q. Then with whom did you talk? A. With Mrs. Dwight Ashley, Jr. I talked first.

Q. And that was the only person you talked with? A. Yes, sir.

Q. Now, you were put out of the room? A. Yes, sir.

Q. And after that you don't know what happened? A. No, sir.

Q. You know that an instrument was drawn? A. Yes, sir.

Q. Did you have it? A. No, sir.

Q. Who had it? A. Mr. Gold had it.

Q. And you did not know anything about its contents? A. The codicil was drawn.

Q. And you did not hear the conversation between Mr. Gourley and your father? A. No, sir.

Q. The door was closed? A. Yes, sir.

Q. How did you come to know what the contents were? A. I did not know the wording of it.

Q. How did you know the substance of it? A. I did not know the exact substance.

Q. Did you know any part of the exact substance? A. I did not see the codicil; Mr. Gold told me it was the 140 shares.

Q. So, when Mr. Gourley called up the house, you had no idea what took place—whether there was any suggested change or not? A. No, sir.

Q. You did not see your father until you reached the home with Mr. Gold? A. That is correct.

Q. Was your father in a quiet state of mind when you reached there? A. Yes, sir.

Q. Was anyone in the room with him when you reached there? A. When I went upstairs with Mr. Gold there was no one in the room, no, sir—

Q. You immediately left the room? A. Yes, sir.

Q. And went immediately into the room adjoining? A. No, sir, I went in the hallway.

Q. From there where did you go? A. Afterwards, I went into my room.

Q. How soon after you had left your father's room? A. Within ten minutes.

Q. What were you doing after you left your father's room? A. In conversation with Mrs. Ashley and Mrs. Dudley in my room.

Q. You had left them downstairs when you came up? A. They came up in the meantime.

Q. You had no idea what they were there for? A. No, sir.



Q. They knew nothing about the codicil? A. No, sir.

Q. Notwithstanding that they came upstairs? A. Yes, sir.

Q. As a matter of fact, you had talked to your wife over the telephone? A. Only to get father over the telephone. I asked her to ask father if he could come to the telephone; that was my message.

Q. Didn't she make any inquiry what it was about? A. No, sir.

Q. And she was not curious about it when you got home? A. Not that I know of.

Q. Did she make any mention to you about it? A. No, sir.

Q. She came up in the bedroom because you were up there? A. She was up there before I was.

Q. Was Mrs. Dudley up there, too? A. No, sir, she was downstairs talking; and then she came upstairs.

Q. With whom was she talking? A. When I came in she was downstairs; I came in with Mr. Gold, and I think she was talking to Mr. Dudley.

Q. The next person you saw other than your father and Mr. Gold was your wife in your bedroom? A. Yes, sir.

Q. And you continued to stay in the bedroom? A. Yes, sir.

Q. Until after the alleged signing of the paper? A. I think that is right; I called a witness before I went in the room.

Q. That was before you took Mr. Gold in the room? A. No, sir, that was after I took Mr. Gold in the room.

Q. When you went in the room did you take Mr. Gold with you? A. Yes, sir.

Q. Mr. Gold is associated with Mr. Gourley? A. Yes, sir.

Q. You went into the room and you left Mr. Gold and came out? A. Yes, sir.

Q. Then you called a witness? A. Yes, sir.

Q. Who? A. Miss Uhlig.

Q. You told Mr. Dudley on the bank steps that you wanted him to witness the codicil? A. No, sir, I asked him to stop at my house.

Q. Did he ask what for? A. No, sir.

Q. How many times during that week had he stopped there at that hour? A. He stopped whenever occasion required it; he would stop in whenever he cared to do so.

Q. Now, you called Miss Uhlig? A. Yes, sir; she was on the third floor.

Q. Did she come down at once? A. No, sir, a few minutes after.

Q. Did Mr. Dudley come up then? A. Yes, sir.

Q. Who called him? A. I think I did.

Q. Are you sure? A. No, sir, but he came up.

Q. Well, you stayed in the adjoining room with your wife and Mrs. Dudley? A. Yes, sir.

Q. You closed the door? A. The portieres.

Q. When did you first know that the codicil had been executed? A. After Mr. Dudley and Mr. Gold came out of the room.

Q. Did you meet them? A. Yes, sir.

Q. What did you do? A. I took Mr. Gold back to the office; I attempted to take him back to the office, and I got as far as the Second National Bank Building, and he stopped me, saying his car was in the garage. Mr. Gold had the will in his pocket.

Q. Don't you know, as a matter of fact, your



father had asked you to put it in your safe? A. No, sir.

Q. After that will was signed, your father never saw it? A. Not up to the time of the codicil.

Q. There was not the slightest comment about the will after that? A. No, sir.

Q. Nor the division of property? A. No, sir.

Q. Your father never said another word about the disposition of the property after that, did he, about the disposition of his estate, after the codicil of January 9th? A. Not that I remember.

Q. You never talked to him anything about the disposition of his property? A. Not that I remember.

Q. You would, naturally, remember? A. No, sir.

Q. You will say that you did or did not comment to your father about the will on January 9th? A. I say I did not.

Q. "Exhibit G-2" on page 11—did you submit that memorandum to your father in reference to the division of the 140 shares of stock? A. What is "Exhibit G-2?"

*By the Court*:

Q. Did you ever submit any statement to your father as to the distribution of this stock? A. Only this letter; I never had any conversation about it.

*Further Cross*:

Q. Now, then, on January 10th, 1925, you had talked this matter over? A. Yes, sir.

Q. And you thought that the codicil, as it stood, was rather unfair? A. To me, yes.

Q. You thought it was unfair? A. Yes, sir.

Q. Do you mean it was unfair that you did not get more? A. No, sir.

Q. Did you think it was unfair to your brother Irving? A. I did not give it those thoughts.

Q. Did you think it was unfair to Charles? A. I did not give it those thoughts.

Q. Did you think it was unfair to the grandchildren? A. I did, yes.

Q. When it concerned you so much that you submitted a written statement to your father on January 23rd, in which you said, "I understand that my father has left me by will 140 shares of stock in the Savoy Realty Company. If this remains so at the time of my father's death, I shall assign the income from 23-1/3 shares of said stock to Viola Emma Ashley, for the term of her natural life; also the income from 23-1/3 shares of said stock to William N. Ashley for the term of his natural life; also the income from 23-1/3 shares of said stock to Florence Dilliston Ashley, for and during her natural life, and also the income from 23-1/3 shares of said stock to Robert Brown Ashley, for and during the term of his natural life, as received by me from the company." That is "Exhibit G-2;" you had worked that out and thought that was the fair method of distribution of this stock? A. That was to put in my safe.

Q. And didn't you on the 9th of January, 1925, say to your father this very language, that that is what you would do? A. No, sir.

Q. Is not that the very thing that induced your father to give you these shares of stock? A. No, sir.

Q. Was not that the purpose of it? A. No, sir.

Q. What did you have it drawn in Mr. Gourley's



office for? A. To put it in my safe for future record.

Q. What was there to keep about this particular paper? A. To know what to do with the shares.

Q. You already knew they were yours? A. Yes, sir.

Q. Why was there any obligation for you to make this paper? A. There was none.

Q. And you made it? A. Yes, sir.

Q. And your father had not made any comment prior to that time; why did you make it? A. For my records.

Q. Who had suggested anything for your records? A. Nobody.

Q. Whose idea was this? A. Mine.

Q. And what did you mean by your records? A. Put in with my will.

Q. Where did you get it from? A. Mr. Gourley made it up for me.

Q. And he gave you the idea? A. No, sir.

Q. Did you draw a will on January 23, 1925, to effect carrying out these provisions? A. No, sir.

Q. Why did you prepare this paper then? A. To put with my will.

Q. What did you want to do all this for? A. For record.

Q. You did not think you could remember any obligation without putting it down in writing? A. While I lived, yes.

Q. Did you say this to any of the beneficiaries? A. I showed it to my wife.

Q. Did you show it to Florence Ashley? A. I may have.

Q. You told her since that time about this paper, didn't you? A. Yes, sir.

Q. How long ago? A. Months after that.

Q. How many months? A. Maybe four or five months after that.

Q. What prompted you to tell her about this? A. Because I told her what I was going to do with them.

Q. So you never considered, so far as you were concerned, that you were the absolute owner of 140 shares of stock that your father gave you? A. I did.

Q. What obligation were you under to assign the income from 23-1/3 shares of this stock to Viola Emma Ashley, for the term of her natural life; also the income from 23-1/3 shares of the stock to William N. Ashley for the term of his natural life; also the income from 23-1/3 shares of the stock to Florence Dilliston Ashley for and during her natural life; and also the income from 23-1/3 shares of the stock of the Savoy Realty Company, the 140 shares, to Robert Brown Ashley, for and during the term of his natural life? A. None.

Q. Then why did you do it? A. That is my reason for doing it.

Q. What is the reason? A. No reason; there was no obligation.

Q. You spoke to your father about this? A. I gave that to my father.

Q. Don't you know you talked to him about it before the codicil was drawn? A. I did not.

Q. When the 140 shares were to come to you, as your father said, didn't you say, "This is a better plan?" A. No, sir.

Q. Why didn't you say so? A. Because it was not written on that date.

Q. You believed it was the better plan at that time? A. I did not think of it.



Q. Then you went down to Mr. Gourley's office and prepared this? A. I was down there on that date and had it prepared by Mr. Gourley.

Q. Himself? A. I believe so.

Q. Do you believe so, or do you know so? A. He dictated it, yes, sir.

Q. To whom? A. To the stenographer.

Q. And then did you take it directly back to your father? A. I gave it to him—maybe that day or the following day.

Q. And Mr. Gourley insisted that you give it to your father? A. He never mentioned it.

Q. Don't you know that Mr. Gourley, in his conversation with your father over the telephone, suggested such a method as this? A. I did not hear the conversation.

Q. And you went home and gave it to your father, and when you gave it to him, what did you say? A. I told him that was what I intended to do with it.

Q. Why didn't you sign it? A. Because he did not approve of it.

Q. What was the reason you told your father that you wanted this done this way? A. I gave him that letter; he knew nothing about it; I told him that was what I intended to do with it.

Q. And he was in a dying condition? A. By no means.

Q. You told him why you wanted it that way, didn't you? A. No, sir, I gave him this letter to read, and told him that was my intention regarding the disposal of the 140 shares.

Q. Now, your father, between the 9th and 23rd, had talked to Irving? A. I presume he had.

Q. And you heard Irving testify that his father

had said that he had made a will in equal parts; you heard him testify to that? A. I don't remember the testimony.

Q. And you know that there was a conversation between your father and Irving about the division of the property? A. No, sir.

Q. Now Irving was there every night, wasn't he? A. I don't remember exactly; he was there a good deal.

Q. And he talked to your father? A. A few minutes.

Q. And was not your father decidedly dissatisfied with the method in which he disposed of his property, and didn't he tell you so? A. No, sir.

Q. Did he tell your wife or your mother that he was dissatisfied? A. No, sir.

Q. Was not that the reason that you then suggested this method? A. No, sir, absolutely not.

Q. You did not give your father any reason? A. He did not say anything about that paper in conversation or otherwise, until I presented it to him.

Q. You knew he had already offered Irving 70 shares? A. Prior to that time.

Q. Did he say anything about it when you handed him that paper? A. No, sir.

Q. You just silently said to this man who was sick, "Here is a paper;" is that what you said? A. I said to him, "Here is a paper that I have drawn up," showing what I intended to do with the 140 shares, and he kept the paper.

Q. Was not that for the purpose of easing his mind? A. There was no reason at all.

Q. You had submitted plans regarding the distribution of your father's property prior to January, 1925? A. No, sir.



Q. Never submitted any plans? A. No, sir.

Q. Never submitted any letters or any propositions to him regarding the Savoy? A. Only in conversations.

The Court: If there is anything you miss, you can recall him; I want to adjourn.

Q. Your mother knew about this codicil, didn't she? A. I don't think so.

Q. She talked about it? A. When?

Q. Did you? A. Later?

Q. Yes. A. Not before.

Q. And was not she wholly dissatisfied with it? A. No, sir.

Q. You told her about it? A. Yes, sir.

Q. And she was not convinced that it was the right thing? A. No, sir.

Q. She never complained to you? A. No, sir.

Q. Was that envelope ever sealed? A. No, sir.

Q. It is marked "Personal;" did you notice it? A. Yes, sir, I carried it.

Q. Why was the word "Personal" written on it? A. I took the envelope.

Mr. Gourley: I am afraid that is my fault.

Q. He did not write "Rejected" on it? A. Not on the letter, no, sir.

Q. How soon after the 9th of January did he give you this stock? A. A day or two afterwards.

Q. And he handed it to you then and gave you physical possession? A. Yes, sir.

Adjourned to a day to be fixed.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the appeal from the Decree of the Orphans' Court of the County of Passaic Admitting to Probate a Certain Paper Writing as the Last Will and Testament of DWIGHT ASHLEY, deceased. — On Appeal. Testimony.

Continuation of the taking of testimony in the above-entitled case, at the Chancery Chambers, Paterson, New Jersey, on the twenty-third day of March, nineteen hundred and twenty-six, before HON. VIVIAN M. LEWIS, Vice Ordinary.

APPEARANCES:

VANDERBILT & HEDDEN, ESQS., associated with JOHN O. BENSON, ESQ.,
For the Caveators-Appellants.
WILLIAM B. GOURLEY, ESQ.,
For the Complainants-Appellees;

---

DWIGHT ASHLEY, JR. recalled for further cross-examination.

*Cross-examination (continued) by Mr. Benson:*

Q. Mr. Ashley, the morning of the 9th of January was the first intimation that you had from your father that he was going to execute the codicil? A. Yes, sir.

Q. And that was in the morning? A. I would not say whether it was in the morning or in the afternoon early.



*Dwight Ashley, Jr.—Cross.*

Q. He was in bed when he talked about it? A. No, sir, he was in his room, though.

Q. Was your wife there? A. No, sir.

Q. Did she have any knowledge of it? A. Not that I know of; not that I remember.

Q. Did you tell her? A. Later in the day.

Q. How much later in the day? A. After the codicil was executed, which was in the afternoon about five o'clock, around five o'clock.

Q. Before or after five o'clock? A. I cannot remember.

Q. Did your mother know there was a codicil to be signed? A. I don't know.

Q. Did you tell her? A. I did not.

Q. To your knowledge, did she know? A. Not to my knowledge.

Q. Did anyone else visit you on the 9th? A. I don't remember.

Q. Will you say that Mrs. Charles Ashley was not there? A. I will not say.

Q. Will you say she was not there? A. I was not home all day; while I was there I don't remember her being there.

Q. Was Mrs. Irving Ashley there on the 9th? A. Not that I remember.

Q. When your father suggested the codicil to you, you don't know whether that was in the morning or the afternoon? A. No, sir—whether it was late in the morning or early in the afternoon, I don't know.

Q. You must have had a conversation with him about it? A. No, sir, I did not.

Q. You had no conversation? A. No, sir.

Q. And had you had any conversation with him in the morning about it? A. No, sir.

Q. Did he get up out of his bed—at what time? A. I don't remember the time.

Q. About what time? A. I could not say.

Q. Were you home all morning? A. I was in and out during the day.

Q. How many times did you go in and out during the day? A. I don't remember.

Q. Where did you go? A. I went to Mr. Gourley's offices in the afternoon.

Q. What time? A. About four o'clock, I think.

Q. That was the first time you went out in the day? A. No, sir.

Q. How many times had you been out during the day? A. I don't remember.

Q. Do you recollect calling on any one that day? A. No, sir.

Q. You don't know what you did through that whole day? A. No, sir.

Q. You don't know the time your father spoke to you about the codicil? A. Around noon time, or early in the afternoon; around the early part of the afternoon, or later in the morning.

Q. What would you say was later in the morning? A. Between eleven and two.

Q. That is as near as you can get the time your father first ordered you to take the will; that was the first time he said he was going to make a codicil? A. Yes, sir.

Q. He told you then he was going to make the codicil between eleven and two? A. About that time.

Q. What did you do then? A. I have testified that I took the will to Mr. Gourley's office.

Q. You took the will to Mr. Gourley's office? A. Yes, sir, with instructions.

Q. You had not been in your father's room at



any time to have any conversation with him prior to eleven o'clock that morning? A. I may have been in there two or three times in the morning.

Q. How long did you stay each time? A. I could not tell you.

Q. What time did he get up out of bed that morning? A. I don't know.

Q. You were there? A. I may have been, and I may have been out; I don't know.

Q. Mr. Ashley, you say he was sitting in the chair, and he said to you that he was going to make the codicil; and that was the first conversation relating to business he had that morning? A. I don't remember.

Q. Just think. A. I cannot.

Q. You cannot think? A. No, sir.

Q. You were alone with your wife in the home; there was nothing abnormal about the morning? A. No, sir; it was on a Friday, I believe.

Q. And do you say you had no conversation with him prior to eleven o'clock, relative to business? A. I would not say; I don't remember.

Q. Now, at eleven o'clock, what did he say to you? A. Between eleven and two he told me to take the will to Mr. Gourley's, with those instructions of having the codicil made.

Q. What part of the morning did he write this telephone conversation to Mr. William H. Ashley? A. It was during my absence that he wrote that.

Q. What time did he give it to you? A. I could not tell you that, even.

Q. That is the original? (Indicating "Exhibit G-1")? A. Yes, sir.

Q. Will you look at "Exhibit G-1" and read it to me? A. "Brother Will: You may have time to go

to livery stable—hire a good sleighing horse, and when there I want you to get six ducklings and bring home; now, the man on place has whiskey, and I will mail his check to farm to-morrow; tell the boys they can get without. Today, of course, stay if you have all night. Tell this man I need men of no whiskey on the place; and this may break it up; but he must go. Tell Clark to get someone there only half a day, and they can soon determine if I am to sell out the stock, as if I am not to get any better I am to quit farming. The expense of horse and sleighing I will remit as soon as I get word from you. There is now one man, he can (I cannot make out that one word) on half-time. Attend to this; I have no accident. If he cares not for discharge, tell him I will soon find reasons to send him anyway. I will not be able to get there for three or four days, so I want to get rid of whiskey and man. Tell them to pick out the big hens from July, then they are to be broilers, six in a circle." I asked father how many he wanted him to take, and he said "six".

Q. Did you read it in that form to Mr. William H. Ashley? A. No, sir, that was a memorandum for me only.

Q. You took the memorandum, and from that telephoned the conversation.

Q. When you talked to your uncle, did he inquire of your father's condition? A. I don't think so.

Q. You won't say he did not? A. I won't say.

Q. Was there any discussion by your uncle Bill relative to your father over the telephone? A. Not that I remember.

Q. Did you tell him he was quite sick? A. I told him.



Q. Did you tell him he could not telephone? A. No, sir.

Q. Your father was in the habit of talking to him over the telephone? A. Not of late years.

Q. Did he tell you at that time he had received a letter from your father? A. I don't think so.

Q. Did he mention anything about the letter at that time, that he had received a rambling letter from your father? A. That was in August, 1924, that he said that.

Q. Did he tell you anything about that on January 9, this alleged conversation? A. Not that I remember.

Q. Did you ask him at that time whether he would like to come down to see your father? A. No, sir.

Q. Your doctors had said your father was rather sick? A. At what time?

Q. January 9th. A. January 9th? Not any more than he had been for some time.

Q. Had you had a consultation at that time with any doctors? A. The consultation was in November, and again in February, February 1st, I think.

Q. Hadn't you had a conversation, and you were informed he might pass out quite quickly? A. The same opinion that we had had for the past year.

Q. Isn't that what they told you? A. That he was liable to go at any time.

Q. And you told your uncle he was sick in bed? A. No, sir.

Q. Did you tell him he was well and was coming back to the farm? A. I didn't tell him anything about that at all.

Q. Did you tell him in that telephone conversation that he was coming up to the farm in three

or four days? A. I don't remember the conversation.

Q. You took the memorandum? A. Yes, sir, in a casual way, and gave him the communication over the telephone.

Q. Did you tell your uncle William that your father would be at the farm in three or four days? A. I don't remember.

Q. You gave him the memorandum? A. The substance of it.

Q. When you said he was going to be up there in three or four days, did you believe he would be there? A. I had no reason to doubt it if he said so.

Q. What time of the day did you receive this Exhibit G-1? A. I don't remember the time of the day.

Q. Did you receive it in the morning or in the afternoon? A. I would not say the time, because I don't remember.

Q. You cannot remember that? A. No, sir, not the time.

Q. And your father had written this all for your benefit? A. To telephone when I returned.

Q. He wrote it down for you? A. I asked him to when he asked me to telephone.

Q. When was that? A. In the morning, or in the afternoon early; I don't remember which.

Q. Did he give you this memorandum before or after the codicil, after he had given you instructions about the codicil? A. I don't remember that.

Q. Was this given to you before he signed the codicil? A. I would not say.

Q. It was given to you on the same day? A. Yes, sir.

Q. Now, you don't remember where you went



that day, except that you went to Mr. Gourley's office? A. Yes, sir.

Q. When did you go there?

Mr. Gourley: That has been asked three times; we shall never end it.

The Court: Mr. Benson is entitled to a liberal cross-examination.

Mr. Benson: The witness' memory is so faulty; he cannot tell us whether this was made in the morning or afternoon or any other time. I want him to fix this time. This is very important because of the character of this writing, and I want to get the time, and I think I am entitled to have it from the witness.

Mr. Gourley: Three or four times is enough.

Q. Now, was that paper given to you in the early afternoon? A. I don't remember the time of the day it was given to me.

Q. Cannot you tell whether it was in the morning or in the afternoon? A. No, sir.

Q. Was it given to you in the evening? A. I doubt it.

Q. Tell us what time you telephoned Uncle Bill? A. I don't know, I don't remember.

Q. Will you give us permission to get from the telephone office the books showing when that telephone message was sent? A. Yes, sir.

Mr. Gourley: You might have asked me that question, and I would have said "Yes", too.

Q. You, at that time, submitted plans to your father with reference to business from time to time? A. What business?

Q. Your business. A. The Hawthorne Silk Company?

Q. Yes. A. I had told him the conditions of the officers.

Q. And you had submitted a plan of liquidation? A. No, sir.

Q. Had you submitted any memorandum to him? A. What year?

Q. In the last two or three years before his death?

The Court: What has that to do with it?

Mr. Benson: The purpose is this: he brings into court a paper marked "Rejected"; the paper is not marked "Rejected," but the envelope, in which they allege this paper was placed by the father; I want to ask him, to find out whether or not he had any other proposition which the father might have written, "Rejected" on.

The Court: I don't want to keep on trying this case forever.

Q. You had this proposal which we are talking about, just before we adjourned the last time, which you had made on January 23, 1925; the proposal that you had submitted to your father? A. I gave it to him.

Q. Now, did you urge him to, and say to him, "I would like to sign this proposal?" A. I did not.

Q. You did not? A. No, sir.

Q. You just handed it to him and told him what?



A. And told him that was what I intended to do.

Q. And that was all that was said? A. Practically all that was said on that subject. I may have talked about the day's topics in the conversation.

Q. Do you know why he rejected it? A. He said he would not hold me to anything.

Q. Do you know why he rejected it? A. I do not; he had his own reasons.

Q. Did you discuss it any other time, the reasons for rejection? A. No, sir.

Q. Your father kept his securities in your safe? A. His stocks he did.

Q. Including the stock of the Savoy? A. Up to November, 1924.

Q. How did he come to get it in 1924? A. He either wrote me, or by verbal conversation asked for the stock.

Q. And do you recall what you did with it? A. I either sent it to him or gave it to him; if I sent it, it would be to Blairstown; I have no record of it.

Q. You did not think any more of that stock after that? A. No, sir.

Q. When was the first time you saw it again? A. The stock certificate?

Q. Yes. A. About January 9, 1925; father had it in his possession.

Q. You were familiar with dealings in stocks, and so was your father? A. To a certain degree.

Q. You had bought and sold stocks? A. To a certain degree.

Q. You knew, in order to make a transfer of stock, it was necessary to fill in the entire assignment, didn't you? A. That all depends on the stock.

Q. The stock which contains an assignment such as the Savoy had? A. I did not question it at all, the way it was signed.

Q. Why didn't you? A. I don't know of any reason why.

Q. You knew that was not a sufficient transfer, didn't you? A. No, sir, I did not.

Q. You had been particularly cautious about your dealings with your father about this particular time, hadn't you? A. Not any more than usual.

Q. Just tell us why you kept an ordinary telephone conversation which he had written out on the 9th? A. To check the telephone bill when it came in.

Q. Tell us of any other occasion when you used such great precaution? A. Out of town calls I always do so.

Q. Did you make any other memorandum at that particular time? A. I don't remember.

Q. You called up Fayetteville? A. No, sir, I did not.

Q. I show you telephone slip marked Lambert 3595, a charge for Fayetteville? A. That is a telegram on January 3rd.

Q. Did you make a memorandum of it? A. Yes, sir.

Q. Where? A. I don't remember where it is now.

Q. What were the contents? A. I don't remember the contents of it.

Q. It is quite as important as a memorandum about six ducklings? A. I have the memorandum.

Q. Can you get it? A. I don't know.

Q. Did you see your father sign this certificate? A. No, sir.



Q. You don't know when he signed it? A. No, sir.

Q. Did you notice there was any date on it? A. No, sir.

Q. Where did he get it from on the 9th of January? A. He had it.

Q. He was not sitting up and fully dressed? A. Yes, sir.

Q. Didn't he have his night clothes on and a bathrobe? A. No, sir.

Q. Are you positive of that? A. I am positive. He was dressed with his bathrobe over his clothes.

Q. He was fully dressed? A. I would not say.

Q. Did he have his shoes on? A. I don't remember.

Q. Now, do you know whether he had it in his pocket during the time he was staying there? A. I don't know, I don't remember.

Q. Which do you mean? A. I don't know.

Q. When he handed you the stock did you call his attention to the fact of the omission to put your name in the stock, and the dating of it? A. No, sir.

Q. Why not? A. Because I did not go into the details.

Q. Didn't you have any conversation with him about it? A. No, sir.

Q. Was there anyone present when he handed it to you? A. No, sir.

Q. At that time was the reason that he did not have anything to say to you about his stock, because he was not able to talk? A. Absolutely not.

Q. And he gave you the stock without saying a word? A. Yes, sir, he did.

Q. Did he talk to you about it the day before? A. No, sir.

Q. You never knew until he just silently handed you that stock? A. After the making of the codicil.

Q. And he never said a word one way or the other? A. Practically no.

Q. When he handed this stock to you, did you make an inquiry?

Mr. Gourley: This is evidently a fishing excursion for another suit.

Q. Did you ask him what he handed it to you for? A. No, sir.

Q. Why not? A. I had no reason to, because the codicil was made.

Q. Did you understand then that he was making a gift of 140 shares to you at that time? A. Yes, sir.

Q. From what did you understand that?

Mr. Gourley: Objected to.

The Court: The instrument speaks for itself; he knew what it was.

*By the Court*:

Q. Did he say "Take this" or anything? A. He handed me the stock and I put it in my pocket; he gave it to me and I put it in my pocket.

Q. Did he tell you to keep it for him? A. No, sir.

*Further Cross*:

Q. You were the executor under the will? A. Yes, sir.



Q. After you received the stock, did you notify the Secretary of the company that you were the owner of the stock? A. No, sir.

Q. Did you tell anyone about it? A. I told my wife about it.

Q. Did you tell any other officer of the company? A. No, sir.

Q. Did you tell anyone? A. Outside of my wife, I don't remember.

Q. You told Mr. Gourley? A. Mr. Gourley knew it.

Q. When did you tell him? A. That time, about the afternoon.

Q. You are sure of that? A. Positive.

Q. That your father gave you the stock? A. He gave me the stock two or three days later after the codicil.

Q. When did you tell Mr. Gourley about giving you the stock? A. I think it must have been months later.

Q. How many months? A. Two or three months, something like that.

Q. You knew of the contents of the codicil and you knew the contents of the will? A. Not of the will I did not.

Q. I show you a memorandum of a list of property in Prospect Park, is that in your handwriting? A. Some of it is.

Q. Is this part referring to Prospect Park in your handwriting? A. Yes, sir, but not this.

Q. Did you write "10¼ Prospect Park?" A. Yes, sir.

Q. What does that mean? A. It means the acreage that is owned by the Savoy Realty Company in Prospect Park.

Q. Is not that the strip of land that is South of Prescott Avenue, that you did not know anything about last time? A. No, sir.

Q. West of Prescott Avenue? A. West is Hawthorne Borough.

Q. You testified, Mr. Ashley, relating to the assets of the Savoy Company; did you refer at any time to mortgages pledged as collateral, on which there is a loan of $2700 against—did you have three mortgages amounting to $6500 in the First National Bank? A. At one time, yes.

Q. And are they there now? A. No, sir.

Q. Are they at present owned by the Savoy Company? A. The mortgages may have been paid off; I don't remember.

Q. Do you say you don't know? A. Not from memory.

Q. You have the records? A. I could look them up.

Q. Didn't you just renew the $2700 note? A. Of the $6500—yes, sir.

Q. And that collateral is there? A. Part of the collateral is there.

Q. That gives you an equity of $3800? A. According to those figures.

*Redirect-examination by Mr. Gourley*:

Q. This Ashley and Bayley Company was composed of Bayley and your father? A. Up to a certain time, yes, sir.

Q. Was the stock of that company $800,000? A. Yes, sir.

Q. Was that divided practically between your father and Mr. Bayley—$400,000 each? A. Yes, sir.



Q. Did our father, of those $400,000, give each of you three boys $100,000? A. Face value, yes, sir.

Q. Was the Hawthorne Company established by Ashley and Bayley? A. Yes, sir.

Q. When were these gifts made to you three boys? A. About 1902 or 1903, in that neighborhood.

Q. When Ashley and Bailey liquidated in 1912, did you then take your shares from the Ashley and Bailey assets, representing the holdings in the Ashley and Bailey Company? A. Yes, sir.

Q. Did you take the Hawthorne over in that way? A. Yes, sir.

Q. Did you take the Fayetteville plant over in that way? A. Yes, sir.

Q. Now, did you loan to the Hawthorne—the three of you—from the Savoy—about $10,000 each? A. Four of us—three, and father did.

Q. That money was put in by your father? A. Yes, sir.

Q. Did your father loan any addition to that, other moneys to the Hawthorne? A. Yes, sir.

Q. $50,500? A. Yes, sir.

Q. Did he give one of the defendants $10,000 temporarily, to Irving? A. Yes, sir.

Q. Has a claim been presented to the Receiver or the Trustee in Bankruptcy for that claim? A. Yes, sir.

Q. About what will the company pay, have you any knowledge? A. From what they told me—about 15%—10% to 15%.

Q. What notes were due of the Savoy at the time of your father's death, to him, I mean?

The Court: I think you went over that, Mr. Gourley.

A. $38,000 if I remember right.

Q. Have you any memorandum? A. No, sir, it is all from memory.

Q. $27,180 owing by the Savoy? A. Loaned to the Hawthorne Silk Company.

Q. Were there certain securities of the Savoy pledged as has been described, by the Savoy to the Hawthorne Company for security for the payment of the income taxes? A. Yes, sir.

Q. How much? A. About $60,000.

Q. The Hawthorne Company took over the Fayetteville plant from Ashley and Bayley? A. Yes, sir.

Q. Who built these mills at Fayetteville? A. Father.

Q. When were they built? A. One of them before 1900, and the other during 1900.

Q. Two brick mills operated for the manufacture of silk and dyeing? A. Yes, sir.

Q. By whom were they operated? A. Colored operators.

Q. Who bought the land around the place? A. My father.

Q. Who bought the lands there? A. Father did.

Q. When were the mills built? A. 1900.

Q. How frequently did you father visit the place? A. At least once every five weeks on the average.

Q. Which is that? A. Fayetteville, North Carolina.

Q. He went down from here to Fayetteville? A. Yes, sir.



Q. Who built the shanties there on the place? A. Father did.

Q. Who occupies those shanties? A. Colored workers.

Q. Have you any photographs showing the character of the property? A. Yes, sir.

Q. Just turn to it.

The Court: What is the object.

Mr. Gourley: The question is raised concerning the value of these securities.

The Court: The Savoy is the main part of the estate?

Mr. Gourley: Yes, sir.

Q. Now, I show you a photograph here; when was that picture taken? A. A week ago yesterday.

Mr. Gourley: I offer it in evidence.

Marked "Exhibit G. R. 1."

Q. You were there when it was taken? A. Yes, sir.

Q. Are there any white people on the property? A. No, sir.

Mr. Gourley: I also offer this one, showing a number of houses on the property, a number of small houses on this property.

Marked "Exhibit G. R. 2."

Mr. Gourley: I also offer this one.

Marked "Exhibits G. R-3, G. R-4, G. R-5, G. R.-6."

Q. When were those taken? A. A week ago.

Q. Were they taken in your presence? A. Yes, sir.

Q. How many times did you visit Fayetteville during your father's lifetime? A. About twice.

Q. And when? A. 1900 and 1924.

Q. Did you go down with him the third time? A. No, sir, I went down with my wife.

Q. You have spoken about—you were asked at some length about bonus; at the time of the declaration of this bonus in 1920, what was the surplus of the company? A. About $375,000.

Q. That is surplus? A. Yes, sir.

Q. Of the Hawthorne Silk Company? A. Yes, sir.

Q. There were some questions asked you about some pieces of paper with the name of a woman written on it—two pieces of paper—did you see those names? A. Yes, sir.

Q. Do you know the one that Mr. William Ashley spoke about? A. No, sir.

Q. Did you ever correspond with anyone of that name? A. No, sir.

Q. This envelope, "Exhibits G-4," with the word "Rejected," I forgot to ask you whether the word "Rejected" on that envelope is in your father's handwriting? A. Yes, sir, I saw him write it.

Q. You said also in your cross-examination, something about your father said he had offered some of this stock to Irving, some of these 140 shares—the 140 shares of the Savoy which is now in question, which was covered by the codicil; you said in answer to some question on cross-examination, that your father had offered that to Irving—some of the stock? A. Yes, sir.

Q. Tell us now the circumstances and what was said. A. Later, father said he could not understand—



Q. What was the first you knew that such an offer was made— A. Father told me that he had offered it to him.

Q. When was that? A. Prior to the codicil.

Q. What was said about it by your father? A. He said he had offered him half the shares.

Q. Did he give any reason? A. He wanted Irving and me to run and keep the Savoy going.

Q. Did he say that? A. Yes, sir.

Q. What did he say that Irving said about it? A. I said to him at the time, "Didn't he make any answer?" and he said "No."

Q. Didn't your father make some comment? A. Yes, sir, he could not understand it.

Q. Did your father make any comment on it? A. He said he could not understand why Irving would not work with me and take half the stock.

*Recross-examination by Mr. Benson:*

Q. On this property in North Carolina, or South Carolina, there are railway frontages? A. There is a siding on that one, yes, sir.

Q. And there are railroad frontages on several of them? A. On one piece—Atlantic Coast Line.

Q. Are there any streams running through them? A. Some have.

Q. Of considerable size? A. Not much size.

Q. And there are valuable timber lands there? A. Some.

Q. You say the buildings on the property are shanties; is that true? A. I did not say they were shanties; they are small homes.

Q. Is that a sample of one? A. That is an old one.

Q. That is a sample of them? A. When they were built—that is a very old picture.

Q. When was the last time your father was down in North Carolina?

The Court: He said he used to go there every six months.

A. About every five or six weeks up to 1914.

Q. Then he stopped and did not go after that? A. No, sir.

Q. And there have been considerable changes in that locality? A. Not in our territory.

Q. You say that in 1920 you had a $375,000 surplus in the Hawthorne? A. At the beginning of 1920.

Q. Then what office did you hold? A. Vice President.

Q. You knew that that $375,000 surplus was there? A. When I received the statement.

Q. Was there any endeavor to pay any dividends out of that $375,000 in 1920? A. Yes, sir, I wanted dividends when I received the statement.

Q. Who objected to it? A. Charles Ashley.

Q. He did not say that Irving had said he did not want to associate with you, as you have just testified—

The Court: Who do you mean said that?

Mr. Benson: The father; he just testified the father had urged and then and there offered to Irving 70 shares, and he did not understand why he would not take the 70 shares and be associated with the witness.

Q. Your father did not say to you that Irving had said to him that he did not want to be associated with you? A. He did not say that to me, no, sir.



*Redirect-examination by Mr. Gourley:*

Q. Was anything said by your father to show he did not want to associate with Charlie? A. Not a word.

Q. What did your father say, if anything, in expressing his opinion one way or the other about Irving not taking one-half of the stock? A. He said he could not understand it; he said he was to give him half the shares.

Q. Did he say why he did not take it, why Irving did not take it? A. No, sir, he said Irving did not give him any reason.

Q. Did he say anything about keeping the Savoy together? A. Yes, sir, he wanted the Savoy Company to be kept as a going concern, and not liquidate, and the future of the value of the property would be greater.

Q. Was that said or not at the time that he was speaking of Irving's rejection of this offer? A. In regard to the stock, it was said shortly after that. In regard to the values he said that a number of times.

Q. I mean, the suggestion which your father said that he had made to Irving to give him half the stock if he would do something? A. Yes, sir.

Q. Give us the whole conversation. A. That was prior to the codicil being drawn.

Q. What was it? A. That he offered Irving one-half of the shares if he would join with me and work and keep the Savoy going as a going concern.

Q. What response was made to that? A. Father said he made no response to it.

*Recross-examination by Mr. Benson*:

Q. Didn't you say, on direct-examination, that your father wanted the Savoy kept for the three boys? A. Yes, sir.

---

GEORGE GOLD, being duly sworn, testified as follows:

*Direct-examination by Mr. Gourley*:

Q. You are an attorney at law of this State? A. Yes, sir.

Q. Do you remember taking some papers to Mr. Ashley's house, a codicil to a will, to have it executed? A. Yes, sir.

Q. When was that, Mr. Gold? A. I believe that was January 9, 1925.

Q. Will you tell us what you know about it, Mr. Gold; did you draw the codicil? A. I did not.

Q. What was the first you knew about it? A. On that day Mr. Gourley asked me if I would go with Mr. Ashley, Jr. to his home to have the codicil executed by Mr. Ashley, Sr.; and I took the codicil and went with Mr. Ashley, Jr. in his automobile to his home. There went upstairs to a front room, where we found Mr. Ashley, Sr., and Mr. Ashley, Jr. introduced me to his father, and left me alone with him. I had a little conversation with Mr. Ashley, Sr., speaking about Mr. Barnett, at the time, ex-Mayor Barnett, I believe there was a talk then of the statement that was to follow, and in my conversation with Mr. Ashley we mentioned Mr. Barnett; I remarked what good deeds he had done, and Mr. Ashley said he thought very highly of Mr. Barnett for these things. I then asked him about his condition, if he felt any pain, and he said "No," that he was just weak and felt somewhat debilitated; that is the word he used, and I remember it. Then I told him that my purpose in coming was to have a certain codicil executed, and I took it out and read it to him and explained to him the purpose of the codicil as it appeared to be, and asked him if that expressed his intention, and he said that it did. I read it to him. It was typewritten. I then went out to the hall where I found Mr. Dwight Ashley, Jr. in an adjoining room, and asked him if he would call some witnesses. A. Mr. Dudley and Miss Uhlig, came into the room, and I then told them that this was a codicil, which Mr. Ashley, Sr. wished to execute, and I read the attestation clause to them. Mr. Ashley, Sr. then signed the codicil, and Mr. Dudley and Miss Uhlig signed as witnesses. Mr. Ashley signed first. Then I said, "Good-bye" to Mr. Ashley, and left the house.



Q. Were all the signatures made while you were present at the same time, all of you together? A. Yes, sir.

*By the Court*:

Q. Did you carry the codicil back? A. Then Mr. Ashley, Jr., took me back to the office in his car, but we did not go right to the office, because I knew that it being so late—

*Further Direct*:

Q. He gave you the codicil after it had been executed? A. Yes, sir.

*By the Court:*

Q. Did you take it and deliver it to Prosecutor Gourley? A. No, sir, the reason for that being I wanted to have it put in the safe; there is a safe in the office, but I have not the key to it. I knew it was locked, and I did not have the combination. And then I asked Mr. Ashley, Jr. where the will was kept, and he said in his safe; so I said, "Well, I guess you had better put the codicil there, too," and I gave it to him in an envelope, and he asked me to seal it, which I did, and returned it to him, and then I left him.

*Cross-examination by Mr. Vanderbilt:*

Q. Mr. Gold, have you attended the execution of many wills? A. Not many, no, sir.

Q. When did you first know about this proposed codicil? A. On the afternoon of the 9th, when Mr. Gourley asked me to take it to Mr. Ashley, Sr.

Q. Mr. Dwight Ashley, Jr., was there at the time? A. Yes, sir.

Q. Did Mr. Gourley give you any instructions as to what was to be done? A. He did not.

Q. Did he say anything to you about who would be the witnesses to the codicil? A. No, sir.

Q. Did Mr. Dwight Ashley, Jr. suggest who should be the witnesses? A. I asked him if he had any witnesses, and that was when we were going out, on the way out of the First National Bank Building, as we were leaving Mr. Gourley's office to go in the automobile; and we met Mr. Dudley on the stairs, and he asked Mr. Dudley to come up to the house.



Q. Did Mr. Dudley go along in the car with you? A. No, sir, he did not.

Q. But he was there when you needed him? A. He was there at the house when we came.

Q. Who was at the house when you arrived; whom did you see? A. I don't recall, because I merely went in the room, and left my hat and coat downstairs and went upstairs.

Q. You had met Mr. Dwight Ashley, Sr. before? A. No, sir, I had not.

Q. Who introduced you to him? A. His son, Mr. Dwight Ashley, Jr.

*By the Court:*

Q. You were a member of the Bar of the State of New Jersey at that time? A. Yes, sir.

*Further Cross:*

Q. Were you not present when the will of April, 1924, was executed? A. No, sir, I was not.

Q. How long did Dwight Ashley, Jr. stay in the room with his father after he introduced you to him? A. He then left.

Q. What did he say to his father? A. He said words to the effect that "This is Mr. Gold of Mr. Gourley's office."

*By the Court:*

Q. You knew Mr. Dwight Ashley, Sr. before this? A. No, sir, I did not know him.

*Further Cross*:

Q. Was there anyone else in the room with Mr. Dwight Ashley, Sr., besides Mr. Dwight Ashley, Jr. and yourself? A. When he introduced me there was no one else present; and when he left me I was alone with Mr. Dwight Ashley, Sr.

*By the Court*:

Q. What time was consumed in that conversation? A. Five or ten minutes.

*Further Cross*:

Q. What was the gist of this conversation between Mr. Dwight Ashley, Sr. and yourself? A. Just as I have stated, that we discussed Mr. Barnett, and we discussed Mr. Ashley, Sr.'s condition.

Q. Well, now, what did you discuss about Mr. Dwight Ashley, Senior's condition? A. I asked him how he was feeling, whether he had any pain; and he said he did not have any pain, but he felt weak and he felt debilitated.

Q. Was he in bed at the time? A. No, sir, he was sitting up in a chair.

Q. Was he dressed? A. He was dressed in a robe.

Q. Why did you ask him about his physical condition? A. Because I thought that visiting a sick man that would be the natural topic of conversation.

Q. Just as a matter or social intercourse with him and not because you wanted to inquire for purposes concerning the execution of the codicils? A. I was not at all interested.



Q. Did he make responsive answers to the various questions you asked him? A. Yes, sir.

Q. Aside from the two topics of discussion about Mr. Ashley, Senior's health, and Mayor Barnett, did you talk about anything else? A. No, sir.

Q. How did Dwight Ashley, Jr. come to leave the room? A. That I cannot say.

Q. Did he say anything as he left you there with his father? A. No, sir.

Q. He made no comment about getting out of the room? A. None whatever.

Q. Did he tell you where you could reach him if you wanted him? A. No, sir, he said nothing whatever.

Q. Did that strike you as unusual? A. No, sir.

Q. You thought that was natural under the circumstances? A. Yes, sir.

Q. Was his father in condition so that it would have disturbed him to have had more than one person in the room with him? A. I don't think so.

Q. How do you account for Dwight Ashley, Jr. withdrawing from the room after introducing you? A. I don't account for it.

Q. You cannot account for it? A. No, sir.

Q. After you had this chat with the father, you went out through the hall into another room and found Dwight Ashley, Jr. there? A. After the chat, I then brought the codicil to his attention.

Q. And what happened in connection with that? A. I read that to him and asked him if that expressed his intention, if that was what he wished, and he said it did.

Q. Now, did you have any discussion with him about the codicil at all? A. No, sir, I don't believe so.

Q. Did he say anything about the reason for making it? A. No, sir.

Q. Did he state to you anything about the nature of the property that was covered by the codicil? A. No, sir.

Q. Did he make any comment of any kind after you read it? A. Not that I recall.

Q. If he had made a comment, you would have recalled it? A. Probably, and perhaps not.

Q. You knew he had been sick for some time, didn't you? A. No, sir, I did not.

Q. Dwight Ashley, Jr. had not told you anything about his father being sick for a long time on your way up in the car? A. No, sir.

Q. All he said after you read the codicil to him was, "That is all right," or words to that effect? A. That was his intention and that expressed his wish.

Q. And then what happened next? A. Then I went out of the room into the hall and found Mr. Ashley, Jr. in an adjoining room, and I told him I wanted to have witnesses, and Mr. Dudley was called and Miss Uhlig came in with him.

Q. Who called these witnesses; do you know A. I don't recall whether it was I or Mr. Ashley, Jr. called Mr. Dudley, but I don't know at all who called Miss Uhlig.

Q. Had you ever met Miss Uhlig before? A. No, sir.

Q. You knew she was employed in the house? A. No, sir, I did not know that.

Q. Were you introduced to her? A. No, sir.

Q. Well, then, as I understand it, Mr. Dudley and Miss Uhlig were called into the room? A. Yes, sir.



Q. And then what happened? A. Then I told them—

Q. Did Mr. Dwight Ashley, Jr. know Mr. Dudley? A. Yes, sir, he did know him.

Q. Did Mr. Dudley or Miss Uhlig go in at the same time with you? A. No, sir, after telling Mr. Ashley, Jr. that I wanted the witnesses, I went back into the room where Mr. Ashley, Sr. was; and then shortly after that Mr. Dudley came in and then Miss Uhlig came in.

Q. And then after they were all three there, what happened? A. Then I told them that this paper which I had was a codicil which Mr. Ashley, Sr. wished to have executed, and I read the attestation clause to the witnesses, and then Mr. Ashley, Sr. signed the codicil, and then the witnesses signed.

Q. Did you ask Mr. Dudley and Miss Uhlig if they understood what kind of a paper this was that they were witnessing? A. No, sir.

Q. How did it come that you did not act as one of the witnesses? A. Simply because I make it a rule not to act as a witness unless I have to, because I don't want to be bothered later in case anything arises.

Q. And then, after the parties had signed, who left the room first? A. I believe Miss Uhlig and Mr. Dudley left first, and I followed them after saying good-bye to Mr. Ashley, Sr.

Q. Was Dwight Ashley, Jr. in the room when the codicil was executed? A. He was not.

Q. Do you know whether Mrs. Dwight Ashley was at the house or not? A. I don't recall.

Q. Did you see Mrs. Dwight Ashley, Jr. when you came there? A. There were some ladies there, but I don't recall who they were.

Q. Were they up on the second floor, where the father was? A. I believe that one or two were in this adjoining room where Mr. Ashley, Jr. was when I called him, but I don't recall who they were.

Q. Now, this adjoining room connected with the room where Mr. Ashley was where you saw him—an open doorway with portieres stretched across it? A. No, sir, both doorways opened into one hall.

Q. But there was no connection between the room Mr. Ashley, Sr. was in and the adjoining room that the ladies and Dwight Ashley, Jr. were in? A. Not that I know of.

Q. Now, neither before the execution of the codicil, nor in the course of the execution of the codicil, did Mr. Dwight Ashley, Sr. say anything about his estate or his property or his reason for making the codicil? A. No, sir.

Q. Was he silent all the time that the two witnesses were in there with you? A. He was.

Q. He did not have anything to say to them? A. I don't believe he did.

Q. Did they talk to him? A. I don't think they did.

Q. It was a silent ceremony? A. I was the one that did the talking.

Q. Except for the reading of the attestation clause by you? A. That is right.

Q. Did you ask Mr. Ashley, Sr. if he understood the nature of the instrument while the two witnesses were in the room? A. No, sir.

Q. Did you ask him while the two witnesses were in the room if he published it or declared it to be a codicil to his will? A. I did that with the attestation clause.



Q. Did you read the attestation clause before or after Mr. Ashley, Sr. signed the codicil? A. Before.

Q. Did you know how long Mr. Ashley, Sr. had been confined to his room before January 9th, the date you were there? A. I did not.

Q. Or, that he had been compelled to sleep in an armchair on various nights prior to that? A. I did not.

Q. Or that he had aften vomited his food? A. I knew nothing of that.

Q. Or that he had been unable to take care of his personal needs? A. No, sir, I did not know that.

Q. Did you know he had been attended at that time by physicians? A. No, sir, I did not.

Q. None of these facts were told to you by Dwight Ashley, Jr. or anyone else in connection with the matter? A. No, sir.

Q. Now, after the instrument was signed, who took possession of it? A. I did.

Q. And what did you do with it after you said "Good-bye" to Mr. Ashley, Sr.? A. I put it in my pocket and kept it there until we arrived down town.

Q. You rode down to Mr. Gourley's office? A. Down to the building, yes.

Q. And then what? A. And then I said to Mr. Ashley that I could not put it in the safe in Mr. Gourley's office, because I did not have the key, and I asked him where the will was kept, and he said it was kept in his safe, and I told him then that he had better put the codicil with the will.

Q. Was not the codicil attached to the will? A. I don't recall.

Q. Do you recall whether it was physically one

paper or whether there were two separate papers? A. My impression is, that it was one paper, but I cannot say positively either way.

Q. Now, either on the way up to the house or on the way back to the office, did Mr. Dwight Ashley, Jr. and you discuss the codicil at all? A. We did not.

Q. He did not talk to you or tell you he was in it, or anything like that? A. No, sir.

Q. Did you ever say to Mr. Gourley that you had taken the codicil to the home of Mr. Dwight Ashley, Jr., and left it there to be executed? A. No, sir.

Q. Did you ever tell Mr. Gourley you had not been present at the time the codicil was actually signed by Mr. Dwight Ashley, Sr. and Mr. Dudley and Miss Uhlig? A. No, sir, I never said that.

*Redirect-examination by Mr. Gourley:*

Q. Was Dwight Ashley, Jr. in the room with his father at the time the paper was executed? A. He was not there.

---

HANNAH MARY ASHLEY, being duly sworn, testified as follows:

*Direct-examination by Mr. Gourley:*

Q. You are the wife of Dwight Ashley, Jr.? A. Yes, sir.

Q. And have been married to him how long? A. 26 years.

Q. You live with your husband in Paterson? A. Yes, sir.

Q. When did your father-in-law, Dwight Ashley,



Sr., come to live with you? A. Well, he did not live with us altogether, he went back and forth to the farm, in Stillwater.

Q. On his visits from the farm at Stillwater, near Stillwater, Warren County, when he came to Paterson, did he stop with you? A. As a usual thing; sometimes when he was down; he always came to our house or to Mr. Irving Ashley's house; he came to both places.

Q. How frequently did he come down from the farm? A. What time are you speaking of?

Q. Take 1924; I don't want to go back very far, about? A. He was down about every two weeks.

Q. During these visits of 1924, did he call at your house or stay there? A. He stayed there.

Q. You say that sometimes he went to Irving's house for a day or so? A. Yes, sir.

Q. When he went there, did he call at your house, too, as a rule? A. Yes, sir.

Q. Did he stay with you at your house, too, on some of these visits? A. Yes, sir.

Q. How frequent was that during these visits—take the last half of 1924? A. I could not say how frequently.

Q. How long did he stay when he did come? A. Sometimes two weeks, sometimes less, it varied.

Q. How short were some of his visits? A. Sometimes for two or three days.

Q. When did he come from the farm the last time? A. January 4th.

Q. Where did he go? A. He came to our house.

Q. Did he remain there until he died? A. Yes, sir.

Q. Did he have any physician attending him during these last days? A. He had Dr. Todd; we call-

ed Dr. Todd when he asked us to, and sometimes we called him ourselves if we thought it was necessary.

Q. Were there any other physicians in attendance? A. Dr. Flitcroft came.

Q. How long was he in attendance? A. He came for a consultation one time.

Q. Covering what period of time? A. Just once he came; and later on, when Dr. Todd was away, then he came two or three times.

Q. When was that; what month was that in when Dr. Todd went away for a while? A. That was in February, 1925, a little while before he died.

Q. Had Dr. Flitcroft seen him before the 9th of January, do you know? A. He saw him one time, but I could not say when.

Q. During the month of January, how frequently did Dr. Todd call? A. I could not say that; once a week, and sometimes not for two or three days.

Q. What was Mr. Ashley, Sr.'s condition from January 4th, from that on until he died; was he able to go up and downstairs? A. Yes, sir.

Q. Where was his room? A. Upstairs on the second floor.

Q. Where was the dining room? A. Downstairs.

Q. Was he able to go up and down the stairs for his meals? A. Yes.

Q. Was his breakfast taken upstairs? A. Sometimes.

Q. What about the noon meal, luncheon, and dinner? A. He was usually down for those.

Q. When was the last time he had been downstairs in the dining room? A. It was the Thursday before he died; he died on Saturday morning,



and that Thursday night he was down for dinner.

Q. Do you remember the date he died in February? A. The 21st of February.

Q. Without exception was he down every day in the dining room? A. Not without exception, but practically every day.

Q. What disability was there in his movements or activities? A. The latter part of the time his legs were very much swollen.

Q. That began when, so far as you know? A. I don't know.

Q. How long before his death? A. Maybe about two weeks, something like that.

Q. Well, how did he spend his time? A. Several times he went out with Mr. Ashley on the back porch and on the front porch.

Q. Did he dress every day? A. Yes, sir.

Q. Did he have his usual street clothes on every day? A. Yes, sir, nearly every day.

Q. How was his appetite? A. Fairly good; he never was a large eater.

Q. Did he read the papers? A. Yes, sir, that was his main pleasure, to read the papers, he read them every day and all the time.

Q. Was there any change in his mental attitude during those days in the month of January? A. Just about the same as he had been right along.

Q. Do you remember the date of this codicil being signed? A. I did not know what was being signed; I knew there was something.

Q. Where were you? A. I was upstairs.

Q. Do you remember Mr. Gold coming in? A. Mr. Ashley introduced me to him in the hall upstairs, as I recall it.

Q. Do you remember Mr. Dudley being there?

A. I don't know that I saw him until afterwards; I saw him later in the afternoon.

Q. This Uhlig girl, where did she come from? A. That is my maid in the house.

Q. Were you upstairs; was Dwight Ashley with you a part of the time? A. Yes, sir.

Q. What room is opposite the one that Mr. Ashley, Sr. occupied? A. At the end of the hall is a lavatory; there is no room opposite.

Q. Where were you while these other people were in Mr. Ashley, Senior's room? A. Right next to his room, in my bedroom; there are doors and heavy portieres.

Q. Who called Miss Uhlig? A. I saw Mr. Gold; he was introduced to me in the hall.

Q. Did you have any conversation with Mr. Ashley, Sr. about his sons? A. Yes, sir, several times.

Q. About their conduct? A. Yes, sir.

Q. I want to find out within the summer and fall of 1924, if anything was said by him during that time; if so, tell me. A. He was very much upset over the way the two boys were drinking.

Q. What did he say about it? A. He said they would shortly go to hell if they did not stop their drinking; he told me that on several occasions.

Q. Were any other comments made by him as to their conduct during that period? A. He did not like the way they were living at home; he spoke of that several times.

Q. What was that in respect to? A. In regard to the way they were living with their families; I don't recall the words.

Q. Do you recall the substance of what he said? A. Most of it was about drinking; and he said he thought it was terrible for Irving to do the way



he did, with such a lovely wife as he had; he was very much grieved over his family.

Q. Did he say anything about Charles? A. Yes, sir.

Q. What? A. That he was doing the same thing practically; that it was too bad the two boys were going the same way, and he felt terrible about it; sometimes he would call up Mrs. Irving's home and talk to her, and then he would tell me what she said, and then the same thing happened in regard to Mr. Charles. He talked to me about them both in different ways.

*Cross-examination by Mr. Vanderbilt:*

Q. Up to the late fall of 1924, Mrs. Ashley, when Mr. Ashley, Sr. would come down, he would spend half his time at your place and about one-half of his time at Irving's place, roughly speaking? A. Perhaps so, I would not say positively as to the time.

Q. During that period of 1924, Mrs. Dwight Ashley, Sr. had been living for a considerable period of years with Mr. Charles Ashley, hadn't she? A. Yes, sir.

Q. That probably accounts for the reason that he did not spend a good deal of his time on the visits at Mrs. Charles Ashley's house? A. I don't think so, because there were difficulties that have been gone over before in the different testimony that has been given.

Q. And when he came down from the farm on January 4, 1924, he came directly to your house to be convenient to Dr. Todd? A. I presume so; that was one reason, I suppose.

Q. In that first week that he was there after January 4, 1925, Dr. Todd visited him every day, didn't he? A. I could not say positively.

Q. Do you recall that his condition was quite serious when he came down from the farm on January 4th? A. I would not say that it was any different than it had been before.

Q. Had not Dr. Todd told you on January 4th, or January 5th, or about that time, that Mr. Ashley, Sr. was likely to die with the slightest exertion? A. I don't recall it.

Q. Did not Dr. Todd say anything to you about that? A. I could not say that.

Q. What did Dr. Todd say? A. He simply spoke about his heart; he said his heart was bad, and we know if anyone exerts his heart too much under such circumstances, it would be harmful; Dr. Todd told me he would have to be very careful, and he should not go up and downstairs any more than was necessary.

Q. Did not Dr. Todd tell you on January 4th, that he despaired of Mr. Ashley's life, that he was in such a serious condition? A. I don't remember it.

Q. Do you say that during this period in January he went up and down the stairs? A. Yes, sir, you could not keep him upstairs; I tried my best to do so.

Q. On how many occasions prior to January 9th, between January 4th and January 9th, did he go out on the front or back porch with your husband? A. I could not say, just at that time.

Q. Do you recall whether he went out at all during that period, or whether it was at some later date after January 9th that he went out on the porch? A. I think it was after January 9th.



Q. In other words, in the period between January 4th and the 9th, he was in very bad condition and not able to go out? A. No, sir, I don't say that.

Q. Did he go out between January 4th and January 9th? A. He never cared about going out at all; you could not get him to go out, but, on the other hand, you could not keep him upstairs.

Q. Why did he want to go downstairs? A. I suppose he had his reasons.

Q. But he did not want to go out? A. No, sir.

Q. Did he ever say why? A. No, sir.

Q. Now this period from January 4th to the 9th, did he go downstairs at all? A. I could not recollect that.

Q. Well, in general, the condition, his condition, when he first came there on January 4th, was very bad, wasn't it? A. I would not say it was very much different than it had been before.

Q. It was much worse than it had been the latter part of January, wasn't it? A. I could not say; he never had to be dressed of any account; he waited on himself always.

Q. Did he have to sleep in the chair at nights? A. Maybe once, on account of his breathing.

Q. Can you recall on what day that was—4th, 5th or 8th? A. I don't recall.

Q. Did it happen more than once? A. I could not say that.

Q. You would not say it did not, either? A. No, sir.

Q. Did he have vomiting spells? A. In the latter part of his life, do you mean?

Q. From the 4th to the 9th of January, I am speaking of? A. Not that I recall.

Q. Was he able to take care of his personal needs? A. Yes, sir.

Q. At no time during his last sickness from January 4th up to the time of his death was he unable to take care of his personal needs? A. I would not say he was unable to take care of himself or his needs; he always went to the bathroom; that was one thing he always did; there may have been a day or two that we may have helped him a little but that is all.

Q. When did you first know of the preparation of the codicil? A. I did not know anything about it.

Q. When Mr. Gold came to the house on the afternoon of January 9th, did you know what he was coming for? A. No, sir.

Q. Did you know who he was? A. Not until I was introduced to him.

Q. When you were introduced to him, did you know what he had come for then? A. No, sir.

Q. Did you know when you were introduced to him, that he was there from Mr. Gourley's office? A. I had heard Mr. Ashley speak of him.

Q. Then you did not know what he had come for? A. No, sir.

Q. Had you received a telephone call from your husband earlier in the day? A. Yes, sir.

Q. What was that telephone call? A. He asked me to have his father come to the telephone.

Q. What time was that call? A. It was in the afternoon; I could not say just when.

Q. As near as you can fix it? A. Around three o'clock.

Q. What did Mr. Dwight Ashley, Jr. say to you over the telephone when he called you up? A. He



asked me to get his father to the telephone.

Q. Was that all? A. That was all.

Q. What did you do? A. I went in and told his father; he was in his room upstairs.

Q. Sleeping? A. No, sir, so I told him that Dwight wanted to talk to him on the telephone, and I pulled the stool out from under the telephane table, and he sat down, and I left the room and went to the other parts of the house where I was busy, and I did not hear the telephone conversation.

Q. When your husband spoke to you, did you ask him what he wanted to speak to his father about? A. No, sir.

Q. Were you not a little surprised that he should have called him to the telephone? A. No, sir.

Q. It did not strike you as unusual? A. No, sir.

Q. When did you first learn about this codicil? A. I could not say just when; I don't recall when Mr. Ashley told me.

Q. Didn't he tell you anything about it after Mr. Gold had left and he had returned from going down to the office? A. He may have.

Q. Did he? A. I cannot say.

Q. When did you first learn about the fact that Mr. Ashley, Sr. had executed a codicil to his will? A. I cannot say; I cannot fix the time when he told me.

Q. When did you first learn about the delivery of the shares of stock to Mr. Dwight Ashley, Jr? A. I don't know that.

Q. Well, you did know about that being delivered to him? A. Sometime, but I cannot say when.

Q. When Mr. Dwight Ashley, Jr. came back af-

ter taking Mr. Gold away in the automobile, didn't you ask him what it had been all about? A. I don't recollect.

Q. Didn't he tell you what it was all about? A. He may have done so.

Q. Do you recall that he did? A. I cannot say.

Q. Mr. Ashley, your husband, brought Mr. Gold into the house and he took him into the room that Mr. Ashley, Sr. was in, and he had a conversation with him, and then he comes out and calls for two witnesses, and one of the witness's wives is there talking to you, that was Mrs. Dudley; and the witnesses go in the room with Mr. Gold to where Mr. Dwight Ashley, Sr. is; then they come out, and then Mr. Dwight Ashley, Jr. takes Mr. Gold away, and after a while he comes back, and you did not ask him what it was all about? A. I did not think anything at all about it; I did not think anything about it at all.

Q. And you did not ask him what he wanted to talk to his father about on the telephone in the afternoon? A. No, sir.

Q. When did you first ask your husband what it was all about? A. I don't know that I asked him at all.

Q. When did he first tell you what it was all about? A. I could not say.

Q. He never discusses his business affairs with you? A. Yes, sir.

Q. When did you first learn about the stock? A. I cannot say.

Q. Was it before or after the father's death, the Savoy stock, that you first heard of the delivery of it to your husband?



Mr. Gourley: I did not speak of that at all.

The Court: The witness is very explicit.

Q. When did you first hear your husband had the stock of the Savoy Realty Company? A. I could not say when; I heard it, but I could not say when.

Q. Was it before or after Mr. Ashley died? A. I don't know.

Q. Was it in the year 1925? A. Yes, sir.

Q. The first half or the second half of 1925? A. It would be the first half.

Q. How early in the first half? A. I cannot tell you; I don't remember when he told me.

Q. When did you have these conversations with your father-in-law with respect to Charles and Irving? A. At different times when we were sitting in the room together.

Q. This was on his last trip down there, beginning January 4th? A. Yes, sir.

Q. Had you talked to him about Charles and Irving before that on the earlier trip in the fall of 1924? A. Yes, sir.

Q. When was it he first began to express the idea that Charles and Irving were going to go to hell, to you? A. That was all through the fall he said that.

Q. The fall of 1924? A. Yes, sir.

Q. Tell me exactly what it was he told you about Irving; let us take Irving first. A. I cannot just recall; he talked at different times about them; it was always about their drinking.

Q. Did he talk about Irving drinking in January, 1925, when he was there on that trip? A. I cannot say that.

Q. Did he talk about Charles drinking at that time? A. There were very few times that he did not speak about it.

Q. Did he say he had ever seen them drunk? A. No, sir.

Q. What did he say? A. He said they drank, and he spoke about things they did.

Q. Did he say how he knew it? A. I suppose Mrs. Irving called him up to tell him; they would talk over the telephone.

Q. Did he tell you how he knew about it? A. No, sir.

Q. What else did he worry about with respect to the boys, except their drinking? A. Their family life.

Q. What did you say to him about it when he told you these things? A. What could I say?

Q. I am asking you what you did say. A. I did not say very much of anything.

Q. Tell us what that was. A. I told him it was too bad that they treated their wives the way they did, that I did not see any reason for it.

Q. Anything else? A. I don't remember anything else just at present. I did not keep on the subject, I tried to take his mind away from the subject; I did not think it was good for him to talk about those things; he always brought the subject up himself; I never brought the conversation up.

Q. You did not discuss the boys' side of it at all? A. No, sir.

Q. You have never seen either Charles or Irving drunk, have you, Mrs. Ashley? A. No, sir.

Q. Did you tell that to Mr. Dwight Ashley, Sr? A. I think I did.



The Court: There is a question as to the competancy of this; do you want to pursue it?

Q. Was there any change in Mr. Dwight Ashley, Sr.'s condition from morning to afternoon on January 9th, or was his condition practically the same all day long? A. I would say it was about the same, as far as I can remember.

Q. Well, you can fix the day by the fact that Mr. Gold and Mr. Dudley and others came in; was his condition about the same all the day long? A. Yes, sir.

*By the Court*:

Q. Would you say that you fix this date of the codicil by reason of seeing these people? A. Yes, sir.

Q. Do you remember whether Mr. Dwight Ashley, Sr. came down to his dinner that night after these people had gone? A. I think he did.

*Further Cross*:

Q. During this period from the 4th to the 9th and thereabouts, did you administer digitalis to Dwight Ashley, Sr? A. I administered it by the doctor's orders.

Q. How many times a day? A. Three times a day I think it was.

Q. How many at night? A. I could not say.

Q. The same number? A. I don't know.

Q. On November 25, Dwight Ashley, Sr. and Dwight Ashley, Jr. and Charles and Irving were all together in your house; do you remember that in-

cident? A. I could not remember it from that.

Q. On the Thanksgiving before he died, were they all there? A. Charles was not there.

Q. Irving was? A. Yes, sir.

Mr. Gourley: I have subpoenaed Charles Ashley and Mrs. Irving Ashley here, but I think myself we have had quite enough of that branch of the case. I have some witnesses here of the values of the Savoy, but I think it is of very little value, and I will rest.

---

REBUTTAL

SOREN P. HANSEN, being duly sworn in rebuttal, testified as follows:

Mr. Gourley: I desire to interpose an objection at this stage. They have put in their case. We have proved the will originally—

The Court: Let us see if this is rebuttal.

*Direct-examination by Mr. Vanderbilt:*

Q. Mr. Hansen, are you familiar with land values in Haledon, Prospect Park and Hawthorne? A. Yes, sir, I am.

Q. Have you examined the property of the Savoy Realty Company in those three municipalities? A. Yes, sir.

Q. Referring to the Haledon lots, known as "Recreation" ground, describe the Haledon lots and tell us their values?



The Court: Put the question in comprehensive form and describe them all.

Q. Tell us what the value of the property in Haledon, Prospect Park and Hawthorne, belonging to the Savoy Realty Company is, as of January 9, 1925. A. The Haledon lots, known as the "Recreation Ground," four acres, or 48 lots on Haledon Avenue—Haledon Avenue is a County road—

The Court: We know about that.

A. (Continued) The land is worth $350.00 to $400.00 a lot at Haledon, on Haledon Avenue.

Q. How much for that whole tract? A. It is from $16,800 to $19,200 for the entire tract.

Q. Give us the next tract in Haledon. A. 12½ acres; this tract is partly on the top of the hill.

Mr. Gourley: We have not the slightest information that we own the thing.

Q. I show you a map, and ask you if that is the property you examined, that you are about to testify to—the second tract? A. Yes, sir, that is the property.

Q. This is the 12½ acre tract you are talking about? A. Yes, sir.

The Court: How do you know that these belong to the Savoy Realty Company; I don't regard this as material; I don't want to shut you off; it is not rebuttal.

Mr. Vanderbilt: If it is part of the assets of the Savoy I want to go into that.

Q. What is the value of it as of January 9, 1925? A. $600—$7,500 for the entire tract.

Q. Now, give us the Prospect Park property value as of the same date? A. The total is $18,000.

Q. Now, I show you a map of the Savoy property and ask you if you have valued those lots, some 440 lots; where are they located? A. This is in Prospect Borough.

Q. What are their values?

Mr. Gourley: Was there ever such a question asked in court before?

Q. I show you a list of the lots by numbers, as prepared by Mr. Dwight Ashley, Jr., and ask if you used that list in checking up what lots were shown on that map? A. Those are the lots that I checked up.

*By the Court*:

Q. What is the value in total, that you checked off as belonging to the Savoy Realty Company? A. $126,500.

Q. Will you give that for them? A. Yes, sir.

*Cross-examination by Mr. Gourley*:

Q. We want to sell that, Mr. Hansen? A. I would be glad to sell it for you.

Q. We will close that today if you will give us a deposit. A. That is an average of $275.00 a lot.

Q. When did you see this property? A. I saw this property in the month of February, or the middle of February of this year.

Q. Did you go over the ground and look at each of these lots? A. Yes, sir, I went over the ground pretty well.



Q. And I suppose you know that some of these lots are for sale; did you know the price they were selling them for? A. No, sir.

Q. Did you inquire from the Savoy Company about what they were getting under contracts of sale? A. No, sir.

Q. Have you ever sold any of that property? A. I have sold some down on the main road.

Q. These last remaining facilities on this tract run up against the mountain? A. Yes, sir.

Q. And there is scrub oak there and rocks? A. Yes, sir.

Q. The worst part of the property is still to be sold? A. I would not say that.

Q. The best part has been sold below? A. I would not say that; when you get on top of the hill it is very good ground.

Q. Where have you sold any property? A. Along the main road, facing the property.

Q. When? A. Two years ago.

Q. How many lots did you sell two years ago? A. I have forgotten.

Q. When have you sold any property there? A. Two years ago.

Q. What did you get for it? A. Around $400.00.

Q. Whom did you sell it to? A. I shall have to bring up my report from the office.

Q. Now, of course, land of this kind requires a good many years to get your cash? A. It does if you sell it on the instalment plan.

Q. And those lots may go fast or may go slow? A. There is no demand for land just now.

Q. You have to carry it along for years before you realize? A. Yes, sir.

Q. Are there trees you can see? A. No, sir.

Q. Are you sure it was our property you were estimating? A. I went by the maps.

Q. That is all you know about it? A. Yes, sir.

Q. Would the property be readily salable? A. Yes, sir.

---

WILLIAM H. ASHLEY, being sworn again by the Court, testified as follows:

*Direct-examination by Mr. Vanderbilt:*

Q. I show you paper, dated January 9, 1925, "Exhibit G-1." and ask you if you have seen that before? A. Not until today.

Q. Did Dwight Ashley, Jr. telephone to you on January 9, 1925? A. About that time.

Q. What did he say to you over the telephone? A. He asked me to go to the farm and put a man off the place; the farm, that he was drinking.

Q. Do you know who the man was? A. No, sir, I do not.

Q. Have you read that paper through, Mr. Ashley, this morning? A. Partly; it is so disconnected that I can hardly understand it.

Q. Did you get the full telephone message that is set forth in the paper from Dwight Ashley, Jr?

Mr. Gourley: He has not read it yet.

Mr. Vanderbilt: He has read it this morning in court, he said.

Q. Did you get the full telephone message that is in that memorandum? A. No, sir.

Q. After Dwight Ashley, Jr. asked you to go over to your brother's farm and put off a man that had been drinking, did you make any inquiry from him



as to the condition of your brother's health? A. Yes, sir.

Q. What did you say; did you ask him how your brother was? A. In substance, he was in bad shape and I wanted to know if I could come down, and he said, "No, I will keep you posted from time to time as to how he is".

*No Cross-examination.*

---

MISS CARRIE CLARK, being duly sworn in rebuttal, testified as follows:

*Direct-examination by Mr. Vanderbilt:*

Q. Where do you live? A. Stillwater.

Q. You were the housekeeper of Mr. Dwight Ashley, Senior's farm at Stillwater? A. Yes, sir.

Q. How long? A. I could not really say.

Mr. Gourley: I object; how is this rebuttal?

The Court: The objection will be overruled.

Q. For several years before his death? A. Yes, sir.

Q. In conversation with you up at the farm, Miss Clark, did Mr. Ashley state what his financial condition was, let us say in the latter part of 1924?

Mr. Gourley: Objected to.

The Court: The objection will be overruled.

A. He did not in particular, but he was up in the country because he had retired from business.

*By the Court*:

Q. What did he say about his financial affairs to you then in 1924? A. That he was not as rich as he had been.

*Further Direct*:

Q. Did he say anything to you about the financial statement of the Hawthorne Silk Company or the Savoy Realty Company?

Mr. Gourley: I object to this; it is not within the issues.

The Court: The objection will be overruled.

Q. Did he say anything to you in the fall of 1924 about trying to get a financial statement of the Savoy or the Hawthorne? A. He did not get a ready reply, and he did not know what was the matter with the boys, he said.

*By the Court*:

Q. He did not talk to you about financial statements? A. Not in particular.

Q. He paid your salary, didn't he? A. Yes, sir.

*Further Direct*:

Q. Did he ever say he did not get financial statements of those two companies? A. (No answer).

Q. Do you recall when he came down from the farm the last time? A. Yes, sir.

Q. When was it? A. Sunday, January 4, 1925.



Q. What was his condition at that time?

Mr. Gourley: Your Honor will note my objection.

The Court: Yes.

Q. Did he go down with you? A. No, sir, the hired man took him down.

Q. Did you bid him good-bye when he went down? A. Yes, sir.

Q. How did he go? A. I don't know whether he went in a sled or how.

Q. How did he get in the sled? A. With the assistance of the hired man.

*By the Court*:

Q. Did you see him after that? A. I made a trip down here to the house later; I had killed some chickens, and it was a holiday, and I had forgotten about it, and I took the chickens down with me.

Q. Did you see him personally then? A. Yes, sir.

Q. Did you have a talk with him? A. Yes, sir, for a few moments.

Q. How did he seem? A. Pretty bad.

Q. Did he ask you how the farm was going on? A. Yes, sir.

Q. Did he give you any money? A. No, sir.

*Further Direct*:

Q. What was his health at the time he left the farm? A. Bad.

Mr. Gourley: My objection goes to this.

Q. During the last few days he was at the farm, did he speak to you about his boys? A. Yes, sir, he was always, more or less, speaking to me about his children.

Q. What did he say about them?

Mr. Gourley: I object to this; this is certainly not rebuttal.

The Court: It might affect the credibility of one of the witnesses.

Q. What did he say? A. He always loved his boys.

Q. Do you know why he left on January 4th, Miss Clark? A. Well, he felt very badly, and he said he did not care to die on the farm.

*No Cross-examination.*

Recess to 2 P. M.

---

After Recess

CHARLES ASHLEY, being duly sworn in rebuttal, testified as follows:

*Direct-examination by Mr. Vanderbilt*:

Q. Mr. Dwight Ashley, Jr. testified that you asked your mother to leave your home. Did you? A. I did not.

Q. I show you a letter dated January 8, 1925, and ask you in whose handwriting that is? A. My mother's.

Q. The envelope and the letter? A. Yes, sir.



Mr. Vanderbilt: I ask to have them marked in evidence.

Marked "Exhibit V. B. 1" and the envelope was marked "Exhibit V. B. 2."

Q. Your brother Dwight testified he did not know that your father loaned money to the Hawthorne Silk Company. Do you know who was instrumental in procuring these loans for the Hawthorne Silk Company? A. Dwight Ashley, Jr.

Q. Was Dwight Ashley, Jr. present at the meeting of the Board of Directors of the Hawthorne Silk Company at which financial matters of the company were discussed? A. Yes, sir.

Q. And did he have access to the books of the company? A. Yes, sir.

Q. Your brother Dwight has testified he accepted a bonus check of $17,500 from the Hawthorne Silk Company under protest; and that he told you so; did he ever protest to you against this bonus check? A. He did not; on the contrary, he was very pleased to get it, just as much as I was.

Q. Your brother Dwight Ashley, testified that in 1920 the Hawthorne Silk Company had a surplus of $375,000. and that he wanted a dividend declared; did he ever speak to you, about it? A. He did not.

Q. Your brother Dwight has testified that you were responsible for the ousting of your father from the Savoy Company? A. That is not so.

Q. How did that come about? A. Dwight made the proposal to me that the office of Treasurer be given to me, in addition to my duties as Secretary. I could not see the necessity for such a move, and asked him why; he made the suggestion, he said "If we continue father in as Treasurer of the com-

pany, he is liable to clean out the treasury."

Q. Your brother testified, that you held a proxy for your mother at this meeting at which your father got out of the company; did you hold that proxy? A. I believe not, but the minutes will show. Dwight usually held mother's proxies.

Q. Your brother Dwight testified that he voted against your father at the meeting of the Savoy Company in 1916, because you and your father were not on speaking terms; is it true, that your father and you were not on speaking terms before this meeting? A. Well, no, I would not say; we spoke at time when we met.

Q. Were you on friendly speaking terms? A. Not entirely.

Q. I show you a piece of yellow paper and ask you to tell us what that is; whose handwriting is that in? A. My father's.

Q. Read it, please. A. "Dear Charlie: There is no need of your taking seriously words that passed between us; certainly, I don't want you to leave the house so long as I can make you comfortable, which is my pleasure and desire." (Signed with his initials).

Mr. Vanderbilt: I offer this in evidence.

Marked "Exhibit V. B. 3."

Q. Can you find the minutes of the meeting of the Savoy at which your father was removed from office? A. They are here.

Q. What page, please? A. Page 33.

Mr. Vanderbilt: May I have the page marked in evidence.

Page marked "Exhibit V. B. 4."



Mr. Vanderbilt: I offer the minute book, especially the minutes of this meeting.

Q. Did the Savoy hold more than one meeting a year? A. Not usually, and some times not every year.

Q. Who managed the business of the company after your father was removed from office? A. The President.

Q. And who was that? A. Dwight Ashley, Jr.

Q. Were financial statements presented to the annual meeting each year? A. They were not, no, sir.

Q. Did you give Dwight Ashley, Jr. a proxy to represent you at any of these annual meetings after your father's removal? A. As I remember it, yes, sir.

Q. Did your mother also give him a proxy? A. Yes, sir.

Q. Were there any meetings after 1920? A. None that I have a record of, until 1925.

Q. In whose possession has the minute book been? A. The President's, Dwight Ashley, Jr.

Q. Did you have anything to do with fixing the prices at which the holdings of the Savoy were offered for sale? A. I did not.

Q. Who did fix that price list? A. The President, Dwight Ashley, Jr.

Q. I show you a slip, and ask you what that is? A. This is a note.

Mr. Gourley: I understand this testimony is only in rebuttal?

The Court: Yes.

Mr. Gourley: I want it to be liberal, but I don't want it to run away with me.

A. This is a note sent to the President, Dwight Ashley, Jr. by myself, in my handwriting.

Q. In pencil? A. Yes, sir, asking for prices on certain of the Savoy Realty Company, in Hawthorne. He replied to it, giving the price per lot, at which I was to sell the property.

Q. And that is the part that is in ink? A. Yes, sir.

Q. And signed by Dwight? A. Yes, sir.

Mr. Vanderbilt: I ask to have that marked.

Marked "Exhibit V. B. 5½."

Q. I show you two pages of figures, dated June 19, 1924, and ask you what they are? A. They are a copy of a list of lots which were open for sale at that date, or about that date.

Q. Prepared by whom? A. Prepared by the President, Dwight Ashley, Jr., with the prices attached.

Q. Was this list given to you by him? A. Yes, sir.

Mr. Vanderbilt: I ask to have that marked.

Marked "Exhibit V. B. 6."

Q. Were you present at the special meeting of the directors of the Savoy held on May 1, 1925? A. I was, yes, sir.

Q. Will you refer to those minutes in the minute book; are these the minutes of that meeting? A. Yes, sir.

Mr. Vanderbilt: I ask to have the minutes of that meeting marked in evidence.

Marked "Exhibit V. B. 7"



Q. Did you and Irving, prior to the meeting, hold any conference with respect to any plan of action against your brother Dwight? A. No, sir.

Q. When was the next meeting held? A. In June, about the middle of June.

Q. Have you the minutes of that meeting? A. Yes, sir.

Mr. Vanderbilt: I desire to offer them in evidence.

Mr. Gourley: My objection goes to the relevancy and competency, and as to whether it is rebuttal or not.

Marked "Exhibit V. B. 7½."

Q. When was the next meeting held? A. On July 7th.

Q. Have you the minutes of that meeting? A. Yes, sir.

Mr. Vanderbilt: I desire to have them marked.

Marked "Exhibit V. B.-8."

Q. That is the last meeting that has been held of the company? A. Yes, sir, it is.

Q. Were you present, Mr. Ashley, at the time your wife took her things from your house and left? A. No, sir.

Q. When did it happen? A. July 25, 1924.

Q. Where had you been that day? A. At a business meeting of the Hawthorne Silk Company.

Mr. Gourley: I object to this testimony.

The Court: I shall sustain the objection.

Q. Where had you been on that day? A. At a business meeting of the Hawthorne Silk Company.

Q. Did Dwight speak to you after that meeting? A. Yes, sir.

Q. And what did he say? A. He talked of several matters that were not important—after the meeting.

Q. When you came home, what did you find? A. I found the house empty.

Q. Did you at any time ask your wife to leave the house? A. I did not.

The Court: That does not affect the credibility of Mr. Dwight Ashley; it simply goes to the statement that he says that Mrs. Ashley said to him; that is all it does.

Q. Your brother Dwight testified you were not present at the reading of the will and the codicil? A. I was present.

Q. Did anyone at that time ask Dwight Ashley, Jr. what the value of the Savoy stock was? A. Yes, sir, my mother did.

Q. Your brother testified that you did not speak to your father for eight years; is that so? A. It is not so.

Q. Had you been alienated from your father for any such period as that? A. No, sir.

Q. What were the relations between your father and you during this period? A. We talked when we met.

Q. Readily? A. I would say so.

*By the Court*:

Q. Did you go to see him? A. No, sir.

Q. Did you write to him? A. I did not.

Q. Did you remember him at Christmas by sending him a gift or remembrance? A. No, sir.



Q. Did you remember him on his birthdays? A. No, sir.

*Further Direct*:

Q. What were the conversations that you had with your father at this period? A. Two of them I recollect; one of them was at Mr. Gourley's office; they were business conferences; and one time in particular I mentioned something about Irving, and he stated he never was sorry for anything he had done for Irving. At another time I met my father at my brother's house, my brother Dwight's house, after my mother had been in an accident. At that time father greeted me very affctionately, and I did him.

*By the Court*:

Q. Did you kiss each other? A. Yes, sir.

*Further Direct*:

Q. On any of these occasions did you discuss with your father a plan of buying out Irving's 25% interest in the Hawthorne Silk Company and Dwight buying out your father's 25% interest? A. I think I mentioned that at Mr. Gourley's office.

Q. Did your father approve of this? A. No, sir, he said he wanted the stock to remain as it was.

Q. What did he say; what did your father say when you put that proposition to him? A. He said he wanted the stock to remain as it was.

Q. Do you know whether Dwight and your father were estranged at any time? A. I do.

Q. When and for how long? A. I would say approximately four years.

Q. And when were these years? A. From about the time he withdrew from the Hawthorne Silk Company, until, I would say, close to 1920.

Q. Are you familiar with your father's handwriting? A. Yes, sir, I am very familiar with it.

Q. I show you "Exhibit G4", and ask you to look at the word "Rejected," and tell us whether or not that is your fahter's handwriting?

Mr. Gourley: Objected to; he is not an expert.

The Court: I don't think it is good evidence.

A. I would say it is not my father's handwriting.

Mr. Gourley: He is incompetent to testify on that.

The Court: I doubt his ability to testify, but I will let it stand.

Q. In the course of your father's life had you received many letters from him? A. Hundreds of them.

Q. You are familiar with his handwriting in that way? A. Every word.

Q. Did he make the letters and the words anything like that? A. No, sir.

Q. Will you tell the court in what particular you know that is not in his handwriting? A. The "R" does not look like his, nor the "t" nor the "d."

*Cross-examination by Mr. Gourley*:

Q. Who procured these loans you speak of? A. The President, Mr. Dwight Ashley, Jr.



Q. You were President of the Hawthorne? A. Yes, sir.

Q. Were you not concerned about the question whether the loan was desirable or not? A. As President, I was.

Q. And you consented to the application to your father? A. I made no objection, except that I thought it was money thrown away.

Q. Why did you take it then? A. Because the people needed the money for operators; when the bills arrived we had to pay them.

Q. Did you tell your father he was throwing money away when you took his money? A. I did not visit my father.

Q. You took his money and spent it? A. In the general course of business it was spent.

Q. There was a surplus of $375,000 at the time your brother speaks about? A. I have not the figures.

Q. Approximately that? A. It was a large sum.

Q. You wanted to pay a bonus rather than a dividend; is not that true—that was your individual opinion? A. We both had that opinion.

Q. I am asking you for yours. A. We took a bonus because we had small salaries prior to that time.

Q. Did you approve of the dividend instead of the bonus? A. The matter of dividends was not approached.

Q. Did you approve of the bonus? A. I took it.

Q. Did you vote for it? A. I did.

Q. Now, there were on the Board of Directors some of the employees of the company? A. Yes, sir.

Q. Who were they? A. Mr. Cook, Mr. Purdy, and Mr. Pross.

Q. They were employees of the company at Hawthorne? A. They were stockholders of the company.

Q. And were they employees of the company? A. Just as I was; yes, sir, they were employees and stockholders.

Q. Were they employed at the Hawthorne mill during the day? A. Yes, sir.

Q. Were you employed in the Hawthorne mill during the day? A. Yes, sir.

Q. Did they vote for this bonus? A. As I remember, they did.

Q. Dwight said nothing about being in the minority in the Board of Directors on that question? A. No, sir.

Q. The difference between you and your father, or the company and your father, was because of the selling in of the business? A. Partly.

Q. And wasn't it largely because your father wanted to sell the output of the Hawthorne through the Forest Silk Company, and you thought they ought to have a new company organized as being less costly? A. No, sir, we differed not alone in that respect; we differed in policies of manufacturing.

Q. Was not that the main difference as to the selling in of the plant as being too costly, he wanting the Forest to sell and you wanted a new company? A. The Board of Directors acted on that matter.

Q. Answer my question; was not that the main difference? A. One of the differences.

Q. What was the main difference between you



and your father? A. It started in the manner of manufacturing; that was the main difference; I had a controversy with my father; later on it was a question of the selling policy.

Q. Was not the reason that you wanted a new company to sell rather than the old company, the Forest Company? A. We had a difference of that kind.

Q. And that is why your father resigned from the company? A. One of the reasons.

Q. He walked out—nobody expelled him—he walked out and did not come back? A. Yes, sir.

Q. After you agreed not to sell through the Forest Company your father walked out of the Board? A. He walked out.

Q. And he did not come back since that time; is not that so? A. He did not come back.

Q. Now, you speak about the Savoy; what office did you have in the Savoy? A. Secretary and Treasurer.

Q. You signed all the checks? A. I believe so.

Q. Have you any reason to doubt it, Mr. Ashley? A. No reason, Mr. Gourley.

Q. Every check drawn was signed by you? A. That is true, as far as I know.

Q. You have never learned since that time until now, that a single penny of the company was confiscated? A. I have not.

Q. Have you ever differed with your brother as to the value of lots to be sold? A. Whenever there were lots to be sold, and there was any proposition that would not reach the figure that he put on the value of the lots, I submitted the proposition to him for final decision, to take it or leave it.

Q. And you assented to that conclusion? A. I sold them at the figure.

Q. And you signed the deeds? A. Yes, sir.

Q .Every deed given by the Savoy Company at the price named was signed by you as secretary? A. Yes, sir.

Q. Did you ever utter any protest that the proper values were not obtained? A. I don't recollect any.

Q. You have spoken about your association with your father; you lived at the Riverside house, formerly the Pilgrim House, now a Jewish home of some kind? A. Yes, sir.

Q. How many years did you occupy that house with your father? A. I would not say off-hand—a number of years.

Q. During that time—a great part of that time, or during part of that time, you did not meet your father at the table? A. Yes, sir, I did.

Q. How frequently during your meals did you and your father meet at the table? A. If I was detained at the factory I had my dinner when I arrived home.

Q. Did you have your meals with him at any time during a number of years? A. Yes, sir.

Q. Did you speak to your father during those meals? A. I don't think we spoke every day.

Q. You and he temperamentally did not agree much? A. Not temperamentally—in business we did not agree very well.

Q. You spoke of the meeting at my office; the relations were very strained that night between you and your father? A. I would not say so; some question came up regarding my brother Irving and the division of the Hawthorne Silk Company stock; and I have already testified to that conversation.



Q. Well, you wanted to buy everything out; do you remember? A. Yes, sir.

Q. Do you remember your father appealing to you boys to all stand together, that night in my office, appealing to you? A. That was always his idea.

Q. He appealed to you and you were very cold to him and utterly unresponsive; don't you remember that? A. No, sir, I don't remember that part of it.

Q. Your father knew about the differences between you and your wife before his death? A. Yes, sir, I have been told so.

Q. He did not take the matter up with you? A. He did not, at no time.

Q. Your mother did not take it up with you? A. She might have.

Q. Didn't she take it up with you and appeal to you about the thing? A. My mother has talked to me.

Q. Didn't you tell your mother to go and live with her other boys, that you had supported her long enough? A. I did not.

Q. She paid your wife board when she lived with you? A. Yes, sir.

Q. Do you remember what you said to her? A. She left because my wife left; I said to her I wanted her to come back and live with me.

Q. Without your wife? A. It was my mother that I was talking to.

Q. Without your wife being there? A. I did not say who was to be there; I asked my mother to come.

Q. Didn't your mother leave your house first before your wife; is not that true; and then some

weeks afterwards your wife left? A. I am not certain; I think they both left about the same time.

Q. You and Irving acted together at this meeting after your father's death—of the Savoy—you voted together? A. I think we voted the same way.

Q. Who wrote those minutes up? A. I did.

Q. Is this your language, or Mr. Vanderbilt's language? A. Let me see it.

Q. This was the minutes of the Savoy after your father's death? A. The gist of it I wrote out; I think the copy was made in my brother's office, most of it.

Q. You wrote the substance of it? A. Yes, sir.

Q. That is not your typewriting? A. No, sir, I have no typewriter, this is signed by the Secretary; these are not my minutes; I was not Secretary at this meeting.

Q. You did not write them, then? A. No, sir.

Q. I thought you said you gave the substance of it? A. Not this meeting; at that meeting I was not the Secretary.

Q. Did you write the other meetings up? A. Yes, sir.

Q. And do you say this is your language? A. Let me see the minutes.

Q. There is one May 1, 1925? A. Yes, sir, that is my language.

Q. Look over that, and look over the second one; whom did you give the original minutes to? A. I gave them to my brother Irving to type.

Q. When was the next time you saw these; Irving did not take them to John Benson, did he? A. I don't believe so.



*By the Court*:

Q. You did not dictate them? A. Yes, sir.

Q. Did you dictate them to a stenographer or a typist? A. I had a pencil copy, and I handed them to my brother Irving.

Q. June 16, 1925; "In addition to this subject the matter was discussed and strongly objected to by the majority of the directors, regarding the way the President was spending the company's money without the consent or advice of the directors. The President was very haughty in stating that he would carry on things the way he thought best." A. That was the substance of the meeting, Mr. Gourley.

Q. In what way did the Presidene of the company spend the money of the company? A. All of the work that had been done in Fayetteville, North Carolina, had been done without the knowledge or consent of the Directors.

Q. Was there a single dollar's worth of money spent? A. Yes, sir.

Q. Tell his Honor just briefly, what did he do? A. He spent the money on the Fayetteville property—without any knowledge or consent of the Board of Directors.

Q. What did he do? A. We were not familiar with the work he was doing.

Q. "In addition to this subject the matter was discussed and strongly objected to by the majority of the directors, regarding the way the President was spending the company's money without the consent or advice of the directors. The President was very haughty in stating that he would carry on things the way he thought best." You were

President of the Hawthorne Company, and up to the failure of the Hawthorne Company, you were President. Did you visit these mills at all? A. I did.

Q. How often did you go down there after your father parted with the control? A. I have no record of how often I visited them.

Q. How many hundred colored people had you in your employ? A. We had at times two or three hundred colored people working in the mills.

Q. During the history of the Savoy affairs, was there anything done concerning the Savoy, of which you had knowledge, any substantial thing—spending money or selling property, or making any change of substance? A. Yes, sir.

Q. There was? A. Yes, sir.

Q. You got a statement every year? A. No, sir.

Q. Did you ever ask for the statement you did not get? A. I don't remember.

Q. No money could be spent without your signature? A. I don't think so.

Q. What statement did you want? A. I don't know that I asked for a statement.

Q. Nobody was paid anything—the President got no salary? A. None of us received any salary, none of the officers received any salary at all.

Q. All working for the benefit of the stockholders without any subtraction for official fees? A. Yes, sir, I was.

Q. No one received any salary? A. That is right.

Q. What is the date of this yellow paper, "Dear Charlie: There is no need of your taking seriously;" what is the date of that? A. That was at the time I was about to leave the home after the Savoy Realty Company episode for which I was blamed.



Q. What is the date of that? A. 1916.

Q. Was he in the house with you at that time? A. Yes, sir, he left that note for me the following morning.

Q. Did you see him the next day at the table? A. I don't remember.

Q. Did you speak at all with him about it, or he with you? A. I cannot say.

Q. In these meetings of the Savoy Company, after your father's death, you appointed a general manager; that is true, isn't it? A. Yes, sir.

Q. A man in town here named what? A. Stanley Mortlock—at $3,000 a year, as I remember it.

Q. "The General Manager shall disburse the funds of the company as may be ordered by the Board." You voted for that resolution to take it away from your brother, and all funds were to go to Stanley Mortlock, a stranger to you? A. It was our purpose to do away with dissension, and have the business of the company run on a basis where it would make money.

Q. What steps did you want to take that would make business better? A. We thought if we could do away with dissension, we could do more business.

Q. In what way did the company suffer? A. Through dissension.

Q. Was there a sale prevented or a security incurred by any such conduct? A. I would say so.

Q. Give it to us. A. We could not sell any property, and we could not remove.

*Redirect-examination by Mr. Vanderbilt*:

Q. Why did your mother leave your home? A. Because, I presume, of my family troubles.

Q. In December, 1924, did you ask your wife to return to your home? A. I did.

Q. Do you know whether or not your father knew that? A. I do not.

Q. Did she return? A. She did not; I never asked her since that time.

Q. Now, with reference to the Savoy, in the period when your brother was President of it, was the sale of the lots pushed; were many sales made? A. Very few.

Q. Were improvements made to the property? A. Hardly any.

Q. Was it being developed? A. No, sir.

Q. What was the object of putting Stanley Mortlock in as manager? A. To further the interests of the business as a real estate man, and to promote harmony in the organization.

*Recross-examination by Mr. Gourley:*

Q. You have an action now before Vice Chancellor Lewis, you and your wife? A. Yes, sir.

---

IRVING ASHLEY, recalled.

*Direct-examination by Mr. Vanderbilt:*

Q. Mr. Dwight Ashley, Jr. testified you were under the influence of liquor when you came in the house the morning of your father's death?

Mr. Gourley: Objected to. He was on the witness stand and was asked about that.

Q. Did you ever hear Dwight Ashley, Jr. speak



of the circumstances under which Mrs. Charles Ashley removed her belongings from your brother's home?

The Court: What is this rebuttal of?

Mr. Vanderbilt: Rebuttal of statements which Mr. Dwight Ashley, Jr. made on his examination as to never having had anything to do with the relations between Charles and his wife; this goes to disprove that.

Mr. Gourley: We object to it.

Q. What did he say? A. I was there in the evening, and the telephone bell rang, and mother answered it, and she called Dwight, and he went to the telephone, and she told him that Charlie was on; and he considered it quite a joke, and so did I, and my mother told Dwight that Charlie was on the telephone.

The Court: What has that to do with this will—the upsetting of the will by undue influence?

Q. What did Dwight say over the telephone? A. He came back, and his face was changed; I considered it a joke. He said he had detained him over there at a meeting, so that his wife could get the clothes from the house, or go into the house; Dwight Ashley told me that.

Q. You were on friendly terms with Dwight Ashley, Jr. at the time, and not on friendly terms with Charles at that time? A. That is true.

Q. Were you present at Dwight Ashley's house when your father and Mrs. Charles Ashley had any conversation in 1924? A. Yes, sir; and she made

the statement that she had accused Charles of making a failure of his business; and my dad said, "What a mistake you have made; you should get down on your knees and apologize to him".

Q. Was your brother Charles present when the will and codicil were read? A. He sure was.

Q. Your brother Dwight Ashley testified you and your father did not attend meetings of the Hawthorne Silk Company and the Savoy Realty Company for several years; why did you and your father not attend? A. He told me he would not; and he told me not to, because of the treatment that had been accorded to him.

The Court: I think he has been over that on direct examination.

Q. Were you present at the house of Mrs. Charles E. Ashley for dinner a few days after the reading of the will? A. Yes, sir, at her home on Graham Avenue; it was on a Sunday night following the reading of the will. The boys and my mother were there, and we got discussing the codicil, and she said she had told Dwight that it was absolutely unfair, and that it should be divided equally.

Mr. Gourley: I move it be stricken out.

The Court: The objection will be overruled.

Q. After the reading of the will did your mother, in the presence of Dwight Ashley, Jr. ask what was the value of the shares of the Savoy Realty Company? A. Yes, sir.

Q. Did Dwight Ashley, Jr. answer? A. He did tell her, I think, that it was worth $200.00 a share.



The Court: Now, we have had that before.

Q. Are you familiar with your father's handwriting? A. I am, yes, sir.

Q. Is the word "Rejected" in your father's handwriting?

Mr. Gourley: Objected to.

The Court: Objection overruled.

A. Inasmuch as I did not see my dad write it, I say it is not in his handwriting.

Mr. Vanderbilt: We rest.

---

## SUR-REBUTTAL.

JOHN E. GLASSER, being duly sworn, testified as follows:

*Direct-examination by Mr. Gourley:*

Mr. Gourley: Will you admit Mr. Glasser's qualifications?

Mr. Benson: Yes.

Q. Did you make a valuation of this property of the Savoy Realty Company at Haledon, Prospect Park and Hawthorne? A. Yes, sir.

Q. Will you tell us what you did? A. In Hawthorne lots on Prescott, Westervelt, Mohawk, Irvington, North Eighth, Tenth, Eleventh, Twelfth, Fifteenth, Sixteenth and North Seventeenth Street, 147 lots at $200 a lot; that would be a total of $29,400. In Hawthorne, nineteen plus acreage shown on the map as lots with paper streets, no streets, on basis of acreage, I figure that at $900.00

an acre; or on the basis of lots to assist, they show 238 lots at $75.00 per lot.

Q. How much is the total? A. $17,850. In Prospect Park 28-11/20 acres at $250 per acre, $6800.00. In Haledon, about 40 lots on Roe and Post Streets, in rear of East Barber Street, 40 lots at $100 a lot, were $4,000.

Q. Give the descriptions of some of that property. A. The last part is in a gully, about 12 feet below the street line, with a brook running through, now used as a dump by the Borough of Haledon. The Prospect Park acreage of 28-11/20 acres is a hill of rock, and a gully leading to the Bridges Pond. The nineteen plus acres, known as Blocks A, B, C, D, E, F, G, H, I, J, K, L, M, shown as lots with paper streets, cover that scrub oak; it has a pitch of about 10 feet to each 50 feet leading down to the main road. The lots on Prescott, Westervelt and Mohawk Avenues are separate and detached lots, some of which are five to ten feet above the street level; some are ten feet below the street level, and others are on the level with the street.

Q. That is the general description? A. Yes, sir.

Q. Have you bought and sold land in the neighborhood of these? A. Yes, sir.

*Cross-examination by Mr. Vanderbilt*:

Q. I show you "Exhibit V. B. 6," and ask you if you consider those prices reasonable for the land mentioned thereon? A. They are way above the market value today.

Q. Did Dwight Ashley, Jr. give you a list of the property you were to look at? A. Yes, sir.

Q. With the price on them? A. Yes, sir.

Q. Is not that a copy of the list of prices that



he gave you? A. I did not have this list; I just saw a list.

Q. Did you examine this tract in Prospect Park shown on this sketch, covering all Oak Street and North Fifteenth Street? A. Yes, sir.

Q. That is covered in your report? A. Yes, sir.

Mr. Gourley: I have a real estate expert from Fayetteville in this case, but as there is no evidence put in by the other side, I will not call him—he is a Mr. Cooper.

I will make a formal offer of the will and codicil, and rest.

Mr. Vanderbilt: We want to reserve the right to introduce the record of the telephone company as to the date of the telephone call of January 9, 1925.

Mr. Gourley: Yes, we will be glad to help you get that.

The Court: That will be permitted.

Both Sides Rest.

## Exhibit C-1—1910 Will.

I, Dwight Ashley, of the City of Paterson, in the County of Passaic and State of New Jersey, being of sound and disposing mind and memory, make and publish my last will and testament, as follows—

First- I direct all my just debts and my funeral and testamentary expenses to be paid as soon as may be reasonable after my decease.

Second- If my estate shall after the payment of all obligations justly due, exceed the sum of One Hundred Thousand Dollars, then my executors are hereby directed to pay to the Sisters of Charity of St. Elizabeth, for the benefit of St. Joseph's Hospital at Paterson, the sum of One thousand dollars ($1,000); to the General Hospital Association, for the Benefit of the General Hospital at Paterson, the sum of One thousand dollars ($1,000) and to the Paterson Orphan Asylum, the sum of One thousand dollars, ($1,000).

Third- From the income derived from my estate, I direct my executors to pay to my wife for and during the term of her natural life, the sum of Fifteen Hundred Dollars ($1,500) annually in equal monthly instalments.

Fourth- I give, bequeath, and devise all my real and personal property of every kind and description and wherever situate, except as aforesaid to my three sons, viz: Dwight Ashley, Jr., Charles E. Ashley and Irving D. Ashley and to their heirs and assigns forever.

Fifth- I constitute and appoint my three sons, Dwight Ashley, Jr., Charles E. Ashley and Irving D. Ashley, executors of this my last will and testament.

In Witness Whereof, I have hereunto set my



hand and seal this twenty-seventh day of June, nineteen hundred and ten.

DWIGHT ASHLEY (SEAL)

Signed, sealed, published and declared by the above named Dwight Ashley to be his last will and testament, in the presence of us, who were present at the same time, and subscribed our names as witnesses in the presence of the testator and each other.

WILLIAM B. GOURLEY
EDO M. YEREANCE

---

## Will and Alleged Codicil.

In the Name of God, Amen. I, Dwight Ashley, of the City of Paterson, County of Passaic and State of New Jersey, do hereby make, publish and declare my last will and testament as follows:

First: I direct all my just debts and funeral expenses to be paid as soon after my decease as may be practical.

Second: I give, bequeath and devise all my property, both real and personal to my executors hereinafter named, in trust to pay to my wife, for and during the term of her natural life, an annuity of $1000.00, payable quarterly from and after my death, to pay the remaining income of my estate equally to my three sons, Dwight Ashley Jr., C. E. Ashley and Irving D. Ashley for the term of five years after my death, share and share alike, if my said wife should die before said period of five years after my death then the income forming the annuity aforesaid shall also be divided among my

three sons, share and share alike for the remainder of said period.

Third: Upon the expiration of said period of five years after my death, I give, bequeath and devise all my property of every kind and description to my three sons aforesaid, their heirs and assigns, forever, share and share alike. If my wife shall survive me beyond that period then I bequeath and devise the property whether real or personal or both from which the said annuity is paid upon her death, my said three sons, their heirs and assigns forever, share and share alike.

Fourth: I empower my executors to sell and dispose of any and all of my real estate at public or private sale at such times and at such terms and conditions as they shall deem meet or proper and to execute all proper deeds of conveyance therefor.

I do hereby appoint my son Dwight Ashley, Jr. and my friend W. B. Gourley, executors of this my last will and testament.

In witness Whereof, I have hereunto set my hand and seal this 28th day of April, 1924.

(Signed) DWIGHT ASHLEY (L.S.)

Signed, sealed, published and declared by the said Dwight Ashley, as and for his last will and testament in the presence of us, who were present at the same time and who subscribed our names as witnesses in the presence of the testator and each other.

(Signed) MUNSON FORCE
HARRY J. BOYLE

## Codicil.

I Dwight Ashley, of the City of Paterson, County of Passaic and State of New Jersey, do hereby make



and publish this codicil to my last will and testment in manner following:-that is to say—

I give and bequeath 140 shares of the capital stock of the Savoy Co. Inc., now standing in my name on the books of said company to my son Dwight Ashley.

I do hereby ratify and confirm my said will in all respects save so far as any part thereof shall be revoked or altered by this present codicil.

In witness whereof to this present writing which I hereby declare to be a codicil to my last will and testament and which I direct to be added thereto and to be taken as a part thereof, I have set my hand and seal this 9th day of January, 1925.

DWIGHT ASHLEY (L.S.)

Signed, sealed, published and declared by said Dwight Ashley, as and for a codicil to his last will and testament and to be taken as part thereof in the presence of two several persons whose names are hereunder subscribed as witnesses to the signing, sealing and publishing the same which said two persons do so hereunder subscribe their names at the request and in the presence of said Dwight Ashley and in the presence of each other.

MARIE UHLIG
EDWIN E. DUDLEY

## CAVEATOR'S EXHIBITS.

### Exhibit V-1.

Dated, Dec. 17, 1920.

Printed at Page 135.

---

### Exhibit V-2.

Printed at Page 136.

---

### Exhibit V-3.

Printed at Page 137.

---

### Exhibit V-4.

Printed at Pages 137 and 138.

---

### Exhibit V-5.

Printed at Page 139.

---

### Exhibit V-6.

Printed at Page 141.



### Exhibit V-7.

Dated 6/9/23.

Letter from Testator to Appellant Irving Ashley.

Dr. Son Irve: Yours of Thursday received one day late as the P. Master at B. Town is not prompt. I will not come down today as weather is bad and very cold. I am sory your finances keep you so busy—I will send you 1000—use it if you are compelled to. I see you have big bills to meet. Yes you will be up against it if you cannot get some equity on your slk stock. Well, a Com. House is supposed to guarantee sales and not hold you up on that prtext, so you pay 2½% for guarantee and why do you wait for the payment of buyers. I am glad you and D. went up to Lake. Received letter from Bro. Well he is in care of Dr. yet. Bohn is in cast. Will not be taken off for two or three weeks. Hope it will come out right—now I send you my ten trip ticket. I will not be able to use this ticket. Can't you sell it to someone that goes to Lake each day—let me know, I will return it—sent you one crate of eggs on Friday. Am not sendiny any only to you and cold storage—am busy as I should be—at my age, and the way I feel—was very hot last week—or early this week—I do hope you all will come out and win victory in business and make a good record—love to all and self,

Pop.

Hens falling off but will send you one crate on Tuesday or Wednesday.

## Exhibit V-8.

Letter from Testator to Appellant Irving Ashley.

3/13/24

Dear Son Irve:

I will mail this in Florence letter and hope it will find you much improved—received letter from D. today and he said he was trying to get an extension. This I like better as it will give him a chance to size up the situation and see if there is any hope for future—of course he has lost heart when you see conditions as they are—but someone must make silk and goods and the fight is who will get their share and who will not get what they are entitled to in the business. I do hope the business with you will come out better—of course the fight is on and you will come out right—am told the H. S. Company has only 18,000. and not 28,000.—am glad of that—now I will have four cases of eggs on Monday—you see the hens get busy this time of year and they have dropd here to 24c.—therefore you should drop to 33—if they do not sell then I would say sell a couple of crates to some grocer store at the 30 cent price. Writ me. Love to all and self.

Pop



## Exhibit V-9.

Letter from Testator to Appellant Irving Ashley.

10/2/23.

Dear Son Irv:

Yours of Oct. 1 received. Also checks. Now eggs are scarce and I am buying a few for 46c.—that is the price up here at B Town—I would advise now to start in with the storage eggs. There is 12 cases there and I would keep to your price 55 and not go higher—The question will be are they all good and if you can get some one to test them all by the candle process it will be the only safe way—but the 1st thing is to send Robby there and see if the 12 cases are there and start at No. 1 case they are tholdest—now in regard to the contract I think there is some way out of it—and if you can get up some style of goods for dress goods it may help you out—I went over the ground with you in the letter I sent out this A. M. If Gourley says there is no way out of it I will then believe it—Bert has not the experience he, Gourley, has had—promises to fill the contract—is not keeping it—again—where do you stand as to credit—I blame Bert to let you sign it—I would not have let you sign it as I could see no benefit to you and you know they started to tie you up from the start—by partnership, then by contract—yes you must make the best of it. I would talk with Gourley, he is our family atty. I send him 100 a year—to keep him—as to putting a key in door this will only throw yourself away and put the responsibility upon some one else—I can see you are in state of mind you need some one to advise you that will be for the best for yourself and family—To do that would make you jump out of frying pan in the fire and if I had gone to Gourley

or any good atty I would not have made my last days in life as bad as they are now and will be until the end—I will be down Sat. and will see you—but if you come to Lake I will expect you to meet me at the Station South Ogdensburg—I would like to see you and D. up to Lake he wrote me he is likely to go away on Sat.—I am in the country—I feel just as you feel I do not want to meet any of my old friends so they can call me a fool to make a fortune and a good business and then let a man like Bailey swamp me—thru my ignorance—now I do not blame any one but self. I must pay the penalty but my mind is on you boys and if you do not make good then it makes me feel more guilty for the liquidation as it all reflects upon all you boys—now Dwight has and is now going through the deal in finances as you are in only he is not held up same as you and has the liberty to run the business with no one to tell him what he can do—the facts are if these men are not financially srong you may get in a deeper hole than you are now in—and it will result in your loss of credit—then you will be in worse shape as you so far has held your credit in a wonderful way—get better lawyers advice through Gourley and stick to the ship until you get out of this contract—the last talk I had you said they broke it—I hope you did not renew it by not. I had a sleep over my letter to you and I will see you on Sat. I expect—then we will go over the contract and decide it for the best. I have less than $1000. in the bank—I sent in my resignation for the bank as it is very selfish to retain a position as director and not able to be of any help to the president. One thing sure if your people will not furnish you with 100% you cannot make goods for



them—and if they ruin your credit how can you make goods for them—if you do business with them put this up to them—I do hope this will be a lesson to you but I made a bigger blunder when I allowed Bailey to take his father's place in the A. & B Co.—hope you will come out all right—I am worried over your affairs same as you.

Pop.

---

## Exhibit V-10.

Agreement relating to Government Taxes.

Whereas there is now pending before the Income Tax Bureau in the Treasury of the United States, a controversy as to the amount of the income tax due and payable by The Hawthorne Silk Company, for the years, 1919 and 1920, and

Whereas, there has been pledged by The Hawthorne Silk Company, with the First National Bank of Paterson, New Jersey, certificates of deposits and bonds, aggregating the sum of $51,000. as security for the payment of the tax which may be determined to be due for said years, and which is to be paid by said Bank, from the sale of said securities as hereinafter set forth, and

Whereas said certificates and bonds, aforesaid were originally the property of The Savoy Realty Company, and advanced to the said The Hawthorne Silk Company, with the unanimous consent of the stockholders of the said The Savoy Realty Company, for the purpose aforesaid to be so pledged as aforesaid, and

Whereas it is understood and expressly declared by the undersigned that said certificates and bonds are held by said Bank as security for the payment of said Income Tax, or for such sum as may be accepted by the Government by way of adjustment of said Income Tax, for the period aforesaid and which The Hawthorne Silk Company may be called upon to pay.

Now Therefore, said The Savoy Realty Company and the undersigned, being all of the stockholders of the said The Savoy Realty Company, in consideration of one ($1.00) dollar to each in hand paid, do hereby assign our interest in said securities to said Bank and direct said Bank to sell said securities or so much thereof as may be necessary to pay the Government the sum found to be due as aforesaid, and to return the surplus, if any there be after said payment, to The Savoy Realty Company.

In Witness Whereof the said The Savoy Realty Company, has caused these presents to be signed by its President, attested by its Secretary and its corporate seal hereto attached and the individual subscribers have hereunto set their hands and seals this Twenty Fifth day of October, 1924.

THE SAVOY REALTY COMPANY
By DWIGHT ASHLEY, JR.
President.

Attest:
CHARLES E. ASHLEY
Secretary.

(SEAL)

DWIGHT ASHLEY, JR.
CHARLES E. ASHLEY
DWIGHT ASHLEY



## PROPONENT'S EXHIBITS.

### Exhibit G-1.

1/9/25 (date in Dwight Ashley, Jr.'s writing).

Bro Will—You may have time to go to livery stable hire a good sleigh & horse & when there I want you to get 6 ducklings & bring home—now the man on place has whisky & I will mail his check to farm to morrow tell the boys the can get without today, of course stay if you have all night —now tell this man I need men of no whisky on the place and this may break it up but he must go tell Clark to get some on there only ½ a day, & they can the soon determine if I am to sell out the stock as if I am not to get any better I am to quit farming—now the expenses of horse & sleigh I will remit as I get the word from you—there is now one man he can get (crates)? on ½ time—Attend to this & have no accident—if he cares not for (Discharge)? tell him I will soon find reasons to send him away—I will not be able to get there within 3 or 4 days—so I want to get rid of whisky & man—tell him to pick out the big hens from July 1—they are to big
(Brother)?—(Pot 4?)

---

### Exhibit G-2.

Trust Proposal.

WILLIAM B. GOURLEY
Counsellor at Law
First National Bank Building
Paterson, N. J.

January 23, 1925.

I understand that my father has left me by Will, 140 shares of stock in the Savoy Realty Company. If this remain so at the time of my father's death, I shall assign the income from 23 1/3 shares of said

stock to Viola Emma Ashley, for the term of her natural life; also the income from 23 1/3 shares of said stock to William N. Ashley for the term of his natural life; also the income from 23 1/3 shares of said stock to Florence Dilliston Ashley, for and during her natural life, and also the income from 23 1/3 shares of said stock to Robert Brown Ashley, for and during the term of his natural life, as received by me from the Company.

## Exhibit G-3.

Memorandum.

| | | | |
|---|---|---|---|
| Ma | 90 | D A | 140 |
| C A | 90 | D A | 90 |
| Irve | 90 | | |
| | | | 230 |
| | 270 | 90 | 90 |
| | | 90 | 320 |
| | | | 90 |
| | | | 410 |

## Exhibit G-4.

Envelope.

William B. Gourley
Counsellor at Law
First National Bank Building
Paterson, N. J. rejected
Mr. Dwight Ashley, Jr.
Personal.



## Exhibit G-5.

Part printed at Page 205, l. 19to page 206, l. 8.

Continuation.

as to business and no one can tell how long the conditions will last and the one effort must be made is to save all we can and not spending one dollar that will help only to keep the roof over head so in case the worst comes there will be a home for you and Vi and Billy. If there is any place I can go to live cheaper it is the place for us. I will send you $50. or $100. anytime see Vi needs it for the home—to go into law or divorce it would humiliate Billy and you must not let the boy get excited and do a thing to cause him a lot of trouble. The boys in Chicago—that has not only ruined self but the family, and when you try to force conditions by law or brutal force who knows what it will lead to you—this condition may prompt Charles to pick up and run away—see then how it would humiliate him and is well as all and then he might become desparate if things do not turn out as he expected.—so do all you can with Vi to use good judgment—and not go into court, until she is forced into it—as for the food for the house you can arrange that I think —I am sorry I had to put out so much for the H. S. Company and now if Irv does not make good there is $6300.—I am on his notes—but he gave me $4500.—6% mortgage to help out.—so there will only be $1500. lost if it comes to the payment —I do hope a turn for the better will come for all the boys—as for self I do not worry as I can live off the farm if it comes to a tight pinch—and prices are better for stuff—I ~~had~~ have my affairs so if I should pass away Charles family ~~will~~ can get part of the income

**Exhibit G-5½**

Printed at Page 206, ll. 19-34.

---

**Exhibit G-6.**

Printed at Page 207, ll. 6-11.

---

**Exhibit G-7.**

Printed at Page 207, ll. 20-25.

---

**Exhibit G-8.**

Printed at Page 209.

---

**Exhibit G-9.**

Printed at Page 209, ll. 24-35.

---

**Exhibit G-10.**

Part printed at Page 210, ll. 12-20.

Continuation.

Letter 7/6/24

I think Florence will do her part and I am glad Irv has such a wife—and hope he will try to appreciate her—Vi is a good wife but Chas. wants a fool and a butterfly.



**Exhibit V. B. S. 5½**

(Memorandum which passed between Charles E. Ashley and Dwight Ashley Jr. relating to sale of Savoy Realty Co. lots)

In handwriting of Charles E. Ashley:

7/17

"Have a party interested in lots 163-165-169 Westervelt Ave. Is 275.00 each satisfactory. Advise and also if these are open. Party wants answer Friday.

C. E. A"

In handwriting of Dwight Ashley Jr.:

163- 25 x 100
165- 25 x 100 } open
169- 50 x 100
163-165 $300 each
169 $600

Dwight 7/18

In handwriting of Charles E. Ashley:

"My copy of map does not show 169 as 50 x 100 both 167-169 usual size lots-25′ frontage

7/22 C. E. A

In handwriting of Dwight Ashley Jr:

"Same thing 100 x 100
or 4 x $300 = $1200 7/24

## Exhibit G-11.

Printed at Page 211, ll. 4-10.

---

## Exhibit G-12.

STOCK CERTIFICATE.

Number 4 — Shares 140

SAVOY REALTY CO. INC.

THIS CERTIFIES THAT DWIGHT ASHLEY is the owner of One hundred and forty——— shares of the Capitol Stock of

SAVOY REALTY CO. INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon the surrender of this Certificate properly endorsed.

Savoy Realty Company Incorporated [SEAL] 1910.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation. this 18th day of April, 1911.

DWIGHT ASHLEY, JR. Pres.

DWIGHT ASHLEY, Treas.

SHARES $100. EACH.

---

(Reverse Side.

FOR VALUE RECEIVED hereby sell, assign and transfer unto

shares of the Capital stock represented by the within Certificate and do hereby irrevocably constitute and appoint

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated 19 .

In the presence of

DWIGHT ASHLEY (signed)



## Exhibit V. B. 1.

Referred to on Pages 388-389.

---

## Exhibit V. B. 2.

Referred to on Page 389.

---

## Exhibit V. B. 3.

Printed at Page 390, ll. 22-28.

---

## Exhibit V. B. 4.

Minutes of Savoy Realty Company meetings, 1915 to 1925

Minutes of meeting of Stockholders, Savoy Realty Co. held April 5, 1915, 469 River Street, Paterson, N. J. 4:00 P. M.

The annual meeting held at the above time and place and quorum being present.

President-D. Ashley, Jr. took the chair and there being no new business, the following officers were elected for the ensuing year:- D. Ashley, Jr., President, D. Ashley, Treasurer, C. E. Ashley, Secretary.

Motion to adjourn made and seconded.

Signed: CHARLES E. ASHLEY,
Secretary.

Minutes of meeting of Stockholders, Savoy Realty Co. held April 3, 1916, 469 River Street, Paterson, N. J. 4:00 P. M.

Present in person or by proxy:-Dwight Ashley, Jr., Ashley.

A majority of stockholders being represented the minutes of previous meetings were read and approved.

The following officers were elected for the ensuing year:-Dwight Ashley, Jr., President, Charles E. Ashley, Treasurer, Charles E. Ashley, Secretary.

There being no further business the meeting adjourned.

Signed: CHARLES E. ASHLEY,
Secretary.

---

Minutes of Annual meeting of Stockholders, Savoy Realty Co. held April 2, 1917 at 469 River Street, Paterson, N. J.

Present in person or by proxy:-Dwight Ashley, Jr., Dwight Ashley, Mrs. D. Ashley, Charles E. Ashley.

Absent:-I. D. Ashley.

There being a majority represented, the reading of the minutes was dispensed with.

On motion made and receiving majority vote the following officers were re-elected for the coming year:-Dwight Ashley, Jr., President, Charles E. Ashley, Treasurer, Charles E. Ashley, Secretary.

The President reported that they had sold all their holdings in Coatesville, Penna., and were now negotiating for the sale of the balance of their Pennsylvania property located at Columbia, Penna.



There being no further business, the meeting adjourned.

SAVOY REALTY CO.,
Charles E. Ashley,
Secretary.

---

Minutes of Annual meeting Stockholders, Savoy Realty Co. held Apr. 1st at 8 P. M., 1918, 469 River Street, Paterson, N. J.

Present in person or proxy: Dwight Ashley, Mrs. Dwight Ashley, Chas. E. Ashley, Dwight Ashley, Jr.

Absent:-I. D. Ashley.

The President presented a waiver of notice, signed by all stockholders, waiving the 5 day notice of this meeting.

The minutes of meeting held April 2, 1917 were read and approved.

Motion made and seconded and receiving full vote of stockholders the following directors were elected for the ensuing year:-Dwight Ashley, I. D. Ashley, D. Ashley, Jr., C. E. Ashley.

There being no further business, motion made and seconded to close the meeting.

C. E. ASHLEY,
Secretary.

---

Minutes of Special meeting of stockholders of the Savoy Realty Co. held at the office of the Company, 469 River Street, Paterson, N. J. May 6, 1918.

Present in person or proxy:-Dwight Ashley, Mrs. Dwight Ashley, Charles E. Ashley, Irving D. Ashley, Dwight Ashley, Jr.

Notification of meeting given by the Secretary

as provided in by-laws and majority of Stockholders present in person or proxy it was

Resolved:

That a dividend of 90% be declared from the moneys in the treasury of the Savoy Realty Co. to be paid on or about June 1, 1918 to the Stockholders of record May 29, 1918.

There being no further business the meeting adjourned.

CHARLES E. ASHLEY,
Secretary.

---

Minutes of regular meeting of stockholders of the Savoy Realty Co. held at the office of the Company, 469 River Street, Paterson, N. J. April 21, 1919.

Present in person or by proxy: Dwight Ashley, Mrs. Dwight Ashley, Charles E. Ashley, Dwight Ashley, Jr.

The following Directors were elected to hold office for one year or as provided in by-laws: Dwight Ashley, Irving D. Ashley, Charles E. Ashley, Dwight Ashley, Jr.

There being no further business the meeting adjourned.

CHARLES E. ASHLEY,
Secretary.

---

Minutes of Director's meeting of Savoy Realty Company, held March 3, 1920, 8 P. M. at 628 E 27th Street, Paterson, New Jersey.

Present:-Dwight Ashley, Irving D. Ashley, Dwight Ashley, Jr.

Minutes of the previous meeting were read and approved.



By agreement of the Directors present, 628 E 27th St., was appointed as the place for the meeting.

The following resolution was passed:

Resolved:-The Board of Directors of the Savoy Realty Co., a corporation of New Jersey, on this 3rd day of March A. D. 1920, do hereby resolve and order that the location of the principal office of this corporation within this state be, and the same hereby is, changed from 469 River St., Paterson, in the County of Passaic, to No. 628 East Twenty-seventh Street, in the City of Paterson, County of Passaic.

The name of the agent therein and in charge thereof, upon whom process against the corporation may be served, is Dwight Ashley, Jr.

There being no further business, motion made and seconded to adjourn.

DWIGHT ASHLEY, JR.,
Acting Secretary.

---

No further meetings held until May 1, 1925.

## Exhibit V. B. 5½.

Referred to on Page 392, ll. 5-18.

---

## Exhibit V. B. 7.

MINUTES.

A special meeting of directors of the Savoy Realty Co. was held May 1st/25 5 P M at the office of the company on notice issued by Dwight Ashley Jr president, dated April 28th/25 for consideration of a certain proposition of Brawer Bros., Paterson NJ the original of which is herewith attached and made part of these minutes. All of the directors were present as follows.

Dwight Ashley Jr
Charles E Ashley
Irving D Ashley

The president stated that the proposition included the following properties; situated in or near Fayetteville NC:

| | | | | | |
|---|---|---|---|---|---|
| Hunter tract | 140 | acres | with | 48 | Houses |
| | 1 | " | " | 5 | " |
| | 1 | " | " | 2 | " |
| Hill | 78 | " | " | — | " |
| Winslow | 40½ | " | " | — | — |
| Hill | 43 | " | " | 17 | " |
| Pemberton | 47/8/10 | " | " | — | — |
| Mason, & McFarland | 150 | " | " | — | — |

and did not include among other tracts the following: 1000 acres tract across creek, 50 acres Turn-



pike 8 acres (Powers) 3½ acres with 4 houses. In the discussion which followed it was acknowledged by all of the directors that that actual present day value of all these properties was not known and no data being available for the directors guidance showing the actual value of all the surrounding properties. After further discussion the following resolution was offered by Chas. E. Ashley and seconded by Irving D Ashley, Resolved:, no appraisal on the actual present day value of these properties having been made by any directors of this company, or it being established if a commission on the transaction was claimed by any agent or individual, therefore it is the opinion of the directors of this company that an expert appraiser be selected by this board to determine the present day values of the entire holdings of this company and to appear before the board at the next meeting, and any action in the matter be deferred until full and complete information is available. The president refused to put the question to a vote, demanding immediate action be taken on the proposition and abruptly declared the meeting adjourned despite protests from the other directors. Upon leaving the meeting the president suddenly and without warning forcibly wrested the minute book from the secretary's grasp and refused to surrended it to the secretary who made urgent request for same and also demand for its possession.

CHARLES E. ASHLEY,
Secretary.

## Exhibit B. V. 7½.

Minutes of meeting held June 16th/25
5-30 office of Co.

All directors being present the meeting was opened, Secy, called for books of the company and minute book to pass on minutes of previous meeting and same were refused, Pres. stated he did not have them in his possession and that he was advised by his counsel not to produce the books. This led to an argument from the majority of directors who demanded that the books be opened. Again the Pres. refused. Director I D A then thought by showing the Pres that by his opposition he was causing delay at the cost of the Co. asked him if there were any important matters to be discussed, he replied No. I D A then asked him if the money in escrow was not in danger of being seized by the creditors, he replied No. He then added that his counsel Mr. Comstock who is counsel for the receiver of the Hawthorne Silk Co could give him and also the Co. non confiicting advice, I D A strongly objected to this stating that one man could not represent two clients. I D A then addressed the pres and warned him that he as pres. should act at once and employ counsel for the S R Co to get back the money in escro as soon as possible as the creditors had made a move to get this money, and if by the pres. subborn attitude he lost that money that I D A as one of the directors would see that he (Pres) would be personally responsible to the Co. for any monies that was lost thru his failure to act at once. I D A also stated that the directors were there to act in no other way but to further the business of the Co. and expected co-operation from the Pres who was not giving it.

In addition to this subject the matter was dis-



cussed and strongly objected to by the majority of the directors, regarding the way the pres was spending the Co's. monies without the consent or advice of the directors the pres. was very haughty in stating that he would carry on things the way he thought best. The matter of the agent in the south going to the bank without the consent of any of the diretcors of the Co and obtaining the sum of $250.00 and then requesting the pres to send him the money to make good that amount to the bank and the pres. did write out a check for the amount and send it to the Tres for his signature, which was refused, on the basis that no one had the right to obtain money from anywhere without the consent of the directors. This led to more dissention and the meeting could not proceed with the proper business.

The Pres. did again say he was in favor of the acceptance of the offer made at the previous meeting, and while he stated he had made a trip to the southern property and when asked by the other directors what he had found to be his opinion of the present day values, he refused to state, naturally, the other directors strongly objected to this as the pres. had put in a bill for his expenses for this trip but refused to say on what business he had made the trip.

The pres. was then asked to present the books at another meeting to be agreed upon and he refused to consent to this, and would make no promises to have them when meeting would be called. The directors I D A and C EA after doing all in their human power to receive co-operation from the pres. then stated that it was of no use to try to hold meetings under those conditions and warned the pres. that if he did not work in harmony with the other directors a receiver would be applied for as

the Co. was at a standstill and no effort was being made by the pres. to further the interests of this Co.

The pres. then stated the meeting was adjourned and without waiting for the motion to be seconded he got up, and walked out of the office of the Co.

C. E. ASHLEY,
Secy.

---

## Exhibit V. B. 8.

Minutes of meeting of Savoy Realty Co.
of July 7th/1925 at office of Co.

All directors being present the meeting was opened the Secy. called for minute book to pass on minutes and enter same of previous meeting, and Pres. still refused to present same. The Secy. C. E. Ashley then read his resignation to take effect at once. Before retiring the minutes were read of the previous meeting and the substance of same was objected to by the Pres. this was the minutes of the meeting of May 1st. the same occurred of minutes of meeting of June 16th. The minutes were then approved as read and the vote was D A Jr No, I D and C E yes; The vote on resignation of the Secy. C E A was D A Jr No. I D and C E yes. At this point the presiding Secy. handed the Secretarial notes to the new Secy. who had been nominated and elected as Secy. as follows;

I D Ashley nominated by C E A after nominations were called for by the Pres. seconded by I D A, D A Jr voted no, would give no reason. New business was asked for by the Pres. and the following resolution was presented by C E A "Resolved that



regular meetings of the board of directors of this company shall be held the first Monday of each calendar month (except where a holiday falls on such date, in which case the meeting shall be held the following Tuesday) at 5:00 o'clock P. M. at the registered office of the Company, or should such registered office be unavailable for any meeting, such meeting shall be held at any place agreed upon by the majority of the Board"—The vote on this being D. A. Jr. no: C. E. A. and I D. A. yes.

The president then asked for new business and the following resolution was offered by I. D. A. "Resolved that it is the judgment of the Board of Directors that the dissension which has developed between the Officers of this Company is detrimental to the welfare of the Company, and that to avoid further injury to the Company's business, the actual conduct of the ministerial affairs should be centralized in the hands of one person appointed by this Board, who shell carry on the business of this Company under the instructions and supervision of the Board of Directors."—The vote on this being D. A. Jr. No: C. E. A. and I. D. A. yes.

The President then asked for new business and the following resolution was presented by C. E. A. "Resolved that By-law 19 be and hereby is abbrogated and that a new By-law, to be known as No. 19A, be adopted to read: The Board of Directors shall determine the policies of this Company, pursuant to the authority conferred upon it by By-law No. 11, and shall appoint by majority vote a general Manager, who shall have general control and management of the business and affairs of the Company, subject only to the instructions of the Board of Directors as recorded in the minutes of the meet-

ings of said Board. The general Manager shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements. He shall, with the Treasurer, keep full and accurate accounts of receopts and disbursements in the Company's Books. The books of the company shall be in his possession and he shall make reports to the Board of Directors as often as requested by the Board."—The vote on this being D. A. Junior, no: C. E. A. and I D. A. yes.

The President then asked for new business and the following resolution was offered by C. E. A. as follows: "Resolved that the By-laws are hereby amended to include a new By-law to be known as 19B, to read: Checks of the Company may be signed by any two of the present officers of the Company."—The vote on this being D. A. Junior, no: C. E. A. and I. D. A. yes.

The President refused to put before the Board a resolution made and seconded as follows:

"Resolved that By-law No. 18 shall be amended to read as follows: The Treasurer shall arrange with the General Manager to keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Directors. He shall not be required to enter into bond for the faithful discharge of his duties. He shall, with the President, sign all certificates of stock."

The vote on this being, D. A. Junior, no: C. E. A. and I. D. A. yes.

The President then asked for new business and the following Resolution was offered: By C. E. A.



as follows: "Resolved that By-law No. 14 shall be amended to read as follows: The President shall presoide at all meetings of the Board of Directors and stockholders, and shall, with the Treasurer, sign all Certificates of Stock."

The vote on this being, D. A. Junior, no: C. E. A. and I. D. A. yes.

The President refused to put the following Resolution offered by I. D. A. "Resolved that Stanley C. Mortlock be and hereby is appointed General Manager of this Company for a period of one year, beginning July 15, 1925, at a salary of $3000, and such travelling expenses as may be entailed in visiting for the company the property of the Company located at Fayetteville, North Carolina."

The vote on this being, D. A. Junior, no: C. E. A. and I. D. A. yes.

The President refused to put the following Resolution offered by I. D. A. as follows: "Resolved that a complete auditing, statements and details of all the Company's books and financial affairs, showing deeds and conveyances, etc., from the time of the Company's incorporation, to date."

The vote on this, D. A. Junior, no: C. E. A. and I. D. A. yes.

Resolution offered by IDA to not have Albert Comstock as counsel for the Savoy R Co as follows: Resolved that Albert Comstock be hereby be advised that his services as counsel for the Co. are no longer needed, (As reasons stated in previous minutes). The vote being on this D A Jr. No. C. E. A. I D. A. yes.

Pres. then offered resolution that Bills be paid at once in reference to telegram from Holcomb as he had advised Holcomb to draft on the Co. the vote on this D A Jr Yes, I D A C E A No

The following resolution offered by I D A and vote as follows: That all contracts deeds and conveyances of any of the Cos. property shall be signed by any two officers of the Co. vote being D A Jr No, I D A C E A yes; The following resolution the Pres. refused to put before the board and vote as follows: That all books be deposited at the office of the Mgr. Stanley Mortlock at 152 Market St., Paterson, NJ. on or before the 15th of July 1925. also that counsel for the Co as hereinafter named be retained by the Savoy R Co names as follows Mr. John O Benson of Paterson, N. J. and Venderbilt and Hedden of Newark, N. J. the vote on this being D A Jr No C E A I D A yes.

The Pres. made statement that no new contracts or deeds have been executed to date. His attitude during the entire meeting was one of complete dissension and not co-operation. No books were presented by him during the entire meeting though were asked for by the retiring and new Secy.

No further business being before the meeting, the Pres moved for adjournment and seconded.

Signed,
IRVING D. ASHLEY,
Secy.



## Exhibit V. B. 6.

**Price List made by Dwight Ashley, Jr. relating to Savoy Realty Company property around Paterson.**

SAVOY REALTY CO.

June 19/1924

| *Mohawk Ave.* | | *Westervelt Ave.* | |
|---|---|---|---|
| #25 | $350. | #23⎫ 25⎭ | $500. |
| 67 | 300. | | |
| 69 | " | 163 | 300. |
| | | 165 | " |
| 10 | 400. | 169 | 600. |
| 12 | " | | |
| 14 | " | 134 | 350. |
| 34 | " | 136 | " |
| 36 | " | | |
| 38 | " | | |
| 40 | " | *North 8th St.* | |
| 46 | 375. | #20 | $600. |
| 48 | " | 22⎫ 24⎭ | 750. |
| 50 | " | | |
| 52 | " | 48 | 700. |

*Exhibits.*

*Oak St.*

| | | |
|---|---|---|
| #151 | — | |
| 153 | — | |
| 155 | — | |
| 157 | — | |
| 159 | — | |
| 161 | — | |
| 163 | — | |
| 165 | — | |
| 171 | — | |
| 173 | — | |
| 175 | — | |
| 177 | — | |
| 179 | — | |
| 181 | — | |
| 183 | — | |
| 185 | — | |

*North 10th St.*

| | |
|---|---|
| #27 | $275. |
| 29 | " |
| 31 | " |
| 33 | " |
| 35 | " |
| 37 | " |
| 39 | " |
| 41 | " |
| 43 | " |
| 28 | 300. |
| 30 | " |
| 32 | " |
| 34 | " |
| 36 | " |
| 66 | 375. |
| 68 | " |

*North 12th St*

| | |
|---|---|
| #4 | $350. |
| 6 | " |

*North 15th St*

| | |
|---|---|
| #78 | $350. |
| 80 | " |
| 82 | " |
| 84 | " |

*North 15th St.*

| | |
|---|---|
| #4 | $350. |
| 6 | " |
| 8 | 325. |
| 10 | " |
| 12 | " |
| 14 | " |
| 68 | 350. |
| 70 | " |
| 72 | " |
| 74 | " |
| 76 | " |

*North 16th St.*

| | |
|---|---|
| #1 | $300. |
| 3 | " |
| 5 | " |
| 35 | 350. |
| 37 | " |
| 59 | 350. |
| 61 | " |
| 63 | " |
| 65 | " |



*Exhibits.*

*Prescott Ave.*

| | |
|---|---|
| #35 | $500. |
| 37 | " |
| 39 | " |
| 41 | " |
| 161 | 350. |
| 163 | " |
| 165 | " |
| 171 | " |
| 173 | " |
| 175 | " |
| 177 | " |
| 179 | " |
| 181 | " |
| 183 | " |
| 185 | — |
| 191 | — |
| 193 | — |
| 160 | 350. |
| 162 | " |
| 164 | " |
| 166 | " |
| 172 | " |
| 174 | " |
| 176 | " |
| 178 | " |
| 180 | " |
| 182 | " |
| 184 | " |
| 186 | " |

*Irvington Ave.*

| | |
|---|---|
| #19 | $250. |
| 21 | " |
| 23 | 275. |
| 25 | " |
| 27 | " |
| 29 | 250. |
| 8 | 350. |
| 12 | " |
| 14 | " |
| 16 | " |
| 18 | " |
| 28 | 375. |
| 30 | " |

*North 11th St.*

| | |
|---|---|
| #37 | $300. |
| 39 | " |
| 41 | " |
| 43 | " |
| 45 | " |
| 47 | " |
| 49 | " |
| 51 | " |
| 36 | " |
| 38 | " |
| 40 | " |
| 42 | " |
| 44 | " |

*Exhibits.*

| *North 16th St.* | | *North 16th St.* | |
|---|---|---|---|
| #67 | $350. | #74 | $300. |
| 69 | " | 76 | " |
| 71 | " | | |
| 73 | " | | |
| 75 | " | | |

| | | | *North 17th St.* | | | |
|---|---|---|---|---|---|---|
| 10 | 2 | " | #17 | $350. | #18 | — |
| | 4 | " | 19 | " | 20 | — |
| | 26 | " | 21 | " | 22 | — |
| | 28 | " | 23 | " | 24 | — |
| | 30 | " | 25 | " | 26 | — |
| | 32 | " | 27 | " | 28 | — |
| | 34 | " | 49 | " | 30 | — |
| | 36 | " | 51 | " | 40 | — |
| | 58 | 300. | 53 | " | | |
| 20 | 60 | " | 55 | " | | |
| | 62 | " | 57 | " | | |
| | 64 | " | 59 | " | | |
| | 66 | " | 61 | " | | |
| | 68 | " | 63 | " | | |
| | 70 | " | 65 | " | | |
| | 72 | " | 67 | " | | |

30

40



SAVOY REALTY CO.

July 19/1924

| *Block A.* | | *Block B.* | | |
|---|---|---|---|---|
| #2 | $200. | 1 | $275. | |
| 3 | " | 2 | " | |
| 4 | " | 3 | " | |
| 5 | 185. | 4 | " | |
| 6 | " | 5 | 250. | 10 |
| 7 | " | 6 | " | |
| 8 | 150. | 7 | 200. | |
| 9 | " | 8 | " | |
| 10 | — | 9 | " | |
| 11 | — | | | |
| 12 | 275. | *Block H.* | | |
| 13 | " | #1 | $200. | |
| 14 | " | 2 | " | |
| 15 | " | 3 | " | 20 |
| 16 | " | 4 | " | |
| 17 | " | 5 | " | |
| 18 | " | 6 | " | |
| 19 | " | 7 | " | |
| 20 | " | 8 | " | |
| 21 | " | 9 | 175. | |
| 22 | " | 10 | " | |
| 23 | " | 11 | " | |
| | | 12 | " | |
| *Block G.* | | 13 | " | 30 |
| #1 | $275. | 14 | " | |
| 2 | " | 15 | " | |
| 3 | " | 16 | 200. | |
| 4 | " | 17 | 175. | |
| 5 | " | 18 | " | |
| 6 | " | 19 | " | |
| 7 | " | 20 | " | |
| 8 | " | 21 | " | |

40

| | | | | |
|---|---|---|---|---|
| | 9 | 250. | 23 | 100. |
| | 10 | " | | |
| | 11 | " | | |
| | 12 | " | | |
| | 13 | " | | |
| | 14 | " | | |
| | 15 | " | | |
| 10 | 16 | " | | |
| | 17 | " | | |
| | 18 | " | | |
| | 19 | " | | |
| | 20 | " | | |
| | 21 | " | | |
| | 22 | " | | |
| | 23 | " | | |
| | 24 | " | | |
| | 25 | " | | |
| 20 | 26 | " | | |
| | 27 | " | | |
| | 28 | " | | |
| | 29 | " | | |
| | 30 | " | | |
| | 31 | " | | |
| | 32 | " | | |

30

40



*Block C.*

| | | | |
|---|---|---|---|
| #1 | — | | |
| 2 | $275. | | |
| 3 | " | | |
| 4 | " | | |
| 5 | " | | |
| 6 | " | | |
| 7—6 N. 15 | | | |
| 8—4 " | | | |
| 9 | $275. | | |
| 10 | " | | |
| 11 | " | | |
| 12 | " | | |
| 13 | " | | |
| 14 | " | | |
| 15 | " | | |
| 16 | " | | |
| 16 | " | | |
| 17 | " | | |
| 18 | " | | |

*Block I.*

| | | | |
|---|---|---|---|
| #9 | $250. | | |
| 10 | " | | |
| 11 | " | | |
| 12 | " | | |
| 13 | " | | |
| 14 | " | | |
| 15 | " | | |
| 16 | " | | |
| 17 | " | | |
| 18 | " | | |
| 19 | " | | |
| 20 | " | | |

*Block D.*

| | | | |
|---|---|---|---|
| #1 | $275. | | |
| 2 | " | | |
| 3 | " | | |
| 4 | " | | |
| 5 | " | | |
| 6 | " | | |
| 7 | " | | 10 |
| 8 | " | | |
| 9 | 225. | | |
| 10 | " | | |
| 11 | " | | |
| 12 | " | | |
| 13 | " | | |
| 14 | " | | |
| 16 | " | | |
| 16 | " | | 20 |
| 17 | " | | |
| 18 | " | | |
| 19 | " | | |
| 20 | " | | |
| 21 | " | | |
| 22 | " | | |
| 23 | " | | |
| 24 | " | | |
| 25 | " | | |
| 26 | " | | 30 |
| 27 | " | | |
| 28 | " | | |
| 29 | " | | |
| 30 | " | | |
| 31 | " | | |
| 32 | " | | |

40

| | | | |
|---|---|---|---|
| | 21 | " | |
| | 22 | " | |
| | 23 | " | |
| | 24 | " | |
| | 25 | 200. | |
| | 26 | " | |
| | 27 | " | |
| 10 | 28 | " | |
| | 29 | " | |
| | 30 | " | |
| | 31 | " | |
| | 32 | " | |

*Block J.*

| | |
|---|---|
| #1 | $200. |
| 2 | " |
| 3 | " |
| 4 | " |
| 5 | " |
| 6 | " |
| 7 | " |
| 8 | " |
| 9 | 175. |
| 10 | " |
| 11 | " |
| 12 | " |
| 13 | 100. |
| 14 | 175. |
| 15 | " |
| 20 | 16 100. |

*Block E.*

| | |
|---|---|
| 1 | $175. |
| 2 | " |
| 3 | " |
| 4 | " |
| 5 | " |
| 6 | " |
| 7 | " |
| 30 8 | " |
| 9 | " |
| 10 | " |
| 11 | " |
| 12 | " |
| 13 | 150. |
| 14 | " |
| 15 | " |
| 16 | 175. |
| 40 | |

*Block F.*

| | |
|---|---|
| 1 | is #1 N. 15 |
| 2 | $225. |
| 3 | " |
| 4 | " |
| 5 | " |
| 6 | is #4 N. 14 |
| 7 | is #2 N. 14 |
| 8 | 250. |

*Block L.*

| | |
|---|---|
| #1 | 200. |
| 2 | " |
| 3 | " |
| 4 | 185. |
| 5 | 175. |
| 6 | 150. |



*Block K.*

| | |
|---|---|
| #5 | $225. |
| 6 | " |
| 7 | " |
| 8 | " |
| 9 | " |
| 10 | " |
| 11 | " |
| 12 is 6 N. 12 | |
| 13 is 4 N. 12 | |
| 14 | $225. |
| 15 | " |
| 16 | " |
| 17 | " |
| 18 | " |
| 19 | " |
| 20 | 200. |
| 21 | " |
| 22 | " |
| 23 | " |
| 24 | " |
| 25 | " |
| 26 | " |
| 27 | " |

| | | |
|---|---|---|
| | 7 | 125. |
| | 8 | 100. |

*Block M.*

| | | |
|---|---|---|
| | #1 | 225. |
| | 2 | " |
| 10 | 3 | " |
| | 4 | " |
| | 5 | " |
| | 6 | " |
| | 7 | 175. |
| | 8 | 150. |
| | 9 | 250. |
| | 10 | 235. |
| | 11 | 150. |
| 20 | 12 | 135. |
| | 13 | 125. |

30

40

## Exhibit B. V. 9.

### Price List in handwriting of Dwight, Jr. relating to Savoy property.

(5/26/20)

*Irvington Ave.*

| | | |
|---|---|---|
| Lot | 19 | 350 |
| | 21 | 250 |
| | 23 | 275 |
| | 25 | 275 |
| | 27 | 275 |
| | 29 | 250 |
| | 8 | 350 |
| | 12 | 350 |
| | 14 | 350 |
| | 14 | 350 |
| | 16 | 350 |
| | 18 | 350 |
| | 28 | 375 |
| | 30 | 375 |

*North 8th St.*

| | | |
|---|---|---|
| Lot | 20 | 600 |
| | 22⎫ | |
| | 24⎭ | 750 |
| | 48 | 700 |
| | 68 | |
| | 70 | |

*North 10th St.*

| | | |
|---|---|---|
| Lot | 27 | 275 |
| | 29 | 275 |
| | 31 | 275 |
| | 33 | 275 |
| | 35 | 375 |
| | 37 | 275 |
| | 39 | 275 |
| | 41 | 275 |
| | 43 | 275 |
| | 28 | 300 |
| | 30 | 300 |
| | 32 | 300 |
| | 34 | 300 |
| | 36 | 300 |
| | 66 | 375 |
| | 68 | 375 |

*North 11th St.*

| | | |
|---|---|---|
| Lot | 37 | 300 |
| | 39 | 300 |
| | 41 | 300 |
| | 43 | 300 |
| | 45 | 300 |
| | 47 | 300 |
| | 49 | 300 |
| | 51 | 300 |
| | 36 | 325 |
| | 38 | 325 |
| | 40 | 325 |
| | 42 | 325 |
| | 44 | 325 |
| | 46 | 325 |
| | 48 | 325 |





*Mohawk Ave.*

| | | |
|---|---|---|
| Lot | 1⎫ | |
| | 3⎭ | 750 |
| | 25 | 350 |
| | 67 | 300 |
| | 69 | 300 |
| | 10 | 400 |
| | 12 | 400 |
| | 14 | 400 |
| | 34 | 400 |
| | 36 | 400 |
| | 38 | 400 |
| | 40 | 400 |
| | 46 | 375 |
| | 48 | 375 |
| | 50 | 375 |
| | 52 | 375 |

*Westervelt Ave.*

14x105.60 sold to HSCo.

| | | |
|---|---|---|
| Lot | 23) | 500 |
| | 25) | 300 |
| | 35 | 300 |
| | 37 | 300 |
| | 41 | 300 |
| | 39 | 300 |
| | 83 | 275 |
| | 85 | 275 |
| | 87 | 275 |
| | 155 | |
| | 157 | |
| | 159 | |
| | 161 | |
| | 163 | |
| | 165 | |
| | 169 | |
| | 154 | |
| | 156 | |
| | 158 | |
| | 160 | |
| | 162 | |
| | 164 | |
| | 166 | |
| | 168 | |

*Prescott Ave.*

| | | |
|---|---|---|
| Lot | 35 | 500 |
| | 37 | 500 |
| | 39 | 500 |
| | 41 | 500 |
| | 159 | 300 |
| | 161 | 300 |
| | 163 | 300 |

*Prescott Ave.*

| | |
|---|---|
| Lot | 180 |
| | 182 |
| | 184 |
| | 186 |

| | | |
|---|---|---|
| | 165 | 300 |
| | 171 | |
| | 173 | |
| | 175 | |
| | 177 | |
| | 179 | |
| | 181 | |
| 10 | 183 | |
| | 185 | |
| | 191 | |
| | 193 | |
| | 160 | |
| | 162 | |
| | 164 | |
| | 166 | |
| | 172 | |
| | 174 | |
| 20 | 176 | |
| | 178 | |

| *North 12th St.* | | | *North 15th St.* | | |
|---|---|---|---|---|---|
| Lot | 39 | 350 | Lot | 3 | 300 |
| | 41 | 350 | | | |
| | 43 | 350 | | 4 | 300 |
| | | | | 6 | 300 |
| | 4 | 300 | | 8 | 325 |
| | 6 | 300 | | 10 | 325 |
| 30 | | | | 12 | 325 |
| | | | | 14 | 325 |
| | | | Prospect Park | 68 | 225 |
| | | | √ | 70 | " |
| | | | √ | 70 | " |
| | | | √ | 72 | " |
| | | | √ | 74 | " |
| | | | √ | 76 | " |
| | | | √ | 78 | " |

40



| | | |
|---|---|---|
| √ | 80 | " |
| √ | 82 | " |
| √ | 84 | " |

| *North 16th St.* | | | *North 17 St.* | | |
|---|---|---|---|---|---|
| Lot | 1 | 250 | Lot | 17 | |
| | 3 | " | | 19 | |
| | 5 | " | | 21 | |
| | 35 | " | | 23 | |
| | 37 | " | | 25 | |
| Prospect Park | 59 | 225 | | 27 | |
| √ | 61 | " | | | |
| √ | 63 | " | Prospect Park | 49 | |
| √ | 65 | " | √ | 51 | |
| √ | 67 | " | √ | 53 | |
| √ | 69 | " | √ | 55 | |
| √ | 71 | " | √ | 57 | |
| √ | 73 | " | √ | 59 | |
| √ | 75 | " | √ | 61 | |
| | | | √ | 63 | |
| Prospect Park | 58 | 225 | √ | 65 | |
| √ | 60 | " | √ | 67 | |
| √ | 62 | " | | | |
| √ | 64 | " | | 18 | |
| √ | 66 | " | | 20 | |
| √ | 68 | " | | 22 | |
| √ | 70 | " | | 24 | |
| √ | 72 | " | | 26 | |
| √ | 74 | " | | 28 | |
| √ | 76 | " | | 30 | |
| | | | Prospect Park | 40 | |

10

20

30

40

*Exhibits.*

*Oak St.*

Lot 151
153
155
157
159
161
163
165
171
173
175
177
179
181
183
185

All this in Prospect Park.



## Stipulation.

NEW JERSEY COURT OF ERRORS AND APPEALS

In the matter of the appeal from a decree of the New Jersey Prerogative Court affirming an order of the Passaic County Orphans' Court admitting to probate certain paper writings as the last will and codicil of Dwight Ashley, deceased.

It is hereby stipulated and agreed between William B. Gourley, proctor for and of counsel with appellees, and Arthur T. Vanderbilt, proctor for and of counsel with appellants, that the exhibits offered in evidence in this case are to appear in the state of case as follows:

Exhibits G-1, G-2, G-3, G-4 and G-12 are to be printed in full.

Extracts having been read into the record from exhibits G-5 (letter from Dwight Ashley, dated 5/10/24), G-5½ (letter from Dwight Ashley, dated 5/24/24), G-6 (letter from Dwight Ashley, dated 5/28/24), G-7 (letter from Dwight Ashley, dated 6/5/24), G-9 (letter from Dwight Ashley, dated 6/16/24), G-10 (letter from Dwight Ashley, dated 7/6/24), and G-11 (letter from Dwight Ashley, dated 11/13/24), also G-8, letter 6/16/24 from D. Ashley Sr., said extracts are to be regarded as the exhibits in question, and a reference is to be made in the index of exhibits to the pages of the state of case on which said exhibits appear.

Exhibits GR-1, GR-2, GR-4, GR-5 and GR-6,

*Stipulation.*

which are photographs of the Fayetteville, North Carolina, property of the Savoy Realty Company, need not be printed.

The papers admitted to probate as the Will and Codicil of Dwight Ashley, although not marked as an exhibit, are to be printed.

Extracts having been read into the record from exhibits, V-1, V-2, V-3, V-4, V-5, V-6, VB-3, BG-1, BG-2, BG-3, BV-7 and BV-8½ said extracts are to be regarded as the exhibits in question and a reference is to be made in the index of exhibits to the pages of the state of the case on which said exhibits appear.

Exhibits V-7, V-8, V-9, and V-10, BV-9, VB-5½ and VB-6 are to be printed in full, no portions of said exhibits having been read into the record by the Court's suggestion.

Exhibits VB-4, VB-7, VB7½ and VB-8 being minutes of meetings of the Savoy Realty Company from 1915 to 1925, are to be printed in full.

ARTHUR T. VANDERBILT,
Proctor for and of counsel
with Appellants.

WILLIAM B. GOURLEY,
Proctor for and of counsel
with Respondents.



**Opinion.**

Filed Feb. 16, 1928

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| In the Matter of the Appeal from the Decree of the Orphans' Court of the County of Passaic, admitting to Probate a certain paper writing as the Last Will and Testament of DWIGHT ASHLEY, Deceased. | On Appeal from Passaic County Orphans' Court. Opinion. |

ARTHUR T. VANDERBILT, ESQ.,
for Caveators;
WILLIAM B. GOURLEY, ESQ.,
for Proponent.

LEWIS, *V. O.*:

This is an appeal from the Orphans' Court of Passaic County, admitting to probate the Last Will and Codicil of Dwight Ashley, who died in the City of Paterson, N. J., on February 21, 1925. In the Orphans' Court both the will and the codicil were attacked, but before me the controversy was over the codicil. No written opinion was filed in the Orphans' Court, but Judge Delaney, who sat therein, had this to say at the close of the case for the caveators:

> "I am not disposed to continue this matter. As the matter rests there is nothing before the court that would, under any circumstances, justify the court in refusing to admit this will to probate—absolutely no evidence to justify the court to conclude there was any undue influence and nothing

to justify the court to conclude there was any impropriety or that the execution of the will was not in conformity with the statutes, and, that being so, I don't feel justified in taking up any more time and will order the will be admitted to probate."

Dwight Ashley executed his will April 28, 1925, and the codicil on January 9, 1925. He was seventy-seven years of age at the time of his death. By the terms of his will he devised all his property to his executors in trust, to pay his wife One Thousand Dollars ($1,000.00) a year for life, and after five years equally to his three children, Dwight Ashley, Jr., Charles E. Ashley and Irving D. Ashley. In the codicil he bequeathed One Hundred and Forty (140) shares of the Savoy Realty Company, Inc., to his oldest son, Dwight Ashley. Under the will Charles and Irving would have controlled the Savoy Company. It is quite evident, from the examination of the testimony and exhibits, that the testator was afraid to trust them to manage this Company.

He enjoyed very good health during the greater part of his life and had no serious illness until the stroke which he suffered some time prior to his death. The testimony of the physicians who attended him is that his mind, after the stroke, was keen and clear, save for a day or two immediately following it. Doctors Todd and Flitcroft, two well known physicians of the City of Paterson of high standing, gave such evidence. Doctor Flitcroft appeared as a witness for the caveators. He says he saw the testator on February 8th, 12th, 18th, and 20th, a month after the execution of the codicil, and that "he held his own until the last." Doc-



tor Todd, in his evidence, says that the testator was confused a day or two after his stroke in August, but that after he was perfectly clear. Dr. David S. Hamilton, of St. Paul's Church, Paterson, called upon the testator shortly before his death, and in the month of February, 1925, and describes his conversation with him as "a fine talk" and that he was as reasonable as any man. Relatives, and others who came in contact with him in his latter days, testified to the same effect.

This unfortunate controversy over the disposition of the estate arises without doubt from the bitter and unfriendly feeling existing among the sons of the testator. Two sons, Charles and Irving, have been, and are arrayed, against their brother, Dwight Ashley. The widow makes no attack. Dwight Ashley was a well known citizen of Paterson, being engaged in the silk business for many years there. He was of strong and vigorous mind. He began his career at the "bottom of the ladder" and became one of the most successful men in the industry. He at one time had amassed a large fortune, but this had decreased before his death. He had the "ups and downs" that most men experience in a business of this character so largely dependent upon fashion. He dealt most generously with his sons, as is disclosed by the various transactions between them shown by the evidence. The testator died at the home of his son, Dwight, and the attempt is made by Dwight's brother's, Irving and Charles, to show that the codicil was the result of undue influence exercised by their brother, Dwight. Irving saw him frequently at Dwight's home and in fact on the morning of the day of his death. It is true that the let-

ters and diary, which the testator left, contained reflections upon the son, Dwight as well as the other sons. They were admitted in evidence by me "as bearing upon the condition of the testator's mind with reference to the objects of his bounty" (*Cooper's Will,* 75 N. J. Eq., 177, and other cases cited therein.) Despite these reflections, the son Dwight appears to have conducted himself in life so as to awaken the confidence of his father. Particularly is this true in the latter days, for it was to his home that the testator went to make his final earthly abode. Here his wife, with whom he had not lived as man and wife for many years, dwelt, his son Dwight having provided a home there for her. May not the fact that the son, Dwight, was providing this home for his mother have convinced his father that he was the proper one to take charge of the Savoy Company's affairs which is alleged to be one of the principal assets of his estate. Dwight's home, as a place of abode, was the testator's own selection. The testimony reveals that he was dissatisfied with the conduct of Charles and Irving, and that they both had serious matrimonial difficulties which not only disturbed him but awakened his criticism. Charles did not speak to his father for nine years. He evidently was very fond of Irving and, at various times, advanced large sums of money to him and paid off heavy financial obligations which he had incurred. Referring to Charles and Irving, the housekeeper on the testator's farm, on which he lived before going to Dwight's home, offers important and illuminating testimony as to the testator's concern about them. She says on cross-examination:



"Q. You spoke of some conduct he didn't like. What conduct, whose conduct did he speak about?

A. The two boys.

Q. Which two?

A. Charles and Irving.

Q. What did he say Charles and Irving had done?

A. He didn't like their drinking.

Q. Did he say anything about what the result would be if they kept on drinking?

A. He said the boys would go to Hell if they don't stop."

The selection of his son Dwight's home, it would appear, therefore, was a natural one. The son was living a well ordered life with his family. It was a sort of a haven of rest after a long and sometimes stormy career. He had plenty of opportunity while there for independent advice and frequently saw people. In both the making of his will and the codicil he had counsel. The witnesses to the same were independent and all the formalities requisite to their due execution seem to have been complied with.

It developed, during the progress of the case and very near its close, that the testator, after the execution of the codicil, had transferred to his son, Dwight, as a gift the one hundred and forty (140) shares of the Savoy Realty Company, Inc., stock which he had bequeathed to him by the terms of the codicil. The endorsement on the certificate was in the handwriting of the testator and it was delivered to the son. This appears to have been a gift *inter-vivos,* and if I had held it to be good at the time the certificate was produced, there would have been no reason to proceed further with this case, as this is the only property disposed of

by the codicil. Slight evidence, however, was offered as to the facts relative to, or circumstances surrounding the gift, and, in my opinion, it would be unjust for the court to extract from the case presented—pleadings and evidence an entirely new case which had not been tried, and, therefore, I pass it now without further comment.

Considerable testimony was introduced relative to the stock-holdings and the stock transactions of the various companies organized, or financed, by the testator and in which he and his sons were interested from time to time, some of it of little evidential value in a litigation of this nature, but none of it has changed my view of the controversy.

I am satisfied that the testator was competent and that there was no undue influence exercised.

The decree of the Orphans' Court should be affirmed.

# New Jersey Court of Errors and Appeals

| | |
|---|---|
| In the Matter<br>of<br>The Probate of the Will and Alleged Codicil of DWIGHT ASHLEY, SR., deceased. | On Appeal from Prerogative Court. |

## BRIEF OF APPELLANTS.

### Preliminary Statement of Case.

This is an appeal from a decree of the Prerogative Court affirming a decree of the Orphans' Court of Passaic County admitting to probate a certain paper dated January 9, 1925, alleged to be a codicil to the will of Dwight Ashley, Sr., executed April 28, 1924.

The attack is upon the codicil only. As is indicated by the oral conclusion of Judge Delaney, referred to in the Vice-Ordinary's opinion (S. C. p. 457, l. 34 to p. 458, l. 7), the Orphans' Court terminated its hearing abruptly, without as much as a formal denial by the beneficiary under the codicil of the exercise of undue influence, although the testimony clearly disclosed that the beneficiary stood in a confidential relationship to the testator, as a consequence of which a presumption of undue influence arose which it was incumbent upon him to rebut. The Orphans' Court testimony is printed at pages 12 to 132 of the State of Case. That the case was prematurely closed by the Orphans' Court is apparent from the fact that the Vice-Ordinary permitted 280 pages of additional testimony and 39 additional exhibits to be introduced before him, a considerable part of which had been excluded by the lower court.

It is our contention that although this additional evidence confirmed and fortified the presumption of undue influence, the Vice-Ordinary decided the case on the theory that the burden of proof nevertheless rested on the caveators. Furthermore, although the opinion of the Vice-Ordinary states that all the formalities requisite to due execution of the codicil "seem to have been complied with", (S. C. p. 461, ll. 23-26) a vital question of proper attestation has not received the consideration which it merits.

## The Factual Background.

The testator was, as the Vice-Ordinary states in his opinion, a successful silk manufacturer in Paterson, whose wealth decreased towards the end of his life, (S. C. p. 459, ll. 25-29).

Up to the execution of the alleged codicil, testator had consistently treated his three sons, Dwight Jr., Charles and Irving equally in the distribution of his property. He had given them equal shares of the stock of the old Ashley & Bailey Silk Company, and when this concern was liquidated in 1910 his sons acquired equal interests in the Hawthorne Silk Co. which testator was instrumental in organizing, (S. C. p. 186, l. 37 to p. 187, l. 25). The testator's 1910 will, which is in evidence, (Ex. C-1, p. 412), discloses an intention to distribute his estate share and share alike between his three sons.

When testator in 1912 created the Savoy Realty Co., a holding company to which he transferred property, he gave each of his sons 120 shares, and retained the remaining 140 shares for himself, (S. C. p. 255, ll. 16-23). Similarly when one of the boys received cash, the others invariably received equal amounts, (S. C. p. 270, ll. 1-21).

In 1915 testator was compelled to vacate his offices in both the Hawthorne Silk Co. (S. C. p. 247, ll. 12-38) and the Savoy Realty Co., S. C. p. 260, ll. 20-32) because of differences he had with two of his sons, Charles and Dwight Jr., the beneficiary



under the codicil. The third son, Irving, voted on the side of his father, and as a result both he and testator after 1915 had no voice in the management of these two family companies, which had been founded with testator's wealth, (S. C. p. 247, l. 30 to p. 248, l. 33).

The contemporaneous letters, diaries, and statements which are in evidence and which testator drew with the express purpose of preserving for his posterity accurate records of the events of the years preceding his death, contain an indictment of Dwight Jr., the beneficiary under the codicil, which would have justified his total elimination from among the objects of testator's bounty. On the other hand, they speak frequently of the loyalty of Irving, the younger son, and express solicitude for his welfare. One example will suffice at this point.

After testator was eliminated from the Hawthorne and the Savoy, we find in one of his diaries, (Ex. B-G1) the following statement: (S. C. p. 252, l. 10 to p. 253, l. 12)

> "But that two of my oldest boys that have pushed me further down and taken all power from me that has held me up in active life for 40 years, is a hard blow to me—I have sat days and weeks thinking, thinking what is best to do; my self interest dictates to leave the wreck behind and go in seclusion on farm, where I can see my income making some advance and not pay out more than I am getting—but this move would not be understood * * *".
>
> "You two boys are backed up by your mother, who has told me to my face I never had the brains to run the mill * * *. Your mother says she wants nothing to do with me, dead or alive, therefore what matter is it * *. Where is the manhood to see me stand it all after taking the business and absorbing it all for the benefit of two and the other two try and shift for ourselves?"

The "other two" were the testator and his youngest son Irving.

However testator may have felt towards Dwight Jr. and Charles for their treatment of him in the intervening years, he appeared unwilling to retaliate when he executed a new will on April 28, 1924, (S. C. pp. 413-14). This will eliminated all charitable bequests, and reduced his wife's annuity to $1000. a year, but continued his "share and share alike" policy towards his sons.

Assuming this will indicates an intention to forgive past offenses, what explains the radical change in testamentary disposition through the alleged codicil executed about eight months later, preferring the chief offender over Irving, who had always remained true to his father? The answer is found largely in the fact that from the summer of 1924, when he suffered a paralytic stroke, until he died, testator suffered a steady loss of his powers and experienced mental confusions, (S. C. p. 126, ll. 10-27) with the consequence that he did not, on January 9, 1925, possess normal testamentary capacity and succumbed to undue influence while in the home of the beneficiary under the codicil.

Testator spent his last days in the home of his son, Dwight, Jr., having come down from his farm at Stillwater, where he had lived for several years, in order to be near his doctor, (S. C. p. 119, ll. 9-30), and because, as he told his housekeeper, he did not care to die on the farm, (S. C. p. 388, ll. 16-19). He arrived January 4, 1925, and Dr. Todd testified (S. C. p. 371, ll. 35-40) that when he saw testator that day he found him so ill he thought he would die soon, (S. C. p. 128, ll. 17-20). Testator was then 77 years old, (S. C. p. 193, l. 33) and was in the last stages of an incurable valve disease of the heart, complicated by kidney trouble, which resulted in swelling of the body (S. C. p. 129, ll. 7-22), a progressive physical debility, (S. C. p. 129, ll. 23-28) and a transitory or confused condition of the mind, (S. C. p. 120, ll. 29-39).

On January 9, 1925, five days after the doctor had told Dwight, Jr., that his father could not live



long (S. C. p. 197, ll. 4-11) this son who stood in a confidential relationship to the testator, made all necessary arrangements for the drafting, (S. C. p. 197, ll. 9-43) and the execution of the codicil in question, which named him as beneficiary, (S. C. p. 198, ll. 20 to p. 199, ll. 2-40).

This codicil was executed under circumstances which, as we will show in our argument, rendered the testamentary ceremony perfunctory, and violative of the safeguards required by our statute of Wills. One of the witnesses did not even know what kind of a paper was being signed.

Dwight Jr., the beneficiary, admitted that a day or two before this codicil was executed his father had offered to divide his 140 shares of Savoy stock equally between Dwight Jr. and Irving, and he could give no reason for the testator's sudden determination to give all the stock to him, (S. C. p. 307, l. 13 to p. 308, l. 15).

These 140 shares of stock had a value of $90,000 to $100,000., and also carried control of the family company, (S. C. pp. 317-321). The president of this corporation was Dwight Jr., the beneficiary. He admitted that when his father, who had no active connection with the company for about 10 years, inquired of him shortly before his death concerning the value of this stock, he represented that it was worth from $200. to $250. a share, or a total of from $28,000. to $35,000, (S. C. p. 263, ll. 23-30). The codicil was thus fraudulently procured.

The record also discloses that the beneficiary did all in his power, while his father was in a debilitated state, to prejudice testator against the other two sons. Furthermore, in order to protect the product of his fraudulent scheme, the existence of which he had kept secret until after his father's death, the beneficiary sought to induce testator's brother not to testify at the hearing on the caveat, urging that he obtain from a physician a

certificate of incompetency (S. C. p. 175, l. 35 to 176, l. 10; p. 181, ll. 25-40).

With this brief sketch of the background, we proceed to the argument of the points involved in the case.

## ARGUMENT.

(*Italics ours throughout*).

## POINT I.

**Not only have proponents failed to sustain the burden of proving execution of the codicil in accordance with the statutory requirements, but uncontradicted affirmative proof is present of non-compliance with the requisites of attestation by two witnesses and of proper declaration.**

The Wills Act of 1851 (S. C. p. 58-67, par. 24) states certain requisites to be observed in the execution of a will, and among these requirements is the following: "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 the testator".

The Courts of this state have required strict compliance with these statutory requisites. The Court of Appeals recently had occasion, in *re last will of Sutterlin*, 99 N. J. Eq. 363 (1925), to review many of the principal cases which had construed the language of the statute, and this Court re-affirmed the principle that there must be strict compliance with the requisites of a proper execution and attestation of a will. Accordingly, this court held in the Sutterlin case that the requirements were not satisfied by a testator signing a will in the presence of one witness, who then signed as a witness, and acknowledging the signature in the presence of both witnesses after the second had come into the presence of the testator, and by the second witness then signing as such.



The case at bar involves, among others, the even more fundamental question of whether one who does not know or appreciate the character of the instrument signed is a witness within the meaning of the statutory language quoted above.

The beneficiary, Dwight Jr., after having had the codicil prepared, arranged to have Mr. Gold, a young attorney associated with Dr. Gourley, attend to its execution that evening, (S. C. p. 198, ll. 20-26). He also procured as witnesses Miss Marie Uhlig, his maid, and Mr. Edwin E. Dudley, (S. C. p. 199, ll. 12-30) his intimate friend for seventeen years and financially obligated to him, (S. C. p. 18, ll. 23-33).

The hearing on the probate of the codicil was held April 3rd, 1925, less than three months after its execution. This is not, therefore, a case in which the witnesses had to search their memories for events which had happened years back. At least to Miss Uhlig participation in the ceremony at the request of her employer, Dwight Jr., must have been an important event.

### A. At least one of the subscribing witnesses was not, at the time of signing, aware of the character of the instrument.

Miss Marie Uhlig testified that while she was waiting outside the door of the room occupied by the testator she "just guessed" that they were preparing a will for Mr. Ashley and she explains that she made this guess "because father Ashley was sick" for months, (S. C. p. 37, ll. 12-16).

Miss Uhlig is certain that after she entered testator's room nothing was said by anyone during the execution of the codicil. She testifies as follows: (S. C. p. 38, l. 34 to p. 39, l. 8).

"Q. Wasn't anything said at that time

when you walked in the room, you all walked in there and nothing was said? A. No.

Q. Did Mr. Dwight Ashley, Sr. say anything? A. No.

Q. Mr. Dudley stood there, he didn't do anything, he just stood there waiting to see what was going to be done? A. No.

Q. He didn't have any conversation with Mr. Ashley? A. Senior?

Q. Yes. A. No."

Q. Nothing was said by anyone at that time? A. No.

Q. Nothing was said then, I think you signed first? A. Yes.

Q. Where was Mr. Dudley when you signed it? A. Standing there.

Q. Had he stepped out of the room? A. No, he stood there.

Q. Talking to Dwight? A. No, nobody was talking.

Q. Nobody said a word? A. No.

Q. Was anything said except what Mr. Dudley said 'How do you do, Mr. Ashley'? A. No.

Q. (There) Wasn't anything said by anyone in the room? A. Yes, sir.

Q. That is true, isn't it? A. Yes, sir." (S. C. p. 40, l. 36 to p. 41, l. 15).

When this subject was again touched upon, Miss Uhlig remained firm (S. C. p. 40, ll. 24-30)

> "Q. You are sure from the time you stepped into the room with Mr. Dudley, who went in the room and greeted Mr. Ashley while you were there? That is true? A. Yes, sir.
>
> Q. There was nothing said from that time on by anyone in the room? A. No.
>
> Q. Are you sure of that? A. Yes, sir."

On redirect-examination by Dr. Gourley she testified as follows:

> Q. Did he (the testator) say what the paper was? A. No.
>
> Q. *Did you know what it was?* A. *No, I didn't know what it was.*
>
> Q. Did you read the part before your signature? A. *No, I didn't look at that."* (S. C. p. 41, l. 40 to p. 42, l. 7)



Mr. Dudley's testimony in general evidences a suspicious attentiveness to the requisites of proper execution of a testamentary paper, although his memory on other matters which occurred before, during and after the execution of the codicil is not clear. But on the point under consideration his testimony shows that it is only by *inference* that he learned the nature of the paper about to be signed.

He first testified that he knew when Mr. Gold came into the house that a will was to be executed. (S. C. p. 20, ll. 23-30). He later had a five-minute conversation with his friend Dwight Jr. in the hallway outside the room occupied by the testator, (S. C. p. 36, ll. 1-23). Nevertheless he testified further as follows: (S. C. p. 25, ll. 4-18)

> "Q. Did you know up to that time when you entered the door you were going to witness a codicil to a will? A. I did not know.
>
> Q. You didn't have the slightest suspicion that you were called there for? A. I didn't know what I was called for.
>
> Q. When you stepped across the threshold of the room where Mr. Ashley Senior was you didn't know what you were there for? A. No.
>
> Q. When was the first intimation there was going to be a codicil to a will signed there? A. I should say when either Mr. Gold or Mr. Ashley expressed *to me* or read *to me* what is on the bottom of that codicil."

That testator read nothing and said nothing is clear not only from Miss Uhlig's testimony, quoted above, but also from Mr. Gold's: (S. C. p. 364, ll. 18-40)

> "Q. Now, either before the execution of the codicil, nor in the course of the execution of the codicil, did Mr. Dwight Ashley, Sr. say anything about his estate or his property or his reason for making the codicil? A. No, sir.
>
> Q. Was he silent all the time that the two witnesses were in there with you? A. He was.
>
> Q. He did not have anything to say to them? A. I don't believe he did.

Q. Did they talk to him? A. I don't think they did.

Q. It was a silent ceremony? A. I was the one that did the talking.

Q. Except for the reading of the attestation clause by you? A. That is right.

Q. Did you ask Mr. Ashley, Sr. if he understood the nature of the instrument while the two witnesses were in the room? A. No, sir.

Q. Did you ask him while the two witnesses were in the room if he published it or declared it to be a codicil to his will? A. I did that with the attestation clause."

Mr. Gold was also asked: (S. C. p. 363, ll. 20-22)

> "Did you ask Mr. Dudley and Miss Uhlig if they understood what kind of a paper this was that they were witnessing?"

and his answer was

> "No, sir."

Mr. Gold relied entirely on his reading of the attestation clause to communicate to the witnesses the essential information that the paper was of a testamentary character. No other effort was made to bring this knowledge to the consciousness of the witnesses. Obviously whether reading a clause succeeds in communicating thoughts to the minds of hearers depends on whether it is read rapidly or slowly, whether it is clearly enunciated or mumbled in an undertone, and also depends upon the attentiveness of the hearers. But the statute requires that where a will is to be executed the testamentary character of the instrument *be communicated to the consciousness of both the attesting witnesses.* Where, as in the case at bar, one of the witnesses inferred that a will was to be attested by him, and the second witness clearly testifies that nothing was said concerning the nature of the paper, and that she did not before subscribing it know that it was a testamentary instrument, and that she did not read the attestation clause, clearly non-compliance with the statutory requirement of *two* attesting witnesses is established.



One of the earliest cases in which the problem of execution involved in this case was considered is *Combs* v. *Jolly,* 3 N. J. Eq. 625, in which Ordinary Vroom said, at p. 627:

> "Smith says Jolly acknowledged it to be his hand and seal, in answer to the question from one of the other subscribing witnesses, and that it was for the uses and purposes therein mentioned. And again he says expressly, 'Mr. Jolly did not declare the instrument to be his last will and testament.' I incline with the Chief Justice in the case already cited, to doubt whether this is sufficient; and I think that the safer rule is to require a literal construction of the statute, in regard to the publication as well as the signing. In the case now before the court there was not only no publication by the testator or anyone for him, *but the witness did not even understand that the instrument was intended for a last will and testament*; * * *."

*Darnell* v. *Buzby,* 50 *N. J. Eq.* 725, is a case in which the evidence on the question of execution corresponds in many respects with the case at bar. One of the witnesses testified that "the circumstances of the transaction led her to suppose that a will was being executed, but that she does not think that the word 'will' was used" (p. 728). After quoting from the decision in *Mundy* v. *Mundy,* 2 *McCart.* 290, in which Chancellor Williamson concluded by saying:

> "But the witnesses *must know* it is the will of the testator they are witnessing, and they must witness it at his request,"

Ordinary McGill summed up the governing principle in the following language:

> "Unless a witness is most clearly shown to be utterly unworthy of belief, *his positive testimony must stand against even a perfect attestation clause* which, under disclosure of all that was said and done, is supported solely by equivocal acts and words which are fairly susceptible of a meaning inconsistent with

the character of willmaking. *And especially is this the case when it appears that the witness knew nothing of the contents of that attestation clause.* To serve as a sufficient substitute for express declaration, that which is said and done should *plainly* lead to the single necessary inference that the document executed is the testator's will. The character of the paper should *distinctly* appear to the *witnesses.*"

This case was affirmed by the Court of Errors and Appeals in 52 *N. J. Eq.* 337. The applicability of the portion of the opinion last quoted to the testimony of Marie Uhlig is apparent. Although Miss Uhlig came into the room with a "suspicion" that a will was to be executed, nothing was conveyed to her to confirm this suspicion.

In *Lacey* v. *Dobbs*, 61 N. J. Eq. 575, at p. 583, Ordinary Magie defines attestation as follows:

> "To attest not only bears the meaning to witness, but also *to bear witness to,* and it may be argued that an attesting witness is something more than a subscribing witness, and that the subscription of an attesting witness *bears witness to the act* of the *testator* in a different sense from that which the subscription of the subscribing witness would do."

In the same case on appeal, in 63 *N. J. Eq.* 325, the Court of Errors and Appeals said (p. 326):

> "The grammatical sense of this enactment is that the entire testamentary act is to be attested by *two witnesses* by the subscription of their names. They are to subscribe *as witnesses,* i. e. *those who know* (*Saxon, witan*) *what was said and done.*"

And at page 333:

> "It was suggested by the learned ordinary in the court below, in this case, that there may be a difference in the effect of the two amendatory statutes, in that the English one does, while ours does not, require the witnesses to attest as well as to subscribe the will. It being expressly provided in the English act



> that no form of attestion shall be necessary, it is evident that *what is meant is that the witnesses shall subscribe 'as witnesses,' which is the concise direction of our act, accordant with the usual definition by lexicographers of the word 'attest' as applied to writings.*"

This pronouncement of the Court of Errors and Appeals has since been consistently followed in this State.

A recent case exactly in point is in re *Van Handlyn's Will,* 83 N. J. Eq. 290. Two of the attesting witnesses testified to facts which disproved due publication, while the remaining attesting witness and another person present at the execution gave evidence of sufficient publication. Vice-Ordinary Griffin said, at p. 294:

> "As two of the witnesses *did not know that the instrument was intended as a will,* it follows that the statute as to publication was not complied with; and being themselves in ignorance of the fact that the instrument was intended by the deceased to be her will, *it is apparent that they did not sign as witnesses in attestation of the due execution of a will at the request of the deceased.*"

In *re Last Will of Margaret Buchman,* 26 N. J. *L. J.* 111, 115, probate was refused, the Court saying that

> "The publication may be performed by any utterance or action proceeding from the testator, or from another by his request or direction, and in his presence, by which the witnesses are informed that the paper they see is the will of the testator and *they are required to attest it as such.*"

The opinion in the Buchman case cites *Lewis* v. *Lewis,* 11 *N. Y.* 220, where the court held that to satisfy the statute the testator must in some manner communicate to the attesting witnesses at the time they were called upon to sign as witnesses, the information that the instrument then presented is of a testamentary character.

The New York statute, similar in its language to ours, has consistently been interpreted in accordance with the decision in the Lewis case.

In *In re Dilprat's Will* (27 Misc. 355) 58 N. Y. Supp. 768, a subscribing witness to the will offered for probate testified that she was requested to sign the "instrument" as a witness, and that the decedent did not declare that the instrument was decedent's will. The evidence showed that the witness was not informed of the character of the instrument, either before or after she signed it. In denying probate, the court said at page 768:

> "It must be made to appear unequivocally that the testamentary character of the instrument was communicated by the testator to the witness. Lewis v. Lewis, 11 N. Y. 220; Ex parte Beers, 2 Bradf. Sur. 163".

Persuasive authority which is forceful, clear and to the point is *In re Turrell's Will,* 59 N. Y. Supp. 780, in which it was said at 782:

> "But, whatever the attendant circumstances may be, they must be sufficiently strong to clearly show that the testamentary nature of the instrument was made known to the witnesses by the testator, that there was an unequivocal meeting of minds between them and him—a declaration, however made, but thoroughly understood by all of them. In re Delprat's Will, 27 Misc. Rep. 355, 58 N. Y. Supp. 768; In re Dale's Will, 56 Hun 169; 9 N. Y. Supp. 396; aff. 134 N. Y. 604, 32 N. E. 649. *It has been expressly held that it will not suffice for the witnesses to suspect from the circumstances and occasion, that they are affixing their names to a will* (Lewis v. Lewis, 11 N. Y. 220) or to come to this conclusion from an accidental inspection of the attestation clause. Wilson v. Hetterick, 2 Bradf. 427; Walsh v. Laffan, 2 Dem. Surr. 498. * * * The testator must know that the witnesses know the testamentary nature of the act, and vice versa; and this mutual knowledge must arise from something said, done or signified contemporaneously with the execution of the instrument". The question to be decided is one purely of fact, *with the affirmative resting on the proponent;* in re Eliner's Will, 88 Hun 290, 34 N. Y. Supp. 406; in re Cottrell's Will, 95, N. Y. 329. * * *"



On the facts appearing from the testimony, and under the cases cited, it is respectfully submitted that proponents have failed to prove that *both* subscribing witnesses were clearly apprised of, and distinctly understood, that the paper they subscribed was of a testamentary nature. It makes no difference in the legal result what the cause was of Miss Uhlig's failure to appreciate the testamentary character of the instrument during the brief ceremony surrounding its execution. Whether it was due to the method adopted by the attorney to bring this essential fact to the *knowledge* of the witnesses, or to any other factor, Miss Uhlig's positive testimony that nothing was said to lead her to understand she was witnessing a codicil to a will, and that she did not know this fact during the ceremony, clearly establishes that she did not comprehend the vital essential of publication. Accordingly, she could not testify to any publication, and cannot be considered a witness to any publication. She was present, but her mind did not attest, and the result is that the statutory requirement of *two attesting witnesses* has not, in this case, been fulfilled.

**B. Proponents have failed to prove a Publication by the Testator, or on his behalf with his knowledge and consent, that the instrument was a codicil to his will which he desired the witnesses to attest.**

The testimony set forth under the foregoing subdivision, is also involved on this second phase of the argument on non-compliance in the execution of the codicil with the requirements of the statute. It appears without contradiction that the testator

said nothing and did nothing to indicate to the witnesses that he recognized that the paper before him was a codicil to his will, that he wished them to know that he was about to execute a codicil, and that he wished them to witness it as such. Mr. Gold admitted that except for his reading of the attestation clause the ceremony was entirely silent, (S. C. p. 364, ll. 18-40). He did not ask testator whether he understood the testamentary nature of the instrument, nor did he ask the witnesses this question (S. C. p. 3631, ll. 70-72). Nor did he ask testator whether he wished the witnesses to know that he was executing a codicil to his will.

The question arises, therefore, whether testator clearly manifested to the witnesses knowledge of the testamentary character of the document. There is no proof that he understood Mr. Gold's reading of the attestation clause any more than Miss Uhlig did. But further, it is to the witnesses that he was required to indicate he recognized he was executing a codicil. Nor is there any evidence that he said or did anything during the ceremony which could reasonably be understood as an expression of knowledge of and consent to, the attestation by the two witnesses of a codicil to his will.

Mr. Gold testified that testator told him he was "weak" and "debilitated" (S. C. p. 360, ll. 25-26). As will appear under the next point concerning testator's capacity to make a codicil on January 9, 1925, his condition was such as to render it impossible for testator to participate actively and intelligently in the execution of the codicil. This accounts for his total silence, and the absence of a gesture such even as the nod of his head during this perfunctory ceremony.

In *Ludlow* v. *Ludlow,* 36 N. J. Eq. 597, at p. 600, Justice Scudder, speaking for the Court of Errors and Appeals, said, with reference to the change of language introduced by the act of 1851:

> "The alteration made by substituting 'declared to be his last will' for 'published by the testator' does not change the requirement that there shall be some word or act by the testator, or in his person, by which it may be manifested to the witnesses called to attest that the testator *knew* and *wished them to know* that he was executing his last will and testament."



Justice Scudder went on to say, with respect to the uncertainty of the evidence as to whether the request to one of the witnesses to attest was heard by the testator who was standing a short distance from the witness (p. 601):

> "But he must by some word or sign clearly indicate his recognition of the testamentary act in which he is engaged and of the genuineness of the signature and will which are presented to the witnesses for their attestation. The words used in the statute, 'acknowledged' and 'declared' *demand an open expression either in words or unmistakable act. And we have no right to change their obvious meaning or substitute conjecture for positive proof of conformity to their requirements.*"

Similarly in Clark v. Clark, 64 N. J. Eq. 361, Judge Adams, speaking for the Court of Errors and Appeals, said, at p. 362:

> "Another feature of the case *that is of itself decisive* is that Mr. Clark did not, in the presence of both witnesses, declare the writing to be his last will. Such a declaration is essential to due publication. It satisfactorily appears that neither witness was told by Mr. Clark, and that neither *witness knew,* when he signed, that the document to which he put his name was a will."

A closely analogous New York case is *In re Lyman's Will,* 74 Misc. Rep. 352; 36 N. Y. Supp. 117, at 121:

> "The witness Brower testified that the testatrix signified her acceptance of the will, and when asked how she did this, other than by putting her name to it, he replied, 'By Mr.

Lyman asking her if that was her last will, in reply to which she bowed her head;' and also, in reply to a question that *she said nothing to the witnesses specially.* * * * (p. 122) In the case at bar I cannot do otherwise than find that there is not only an utter failure of direct proof to establish the statutory formality of a request by the decedent to the witnesses *to sign their names as such,* but that, on the contrary, the testimony forbids the finding of any presumption that there was such a request."

**C. In the face of positive testimony contrary to the recitals of the attestation clause, which was not read by the witnesses, the attestation clause does not lighten the burden of proof resting on proponents.**

It does not appear that Mr. Dudley read the attestation clause, and Miss Uhlig testifies that she did not even look at it, (S. C. p. 42, ll. 4-7)

In *In re Turrell's Will,* 59 N. Y. Supp. 780, at 783, the court said:

> "But here it affirmatively appears that one witness did not read the clause, while the other only glanced at it, and did not know its full purport. * * * This being the case, the presumption just referred to cannot arise, and the clause becomes meaningless, and of no value whatever * * *".

In view of the positive testimony that the facts recited in the attestation clause were not true, the clause has no probative value. This Court, after a full review of the authorities, so held in the *Sutterlin case,* 99 N. J. Eq. 363, at 367-68.

The burden of proving due execution is, therefore, on the proponents. *Swain* v. *Edmunds,* 53 N. J. Eq. 142, 143:

By way of conclusion on the point that proponents have failed to sustain their burden of proof, and on the effect of positive testimony of noncompliance with the statute, we quote from a persuasive authority, *In re Hitchler's Will,* 55 N. Y. Supp. 642, at 644:



> "If the Court is left in doubt as to whether the will was executed within the requirements of the law, it is not the will of the deceased. It is for the proponents to make satisfactory and convincing proof of the factum of an alleged will, and, if the proof comes short of conviction, the paper offered may not be admitted to probate; and if, by the testimony, the matter is left in that state of uncertainty that the mind of the court is not brought to the belief of actual execution by the decedent * * * this court will reverse a decree admitting it to probate."

## POINT II.

**The presumption of undue influence by the sole beneficiary who occupied a fiduciary relation-involving trust and confidence not only remains unrebutted by satisfactory evidence, but is confirmed by the testimony, and is therefore controlling against the validity of the codicil.**

The decisions in this State have stressed certain facts or circumstances as indicative of the exercise of undue influence. Eleven such facts or circumstances are present in this case:

1. Testator's expressions of his feelings towards the natural objects of his bounty are characterized by gratitude, devotion and unquestionable partiality to his youngest son Irving.

2. The beneficiary under the codicil occupied a fiduciary relationship to the testator at the time of its execution.

3. Testator's physical and mental condition rendered him dependent upon the beneficiary, and the codicil was executed when he lacked his normal testamentary capacity.

4. Ample opportunity and motive for exercising undue influence existed in this case.

5. The beneficiary arranged the drafting of the codicil.

6. The beneficiary participated in the execution of the codicil.

7. The codicil represents a radical change of testamentary disposition within a brief period.

8. The beneficiary concealed from his brothers the fact that a codicil had been executed.

9. The beneficiary has failed to establish any reasonable explanation or motive for preferring him.

10. The beneficiary has in many respects disclosed a consciousness of guilt.

11. The beneficiary has failed to overcome the presumption of undue influence. His testimony, far from being "impeccable and convincing", is evasive and incredible, and affirmatively confirms the presumption.

Under such facts a presumption arises which has an important bearing upon the burden of going forward with the evidence and upon the burden of proof.

In *Stoutenburgh* v. *Hopkins,* 43 N. J. Eq. 577, the principle was stated as follows:

> "Such circumstances as that the will was drawn by a favored legatee, extreme debility of the testatrix, clandestinity, unbounded confidence in the draughtsman of the will, coupled with like concomitants may warrant the presumption (of undue influence) of which the Vice-Chancellor speaks."

The Court of Errors and Appeals recently adopted a similar statement of the principle by Vice-Ordinary Fielder in *In re Solomon's Will*, 95 N. J. Eq. 706, at p. 711.

Similarly in *re Ulrich's Will,* 98 N. J. Eq. 621, (affirmed V N. J. Adv. Rep. 1492), a case similar in many respects to the present case which was decided by him, Vice-Ordinary Lewis said, p. 626:

> "Whether or not I find that fiduciary relationship between the testator and Burchill is, however, not important, because Burchill unquestionably occupied a position of trust and confidence with reference to the testator. The active agency of the beneficiary of a will in procuring it to be drawn in his favor, especially in the absence of those who have at least equal claims upon the justice of the testator, and where the testator is enfeebled by old age and disease, is a circumstance strongly indicative of undue influence."



The points listed above will now be considered in succession.

**1. Testator's expressions of his feelings towards the natural objects of his bounty are characterized by gratitude, devotion and unquestionable partiality to his youngest son Irving.**

Considerable testimony was devoted to this question. The beneficiary admitted that in 1915 he voted against his father at a meeting of the Hawthorne Silk Company which resulted in the severance of testator's active connection with that company; and that in 1916 he voted to relieve his father, who had founded the Savoy Realty Company with his own assets, from the office of Treasurer of this company. It is characteristic of the beneficiary's testimony that although he was confronted with his votes on these matters, he should have sought to place the blame on his brother Charles. (S. C. p. 260, ll. 4-21). Charles admitted that with respect to the Hawthorne he and Dwight disagreed with testator on matters of business policy (S. C. p. 398, ll. 21-37); but that the Savoy ousting was due to Dwight, Jr.'s fear that his father would "clean out the treasury" (S. C. p. 389, l. 32 to p. 390, l. 4).

> "Q. How did that come about? A. Dwight made the proposal to me that the office of Treasurer be given to me, in addition to my duties as Secretary. I could not see

the necessity for such a move, and asked him why; he made the suggestion, he said 'If we continue father in as Treasurer of the company he is liable to clean out the treasury."

Testator's brother, William H. Ashley, testified that he had a conversation with testator shortly before Christmas, 1924, about two weeks before the execution of the codicil. (S. C. p. 49, ll. 20-27) When asked what feelings testator expressed with respect to Dwight, Jr. he said:

"A. It is hard for me to repeat those words. The substance is he did not feel kindly.

Q. Why? A. Due to the attitude he took to him ousting him from the Hawthorne Silk Co. He didn't feel kindly because he was ousted out of the Hawthorne Silk Co.

Q. Go ahead, tell us all. A. That is a complete answer.

Q. Was there anything further said about it? A. Only in regard to Charles Ashley, the other boy, who voted him out. He was opposed to Dwight Ashley and Charlie Ashley through their efforts to kick him out of the Hawthorne Silk Co.

Q. What other things in reference to that subject, what else did he say? A. He said they used the funds of the Savoy Realty Co. to further the interests of the Hawthorne Silk Co." (S. C. p. 51, ll. 21-37).

"Q. What was his comment with reference to the conduct of Irving Ashley? A. Very good, very commendable because he stood by him.

Q. What do you mean he stood by him? A. He refused to vote with the others to oust the father out.

Q. Out of what? A. The Hawthorne and Savoy Realty Co.

Q. Did he tell you anything further about the efforts to secure the vote of Irving?

Objected to by Mr. Gourley.

Objection overruled.

A. No, only another effort was made to buy Irving's stock in the Hawthorne Company.

The Court: Was this the conversation?

A. Yes, sir.



Q. Alright, go ahead. A. Irving refused to sell his stock in the Hawthorne for the sake of saving Dwight Ashley, Sr. from being ousted out as it would leave the other side all the controlling interest. (S. C. p. 51, l. 18 to p. 52, l. 5).

After the ousting of the testator from the Hawthorne, Dwight received from 1917 to 1923 the sum of $89,808.75 in salary and bonuses (S. C. pp. 243-44) while testator and Irving did not receive a penny, although they were stockholders (S. C. p. 234, l. 21 to p. 235, l. 30; p. 244, ll. 26-40). Moreover, during this period of prosperity, the testator was not repaid any of the money which the Hawthorne, thru Dwight, Jr. had borrowed from him (S. C. p. 238, l. 26 to p. 239, l. 10).

It is preferable to look to testator's own words. Reference has already been made to testator's letter to his son Irving (S. C. p. 138) that "in cold blood at a meeting I was thrown out of office by D. A., Jr., C. A. and your mother; * * * but the great wrong was to kick me around after I done my part in good faith, and to show me that I was no use in the Savoy or in the H. S. Co., or in any capacity where they were connected, but with the funds of the Savoy I would have made in a year more than three to three and a half per cent; but now I have one course, and that is 'play the man' and protect so far as I can the few years I have left; and not one dollar will I neglect to hold for my children and grand-children." (S. C. p. 138).

The testator after his elimination from the Hawthorne and the Savoy companies joined Irving, his youngest son, in the organization of a new silk company known as the Gary Silk Company. Irving testified that he sent testator commissions on the company's sales (S. C. p. 163, ll. 19-33). His letters to Irving show a great solicitude for Irving's welfare. In one letter (Exhibit B-6, p. 141, l. 14 to p. 142, l. 5) after stating that "I must do all I can for myself and each of you boys" he ad-

vised Irving to put the Gary Silk Company in the hands of the Hawthorne so that all could "work for the good of all".

In another letter testator wrote to Irving acknowledging receipt of a check which he did not expect, stating that he could have it back any time he needed it. This letter also shows how solicitous testator was for Irving's business advancement, stating that he would buy from ten to twenty box looms for him to strengthen his plant. In this letter we also learn that Irving was acting as his father's selling agent for the farm products, such as chickens and eggs (Ex. V 5, p. 139, l. 15 to p. 140, l. 8).

A letter under date of 6/9/23, also expresses concern for Irving's business and financial affairs, and speaks of sending crates of goods to him (Ex. V. 7, S. C. p. 417).

A letter under date of 3/13/24 refers to Irving's illness, to his business troubles and to the sale of eggs (Ex. V. 8, S. C. p. 418).

Exhibit V. 9 is dated 10/2/23 (S. C. pp. 419-21). He expresses his sorrow for Irving's financial condition and attempts to encourage him.

Testator, realizing that his youngest son required protection against the others, endorsed to him a note of the Hawthorne Silk Company in the sum of $10,000. to protect him against claims by them on indebtedness of the Gary to the Hawthorne.

> "Q. I show you a note made by the Hawthorne Silk Company signed Charles Ashley, President. Did your father hand you that note? A. He had indorsed it over to the Gary Silk Company.
>
> Q. What for? A. The Gary Silk Company owed the Hawthorne ten thousand dollars for throwing silk. In order to protect me if they started suit he gave me that because they were going to start suit. He did that in order to protect me from those boys. (S. C. p. 114, ll. 6-15).



The same thought must have been in testator's mind when he penned the folowing note to Irving:

> "Dear Boy: As to the amount you owe me and anyone throwing it up to you, that is all nonsense. You have a receipt in full, and it is a question of honor to the boys. If you cannot pay you don't have to. Pop." (S. C. p. 137, ll. 8-13)

No better summary of testator's feeling toward his children could be desired than the following one of his many written statements on the subject.

> "And what to turn to that my time may be made of some value is a question, had the Hawthorne Silk Company given me a job and give a job to Irv and not thrown the jobs into the hands of men who did not invest their money, it would have been a great relief to the situation and to me—the rejection was a most cruel act I could ever dream of—many men would soon mend it all and give the coroner a job, but I don't wish to desert a few relatives I know will stand by me—there is the youngest boy needs someone to hold fast to him * * *". (S. C. p. 251, ll. 26-37).

The cumulative force of this testimony clearly establishes that testator's expressions of appreciation for the conduct of his children were confined to the youngest son, Irving. His grievances against the beneficiary were ample. Nevertheless, the Court is asked to believe that in the two weeks which elapsed between testator's conversation with his brother, William H. Ashley concerning his children and the date of the execution of the codicil, testator suffered a complete change of heart and transferred his preference to Dwight, Jr. And this despite the fact known to the testator that the Gary Silk Company, the concern in which Irving and his father had been interested, had gone out of business in September, 1924, (S. C. p. 163, ll. 19-33) leaving Irving in very bad financial straits.

**2. The Beneficiary under the codicil occupied a fiduciary relationship to the testator at the time of its execution.**

The record establishes clearly that Dwight Ashley, Jr. occupied a relationship of trust and confidence to the testator. They had been jointly interested in business enterprises founded by the testator. Dwight Ashley, Jr. admitted that he had charge of part of his father's finances, and that he kept his stocks and bonds in his safe deposit box and in the safe in his own home (S. C. p. 263, ll. 30-38). He was for many years trustee for his father of an account in the Corn Exchange Bank standing in Dwight Jr.'s name, from which he withdrew various amounts as his father ordered it (S. C. p. 264, ll. 23-40). He testified also that in the summer of 1924 and later on he discussed with his father the financial affairs of the latter (S. C. p. 273, ll. 33-40), and it was he who obtained from testator loans for the Hawthorne Silk Co. by having testator sign checks with the amount left blank, and which he, Dwight Jr., filled in according to the needs (S. C. p. 238, l. 25 to p. 239, l. 10).

**3. Testator's physical and mental condition rendered him dependent upon the Beneficiary, and the codicil was executed when he lacked his normal testamentary capacity.**

The evidence is uniform that the testator on January 9, 1925, when the codicil is alleged to have been executed, was a very sick man (S. C. p. 33, ll. 30-39). Even the beneficiary, Dwight, Jr., admitted this to his uncle on the morning of that day. (S. C. p. 385, ll. 5-10). He was 77 years old. He had suffered a paralytic stroke during the summer of 1924 (S. C. p. 125, ll. 20-29). He was not well thereafter and towards the end of November suffered a heart attack complicated by kidney trouble.



This illness continued, and several days after Christmas, 1924, he suffered a severe attack which proved to be his last.

Dr. Todd testified that he attended the testator for about two years prior to his death (S. C. p. 119, ll. 10-30). During this period he constantly declined. In reply to the question, "That weakened condition continued for how long?" Dr. Todd said: (S. C. p. 126, l. 16-26)

> "A. I can't answer that question. He was a man who from two years ago until the time of his death we prognosed he was going to go on and run a course much as he did, we could not set the time it was going to happen *but it was explained to the family.*
>
> Q. But continued to give him medication for a particular purpose for a long time after? A. He practically lived on it. He was dependent on it for his heart."

Dr. Todd further said (S. C. p. 119, l. 33 to p. 120, l. 12):

> "Q. What was he suffering from? A. Heart and kidney trouble.
>
> Q. How did that affect his going out? A. In the beginning he walked a good deal about the place in the country and often he engaged in work which was too much for a man of his age and condition. I noticed that as long as he would take it easy and not walk fast he would be alright but if he would overdo himself physically, if he over did it, after a week or so he would land down to Dwight's house.
>
> Q. Did you notice any decrease in his physical power or energy? A. His physical powers gradually decreased. He would have good period and then he would overdo it and naturally he gradually wore himself down until he became incapacitated and died."

To be near his physician, Dr. Todd, he came from his farm to the house of his son, Dwight Ashley, Jr., on January 4, 1925 (S. C. p. 119, ll. 9-30). The testimony of Dr. Todd discloses that during the period of the testator's last illness he saw him almost daily (S. C. p. 119, ll. 26-32); that about a month or six

weeks before he died his mind was transitory and confused at times (S. C. p. 120, ll. 29-34); that this confusion dated from the time he had the stroke which was some time before the beginning of his last illness (S. C. p. 122, ll. 20-25); that this confusion would last for a day or two and then clear away (S. C. p. 122, ll. 10-15); that when he came down from the farm to the home of Dwight, Jr. early in January the doctor found him so ill that he thought he was going to die (S. C. p. 123, ll. 35-36); that the doctor did not allow him to get out of bed for about a week (S. C. p. 124, ll. 8-12); that the weakened physical condition might to some extent weaken the mentality (S. C. p. 129, ll. 37-39); that the power of resistance was gradually decreased, the doctor explaining this as follows: (S. C. p. 129, ll. 7-29)

> "Q. Did it affect his power of resistance? A. His power of resistance was going down for two years, his improvement was due to the stimulation. He had to live on digitalis when his heart was bad. The dose was increased. He started two years ago with a heart condition complicated by a kidney condition. We prognosed he would gradually peter out. We knew this thing was going to happen, this attack when he came down from the farm was one of a series. He had them before and with treatment had improved, on this last one the improvement was immediate and then gradual, he gradually improved up until a week or ten days before he died when he became absolutely waterlogged and he was unable to excrete sufficient to carry him along.
>
> Q. His power of resistance was reduced? A. It had reduced from the time he was taken sick. It was a progressive condition. He would have momentary improvement but you would map it going down all the time if you would draw a scale and map it."

Dr. Flitcroft testified with respect to the nature of his illness that his "was a case in which no physician would hold out a prognosis of recovery because he had an incurable valve disease of the heart and



he had kidney trouble", (S. C. p. 45, ll. 24-32). He was in a weakened condition, so much so that Dr. Flitcroft advised that there was danger in his doing any walking at all; that he was liable to die suddenly (S. C. p. 45, l. 36 to p. 46, l. 8) since the valves of his heart were as Dr. Todd said all shot to pieces (S. C. p. 46, ll. 12-15).

Miss Marie Uhlig, the maid at the home of Dwight Ashley, Jr., testified that for months prior to the date the codicil was executed the testator had been a very sick man; that in his last illness he had been confined to his room, and had required the attention of doctors almost daily (S. C. p. 33, ll. 30-39). He could not attend to his personal wants (S. C. p. 151, ll. 10-16). During and after meals he vomited at times (S. C. p. 151, ll. 26-31) Due to the condition of his heart, he was at times unable to sleep in a bed and had to obtain whatever rest he could while upright in an armchair (S. C. p. 373, ll. 28-35).

While in this condition, but four days after Dr. Todd had given him up, the codicil was executed. Evidence of the testator's mental condition is provided by the memorandum which Dwight, Jr. testified his father wrote on the morning of January 9th, to be transmitted by telephone to his brother William H. Ashley, who lived at Hackettstown. This memorandum, (Exhibit G-1) was deciphered by Dwight, Jr. on cross-examination as follows: (S. C. p. 337, l. 39 to p. 338, l. 26).

> "Brother Will: You may have time to go to livery stable—hire a good sleighing horse, and when there I want you to get six ducklings and bring home; now, the man on place has whiskey, and I will mail his check to farm to-morrow; tell the boys they can get without. Today, of course, stay if you have all night. Tell this man I need men of no whiskey on the place; and this may break it up; but he must go. Tell Clark to get someone there only half a day, and they can soon determine if I am to sell out the stock, as if I am not to get any better I am to quit farm-

ing. The expense of horse and sleighing I will remit as soon as I get word from you. There is now one man, (I cannot make out that one word) on half-time. Attend to this; I have no accident. If he cares not for discharge, tell him I will soon find reasons to send him anyway. I will not be able to get there for three or four days, so I want to get rid of whiskey and man. Tell them to pick out the big hens from July, then they are to be broilers, six in a circle."

All one need do is compare this memorandum with any of testator's memoranda and letters in evidence, written before his illness, to realize that a totally different mind composed them. We find in these letters and memoranda a lucidity, coherency and command of language which is noticeably absent in the memorandum of January 9th.

Moreover, what an amazing unreasonableness is manifested in the request to his brother, a man nearly his own age, to proceed in midwinter by a hired sleigh miles over mountain roads from Hackettstown to Blairstown to obtain a few ducklings and attend to a few trivial matters on the farm. Testator wanted his brother to put a man off the farm without telling him who he was (S. C. p. 384, ll. 20-25). When Mr. Wm. H. Ashley, who had during his long lifetime corresponded with testator, examined the memorandum of January 9, 1925 in court he said "It is so disconnected that I can hardly understand it" (S. C. p. 384, ll. 25-30). Mrs. Dwight Ashley, Jr. testified that the condition of testator was the same when Mr. Gold and Mr. Dudley came as it was in the morning when this irrational memorandum was written by testator (S. C. p. 379, ll. 8-15).

William H. Ashley testified also that when testator was his usual self he did not write in a rambling manner (S. C. p. 180, ll. 7-17). Quite naturally alarmed because of the nature of his brother's request through Dwight on the 9th, he inquired from Dwight as to testator's condition, and was informed by Dwight that "he was in bad shape". Then follows a significant bit of testimony by Mr. Wm. H. Ashley:



> "In substance he was in bad shape, and I wanted to know if I could come down, and he said, 'No, I will keep you posted from time to time as to how he is' ". (S. C. p. 385, ll. 5-10)

Why did Dwight refuse to allow his uncle to visit the testator? Was it because, with the execution of the codicil planned for that evening, it was undesirable for testator to have any conversations with the man who probably knew him best, and who might interfere with any will-making while his brother was in "bad shape"?

Mr. Gold, the attorney who supervised the execution of the codicil, admitted that testator said to him he felt weak and debilitated (S. C. p. 360, ll. 23-28). He inquired merely because, visiting a sick man, he thought it was a natural topic of conversation, and was "not at all interested" in his condition so far as it related to the execution of the codicil (S. C. p. 360, ll. 32-40). With the exception of a few comments concerning Mayor Barnett, nothing else was discussed (S. C. p. 361, ll. 6-8). He had no discussion with testator concerning the codicil (S. C. p. 361, ll. 38-40). He had not been informed by Dwight, Jr. nor by any other person that the testator had been sick a long time, (S. C. p. 362, ll. 13-17). He testified further (S. C. p. 365, ll. 7-21):

> "Q. Did you know how long Mr. Ashley, Sr. had been confined to his room before January 9th, the date you were there? A. I did not.
>
> Q. Or, that he had been compelled to sleep in an armchair on various nights prior to that? A. I did not.
>
> Q. Or that he had often vomited his food? A. I knew nothing of that.
>
> Q. Or that he had been unable to take care of his personal needs? A. No, sir, I did not know that.

Q. Did you know he had been attended at that time by physicians? A. No, sir, I did not.

Q. None of these facts were told to you by Dwight Ashley, Jr. or anyone else in connection with the matter? A. No, sir."

The testator was silent during the entire ceremony of executing the codicil, according to Mr. Gold (S. C. p. 364, ll. 18-40). *Nothing was done, therefore, to ascertain whether testator was at the time suffering from one of the mental confusions to which Dr. Todd testified he was subject.* No attempt was made to ascertain, either prior to or during the execution of the codicil, whether testator knew of what his property consisted, who were bound to him by ties of blood, who were the natural objects of his bounty, the character of the business in which he was engaged, or whether he was aware of the will of April, 1924.

In *Bennett* v. *Bennett,* 50 N. J. Eq. 439, these accepted criteria of testamentary capacity are summarized as follows: (p. 446):

> "If he is capable of recollecting of what his property consists, and who, either in consequence of ties of blood or friendship, should be the objects of his bounty, and has a mind sufficiently sound to enable him to know and to understand what disposition he wants made of his property after his death, he is competent to make a valid will."

In *Rusling* v. *Rusling,* 42 N. J. Eq. 603, 607, Mr. Justice Depue defined testamentary capacity as the "power to recollect his nearer kindred, and appreciate their claims upon him, to comprehend the amount and character of his estate, and to intelligently direct its distribution."

Can a mind so weakened by illness as to compose the rambling and incoherent memorandum referred to, be said to meet this test of capacity to make a testamentary disposition? It cannot be argued that testator's mind cleared up by evening, in view



of Mrs. Dwight Ashley, Jr.'s testimony that his condition was the same all day.

In *In re Morrissey,* 91 N. J. Eq. 480, at p. 486, Vice-Ordinary Backes commented on the infirmities of the testatrix as an element on which he based his decision that there was undue influence. In *Dale* v. *Dale,* 38 N. J. Eq. 274, a similar condition existed.

In *Executors of Moore* vs. *Blauvelt,* 15 N. J. Eq. 367, Ordinary Green made a valuable observation on the jealousy of the law safeguarding a testator against undue influence in his hour of infirmity. At page 384 the Ordinary said:

> "But it behooves a tribunal of justice, while maintaining, upon the one hand, the right of the testator to that unlimited dominion which the law gives him over his property, to resist, upon the other hand, with watchful jealousy all attempts to interfere with the free and untrammeled exercise of that dominion, and to see that, in the testator's hour of weakness and infirmity, the will of another is not substituted for his own."

**4. Ample opportunity and motive for exercising undue influence existed in this case.**

The existence of an opportunity for exercising undue influence because the testator was in his last illness at the home of the principal beneficiary, was stressed in *Barkman* v. *Barkman,* 63 N. J. Eq. 211; *Sickles Case,* 63 N. J. Eq. 233, affirmed by the Court of Errors and Appeals in 64 N. J. Eq. 791; *in re Solomon,* 95 N. J. Eq. 706; *in re Tutty's Will,* 87 N. J. Eq. 647.

On his visits to Paterson in the later years of his life, testator stopped at Irving's house in Ridgewood more often than at Dwight's, (S. C. p. 163, ll. 34-37). After August, 1924, when he suffered a stroke, followed by heart and kidney attacks, he came more to the home of Dwight, Jr., because Dr.

Todd, Dwight's family doctor, had undertaken to treat him.

This was not a case where the objects of testator's bounty were all under the same roof. Although testator came into Dwight, Jr's home on January 4th, it was not until January 7th that Irving was notified his father was very sick.

> "Q. When did you first hear of his being at your brother Dwight's house? A. On the Wednesday morning following, that would be the 7th—the Wednesday following the Sunday.
>
> Mr. Gourley: Haven't we had that? It is all in the case.
>
> Q. Who was it called you up and told you? A. No one called me up, which they had usually done when Pop came down. Sometimes he did go direct to Dwight's house, and when he got there, I was either notified by Dwight or Pop, would call me himself, and tell me he was down. He was in bed and very sick when I went over to see him on January 7th, 1925. (S. C. p. 150, ll. 23-39).

At that time Dwight Jr. and Irving were not on good terms owing to the fact that Irving had charged Dwight, Jr. with taking money from the Savoy without his consent and using it for the benefit of the Hawthorne Silk Company, (S. C. p. 148, ll. 24-27). Irving had also discussed this matter with his father and explained what was involved in the agreement to which Dwight had obtained his fathtr's signature, and Irving testified that his father then said, "Dwight should never have asked me to sign it", (S. C. p. 169, ll. 30-40).

Owing to the coolness which existed between Dwight, Jr. and Irving, the latter was not a welcome visitor when he called at Dwight, Jr's home to see his father.

> "Q. After January 9, 1925, when you came to see your father would or would not Dwight Ashley come into the room with you? A. I have gone up the front porch



> in the evening and through the window have seen him, after I would ring the bell I would see him go up ahead of me; the maid or his wife would open the door; if his wife opened it, I would have to shut it. I would go upstairs and find him sitting in the room; he would never enter into a conversation.
>
> Q. You would find him sitting in the room with your father? A. Yes, sir.
>
> Q. He would just sit there and never enter into a conversation at all? A. He just sat there.
>
> Q. Did your brother Dwight speak to you on these occasions? A. If he did, it was a nod, it was not cordial." (S. C. p. 152, ll. 7-23).

Dwight Jr. admitted on cross-examination that he was not on friendly terms with his brothers Charles and Irving at the time. A typical bit of his testimony follows:

> "Q. Answer my question. Were you on friendly terms with Charlie in the fall of 1924? A. Yes, sir, I would say so, personally.
>
> Q. You hesitated; were you on affectionate terms? A. No, sir.
>
> Q. For how long had you not been on affectionate terms with your brother Charlie? A. I don't know.
>
> Q. Were you on affectionate terms with your brothers? A. No, sir.
>
> Q. Were you on friendly terms with Irving in 1924,—the latter part? A. Yes, sir.
>
> Q. Affectionate? A. What date?
>
> Q. Around November and December. A. No, sir.
>
> Q. You were not on friendly terms then with Irving? A. No, sir. (S. C. p. 283, ll. 17-34)

Dwight, Jr's testimony with respect to his conversations with his father concerning the disposition of his property is full of inconsistencies. In answer to the question asked by the Court, "Have you had any conversations with him regarding the disposition of his property?" Dwight said, "No,

sir." (S. C. p. 227, ll. 23-26). On cross-examination he admitted that prior to the execution of the codicil he had about a half dozen conversations concerning the Savoy stock with his father, (S. C. p. 303, ll. 24-40) and that prior to January he had submitted to his father various propositions regarding this Savoy stock, (S. C. p. 314, l. 35 to p. 315, l. 5). It is apparent, therefore, that he was the moving force in the execution of the codicil.

**5. The Beneficiary arranged the drafting of the Codicil.**

Another circumstance indicating undue influence is the fact that the arrangements for the drafting of the codicil were all made by the beneficiary.

Dwight, Jr testified as follows:

> "Q. What was done with it then on that day? A. Father instructed me to take the will to Dr. Gourley and have the codicil drawn as it is.
>
> Q. Did you go to my office? A. I did.
>
> Q. Did you give me those instructions? A. I did, yes, sir.
>
> Q. What was done there, if anything? A. I don't know—at that time.
>
> Q. What do you mean by "at that time?" A. After giving you the instructions.
>
> Q. I don't understand. A. I gave you the instructions to have the codicil made. (S. C. p. 197, ll. 9-21)

This circumstance that the beneficiary made the arrangements for the drafting and execution of a codicil was regarded as detrimental to the probate of wills in

> *Dale* v. *Dale,* 38 N. J. Equity, 274, at p. 277;
>
> *Edwards* v. *Edwards,* 63 N. J. Eq. 224;
>
> *In re Solomon,* 95 N. J. Equity, 706, at p. 711.
>
> *In re Ulrich's Will,* 98 N. J. Eq. 621; aff'd 5 N. J. Adv. Rep. 1492.



**6. Beneficiary's participation in execution of codicil.**

Opportunity for fraud and undue influence in the execution of the codicil is indicated also by the role which Dwight, Jr. played during the actual execution of the codicil. It is not denied that he brought Mr. Gold into testator's room and introduced them, and while there is some doubt whether Dwight, Jr. was actually in the room during the execution of the codicil, it is admitted even by the beneficiary that he was in the adjoining room, separated from testator's room only by portiers (S. C. p. 326, ll. 26-28).

Moreover, the witnesses were Mr. Dudley, a friend of the beneficiary for 17 years and known to the testator, and Miss Uhlig, a member of beneficiary's household.

In *Boisaubier* v. *Boisaubier,* 51 N. J. Eq. 252, and in *Executors of Moore* v. *Blauvelt,* 15 N. J. Eq. 367 (see especially page 374), the presence of the beneficiary himself was held to be an element entering into the upsetting of the will. Those persons who are closely related to the beneficiary would, by their presence, similarly affect the validity of the document.

**7. The codicil represents a radical change of testamentary disposition within a brief period.**

Dwight Ashley, Jr. was present at the execution of the will in April, 1924, (S. C. p. 276, ll. 5-15). He testified that his father was then in very good health, (S. C. p. 276, ll. 28-29); that his father's feelings toward the other boys were the same as they had always been; and he admitted also that his father said he would treat all alike, (S. C. p. 279, ll. 7-10). This is significant in view of the fact that the so-called estrangement between testator and Charles frequently referred to by Dwight, Jr. had continued for years.

But the most impressive evidence concerning testator's policy with respect to his testamentary disposition is contained in his 1910 will (Exhibit C-1, p. 412 to 413) and in his letters, diaries and statements which are in evidence as exhibits and which all emphasize equality. These written statements of the testator disclose that irrespective of things which his sons did which offended him, they were *his* children and should be forgiven. He was dominated by the thought, after suffering a great loss in the Ashley and Bailey liquidation that his task was to conserve every penny for his children and grand-children.

Papers like Exhibit V-1 show that he was firmly committed to "share and share alike" policy.

> "To executors of my will: I hereby direct them to divide the stock of Savoy Realty Company and the Hawthorne Silk Company between Charles Ashley, Irving D. Ashley and Dwight Ashley, equal parts, share and share alike, and not to sell the stock and divide the proceeds. (Signed) Dwight Ashley." (S. C. p. 135, ll. 26-33, Ex. V1)

To the same effect is Exhibt B. V. 7, (S. C. p. 279, ll. 27-39).

> "I here attach this to my last will and testament that the executors of my will shall be Dwight Ashley, Jr., and William B. Gourley; that any money or loans made to any one of the boys, Dwight Ashley, Charles Ashley and Irving Ashley that exceed more than an equal loan to each and is not returned or not paid back, the same unequal amount must be deducted from their share of distribution in said estate, and as the intention of the will is to have *share and share alike,* as above directed, in event of either of the above executors will not qualify, I will have them name one or more exector as they choose."

Then came the will of April, 1924 (S. C. p. 413-414). In spite of all the troubles testator had experienced in his business relationships with his



sons Dwight, Jr. and Charles, he continued the policy of equality both with respect to income and division of the corpus of his estate.

According to the evidence presented under Point III of this brief, the 140 shares of Savoy Stock bequeathed by the codicil had a value of approximately $91,000. The remainder of the estate in which Dwight, Jr. by force of the will also obtained a one-third interest had a value of approximately $125,-000.

Obviously then, the codicil of January 9, 1925 does present a radical change of testamentary disposition.

The effect of an inconsistency in testamentary disposition with previous statements of the testator himself is discussed in *Dale* v. *Dale,* 38 N. J. Eq. 274. At page 277, Mr. Justice Reed, speaking for the Court of Errors and Appeals, made this observation:

> "It is not only unnatural in itself, but it is a disposition of the property which the testatrix had herself branded as unnatural."

The Court of Errors and Appeals in the Dale case reversed a decree of the Prerogative Court which had admitted to probate a certain will. The ground on which the Court of Errors and Appeals went was that the burden cast upon a beneficiary who bore a fiduciary relation to the testator had not been sustained by him.

Similarly, *In re Ulrich,* 98 N. J. Eq. 621, Vice-Ordinary Lewis commented on the radical change in testamentary disposition as follows (p. 626):

> "Eight months afterwards, mentally and physically weakened, he makes Burchill his most favored legatee by the will drawn by Mr. Dunn, prepared on four different occasions, with Burchill in an adjoining room part of the time, and in the presence of testator and Mr. Dunn part of the time, *with the whole transaction concealed from every other interested party.*"

**8. The Beneficiary concealed from his brothers the fact that a codicil had been executed.**

Not only did Dwight, Jr. fail between January 4th and January 7th to notify those entitled to know of testator's illness, but he concealed from his brothers the fact that a codicil had been executed (S. C. p. 154, ll. 4-7). It has been held that such a circumstance smacks thoroughly of undue influence.

*In re Morrissey's Will,* 91 N. J. Eq. 480, 487.

*Edwards* v. *Edwards,* 63 N. J. Eq. 224, 228.

*In re Ulrich,* 98 N. J. Eq. 622, 627, aff'd V. N. J. Adv. Rep. 1492.

In *Syckles' Case,* 63 N. J. Eq. 233, at 239, it was held significant of the opportunity of the beneficiary that he saw the lawyer 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."

**9. The Beneficiary has failed to establish any reasonable explanation or motive for preferring him.**

It was pertinent to inquire of Dwight, Jr. whether testator had explained to him why he suddenly decided to give Dwight, Jr. all of the 140 shares of Savoy stock. His testimony on this point is a masterpiece of evasiveness and contradiction and invites suspicion concerning possible methods employed by him in obtaining the execution of the codicil.

He admitted that as late as November, 1924, testator had told him he had offered 70 shares of the stock to Irving (S. C. p. 305, l. 30 to p. 306, l. 10). He admitted also that a few days prior to January 9, 1925, when the codicil was executed,



testator again stated he had offered Irving 70 shares, "to keep the company as it had been kept", i. e. "in the family so the boys would be together." (S. C. p. 308, l. 30 to p. 308, l. 11).

> "Q. What did you say when he told you that he was going to give Irving 70 shares of the Savoy? A. I made no comment.
>
> Q. Did he say anything further? A. That was his statement to me; he said nothing further to me and that ended the conversation. (S. C. p. 309, ll. 29-35).

Testator had stated many times that the Savoy would never be a one-man concern, (S. C. p. 144, ll. 16-29). But Dwight, Jr.'s testimony contains innuendoes that testator feared a possible combination between Charles and Irving against Dwight, Jr. This shows to what extremes the beneficiary went to sustain the codicil.

And the Vice-Ordinary in his opinion says with respect to Charles and Irving (who had not been on speaking terms for years and who were not on speaking terms prior to testator's death), "It is quite evident from the examination of the testimony and exhibits, that the testator was afraid to trust them to manage this company." It is pertinent to ask "What testimony and which exhibits?"

After admitting he knew no reason for the gift of the 140 shares to him, (S. C. p. 311, l. 38 to p. 312, l. 4), Dwight, Jr. testified as follows:

> "Q. You knew the reason why he wanted them given to you? A. Not directly.
>
> Q. Didn't you testify the last time, your father had stated that he was afraid that Charles and Irving would combine—"Yes" or "No?" A. Yes, sir. Yes, sir, according to the testimony.
>
> Q. That is true, isn't it? A. Yes, sir.
>
> Q. So you did know why he wanted to give it to you? A. In that way, yes, sir.
>
> Q. Why didn't you say so? A. I thought you were looking for some other conversation.

Q. You knew at the time he told you that, that Charles and Irving were on bad terms with each other? A. I know that, yes.

Q. Did you tell your father that? A. He knew it; I did not tell him.

Q. You did not know whether he knew it or not? A. I knew he knew it, because he told me so at different times. (S. C. p. 312, ll. 5-25).

"Q. You were more friendly with Charles than Irving was? A. Yes, sir.

Q. Your father knew that? A. Yes, sir." (S. C. p. 312, l. 39 to p. 313, l. 4).

He knew also that his father had given Irving a Hawthorne note for $10,000, to protect him against Charles' demands for payment of a debt due the Hawthorne (S. C. p. 287, l. 30 to p. 288, l. 21). Nevertheless the beneficiary perpetrated and fostered the falsehood of a combine against him.

The beneficiary admitted also that he made no effort to provide his father with a simple defense against this imaginary combination. Each of the boys owned 90 shares. Dwight had for years held a proxy for the 90 shares standing in his mother's name, (S. C. p. 313, ll. 19-26). His mother was living with him (S. C. p. 313, ll. 27-29). If, in addition to the 180 he thus controlled he had obtained 71 shares from his father, a majority of 251 shares and control of the company would have been in his hand. Why, then, the gift of the 140 shares? But he did not discuss such points with his father (S. C. p. 314, ll. 13-26).

Only a greatly weakened and confused brain could fail to see this solution of the "danger," but Dwight, Jr. rather than aid his father, elected to take advantage of his impaired faculties.

On cross-examination the beneficiary admitted he thought the codicil was unfair, and he gave an amazing explanation of Exhibit G-2, a trust agreement devised by him to overcome the unfairness of the codicil, and which he said testator rejected.

"Q. Now, then, on January 10th, 1925,



you had talked this matter over? A. Yes, sir.

Q. And you thought that the codicil, as it stood, was rather unfair? A. To me, yes.

Q. You thought it was unfair? A. Yes, sir.

Q. Do you mean it was unfair that you did not get more? A. No, sir.

Q. Did you think it was unfair to your brother Irving? A. I did not give it those thoughts.

Q. Did you think it was unfair to Charles? A. I did not give it those thoughts.

Q. Did you think it was unfair to the grandchildren? A. I did, yes.

Q. When it concerned you so much that you submitted a written statement to your father on January 23rd, in which you said, "I understand that my father has left me by will 140 shares of stock in the Savoy Realty Company. If this remains so at the time of my father's death, I shall assign the income from 23-1/3 shares of said stock to Viola Emma Ashley, for the term of her natural life; also the income from 23-1/3 shares of said stock to William N. Ashley for the term of his natural life; also the income from 23-1/3 shares of said stock to Florence Dilliston Ashley, for and during her natural life, and also the income from 23-1/3 shares of said stock to Robert Brown Ashley, for and during the term of his natural life, as received by me from the company." That is "Exhibit G-2;" you had worked that out and thought that was the fair method of distribution of this stock? A. That was to put in my safe. (S. C. 327, l. 37 to p. 328, l. 32).

"Q. What was there to keep about this particular paper? A. To know what to do with the shares.

Q. You already knew they were yours? A. Yes, sir.

Q. Why was there any obligation for you to make this paper? A. There was none.

Q. And you made it? A. Yes, sir.

Q. And your father had not made any comment prior to that time; why did you make it? A. For my records.

Q. Who had suggested anything for your records? A. Nobody.

Q. Whose idea was this? A. Mine.

Q. And what did you mean by your records? A. Put in with my will.

Q. Where did you get it from? A. Mr. Gourley made it up for me.

Q. And he gave you the idea? A. No, sir.

Q. Did you draw a will on January 23, 1925, to effect carrying out these provisions? A. No, sir.

Q. Why did you prepare this paper then? A. To put in with my will.

Q. What did you want to do all this for? A. For record. (S. C. p. 329, ll. 6-30).

This inability to give any reasonable explanation of his efforts to mitigate the admittedly unfair codicil is of great significance. It is in effect an admission that he made representations to the testator with respect to the disposition of the stock after testator's death which he never intended to keep. Furthermore such promises, creating a trust of property to be bequeathed by will, render the entire testamentary act void, because a material portion of the testator's will is not included in a proper testamentary document.

Dwight, Jr. also attempted to justify the codicil by innuendoes that his brothers were drunkards. On cross-examination he admitted he never saw his brothers under the influence of liquor in his fathers' lifetime (S. C. p. 296, ll. 24-32). Of course, he could not remember his own drinking with his brothers, but he admitted he and testator were not teetotallers (S. C. p. 298, ll. 1-35). He had difficulty explaining a still in his house, although he conceded asking Irving to brew some beer for him as "a try-out." (S. C. p. 296, l. 39 to p. 297, l. 5). The Vice-Ordinary cut short further cross-examination along this line by stating there was no conviction in the courts' mind that Irving and Charles were drunkards (S. C. p. 297, ll. 6-11). It is with considerable surprise, therefore, that we find the Vice-Ordinary quoting in his



opinion (p. 461) some drinking testimony from the Orphan's Court record. Moreover, the testimony of the same witness, testator's housekeeper, that he nevertheless loved all his children equally (S. C. p. 63, ll. 20-28) is not referred to.

This was an abortive effort by the beneficiary to bolster his case by mud-slinging and there is no reason to feel that he did not encourage his father to believe that his brothers were drunkards. But his vilification did not stop with such mild charges. He also intimated that his father was influenced by the domestic troubles of his sons. We need but refer to testator's comments about his own domestic difficulties in his statements and diaries which are in evidence to realize that he was not the type of man who would jump to conclusions with respect to responsibility in such matters, unless he was influenced by false accounts giving him one side of the story.

Dwight obtained from his mother some letters written by testator dealing with the private affairs of their son Charles. The hearing at which they were introduced in evidence was held November 25, 1925 (S. C. p. 185, ll. 17-18). Dwight testified he received these letters from his mother about a month before (S. C. p. 204, ll. 27-32). Apparently he had been unable to induce his mother to part with them for use in the Orphan's Court hearing in April 1925, but by the use of some of his "influence" succeeded in obtaining them shortly before the Prerogative Court hearings.

Objections were made to the admissibility of these letters on the grounds that the recipient of the letters was living at Dwight, Jr.'s home in Paterson and should appear as a witness (S. C. pp. 203, l. 30 to p. 204, l. 39). These objections were improperly overruled because the letters in question were on their face replies to letters written by Mrs. Dwight Ashley, Sr., and when the court admitted the letters on identification of the handwriting, appellants were deprived of their right to cross-ex-

amine Mrs. Ashley concerning the nature of her letters to testator, the sources of her information and the beneficiary's part in their composition.

These letters deal exclusively with Charles' family affairs and do not involve Irving, and they show that Dwight, Jr. actively interfered in the domestic affairs of Charles and helped bring about a breach.

In May, 1924, Dwight Jr. wrote testator that Charles "was bound to get rid of Vi," but on cross-examination he "could not remember" his letter.

> "Q. I show you a letter dated May 28, 1924; is that in your father's handwriting? A. Yes, sir.
>
> Q. It is marked "Exhibit G-6? A. Yes, sir.
>
> Q. Will you read from the beginning? A. "My dear Ma: Lots of time on my hands, so will write a few lines. Received letter from Dwight and he incidentally said Charles had gone to Washington and would write me the results, as there is $50,000 held up with Government, *and said he, Charles, was bound to get rid of Vi.* It sounds so bad I can hardly believe the boy is in his right mind."
>
> Q. Did you write such a letter to your father? A. I don't remember any such letter.
>
> Q. Did you express any such sentiments that Charles was bound to get rid of his wife? A. Not that I remember.
>
> Q. Will you say you never said that? A. I will not.
>
> Q. You did talk to your father about Charles and his wife? A. In conversation with him.
>
> Q. You did believe that Charles wanted to get rid of his wife? A. From what was told me.
>
> Q. And you conveyed that to your father? A. Indirectly.
>
> Q. You had no basis for such a conclusion, had you? A. Only what was told me." (S. C. p. 290, ll. 8-36).
>
> "Q. Did you make it clear to him that it would be well to hear both sides before you came to a conclusion? A. I did not say that to him." (S. C. p. 292, ll. 35-37).



About that time Irving was not friendly with Charles and was on friendly terms with Dwight, Jr. (S. C. p. 407, ll. 35-37). He related a very important incident which occurred while he was visiting at Dwight's home in July,, 1924. Charles telephoned to Dwight and accused him of having purposely detained him at a Hawthorne Silk Co. directors meeting, so as to enable his wife to remove her things (S. C. p. 393, l. 27 to p. 394, l. 10). Irving testified that after Dwight finished his telephone conversation with Charles, he treated the members of his family to a funny story by reciting how he had detained Charles at a meeting so that his wife could remove her belongings from the house (S. C. p. 407, ll. 16-34).

Dwight, Jr. was brazen enough to deny he paid Charles' wife's fees for legal advice until he was confronted with a letter.

> "Q. You assisted your sister-in-law? A. In what way?
>
> Q. Financially? A. No, sir.
>
> Q. You never gave her anything? A. Not to my knowledge.
>
> Q. And you are as sure you did not tell your father that you were assisting Vi financially? A. If I did, it was repaid me.
>
> Q. But you told your father you were assisting her? A. I may have.
>
> Q. Did you tell him that it was repaid? A. He repaid it.
>
> Q. I show you a letter, "Exhibit C-11;" will you read from "Vi's letter?" A. "Vi's lawyer advised her to leave home; it was a bad advice; it cost someone one hundred dollars or more; *Dwight gave her the money and I paid Dwight.*" (S. C. p. 293, ll. 15-32).

Dwight, Jr's wife testified she had numerous conversations with testator on this subject, and that

> "I told him it was too bad that they treated their wives the way they did, that I did

not see any reason for it." (S. C. p. 378, ll. 23-25).

This testimony shows what was happening at Dwight Jr's home while testator was in his last illness. After fostering troubles, Dwight, Jr. and his family conspired to have a one-sided version presented to testator, and fed him with falsehoods and misrepresentations to create a bias against his other children. A codicil obtained by such means should not be sustained.

The act of the beneficiary in creating a feeling of resentment in the testator's mind against other possible beneficiaries is illustrated in *Dale* v. *Dale*, 38 N. J. Equity, 274, at p. 277. Mr. Justice Reed, speaking for the Court of Errors and Appeals, said:

> "He (the beneficiary) not only emphasized his unfriendly feeling toward Frederick, but his acts seemed to show that he fostered in the mind of his mother the notion that Frederick had acted badly towards his mother."

The beneficiary has failed to show a single letter from testator commenting unfavorably on his youngest son Irving, about whose loyalty testator spoke to his brother William Ashley only two weeks before the execution of the codicil.

An attempt was also made on behalf of the beneficiary to prove that Irving received from testator more than he did. It required four pages of testimony (S. C. pp. 265-269) to bring out all of the advances by testator to Dwight Jr., which the latter claimed were "gifts". Testator's letters and statements heretofore referred to indicate that he dealt liberally and equally with all three of his sons during his life time.

Much was made concerning four small notes of the Gary Silk Co. which were endorsed by testator, who was associated with Irving in the Company, (S. C. p. 173, ll. 28-37). These notes were not used for Irving's personal benefit, (S. C. p. 172, ll. 15-



21). Irving turned his Savoy dividend checks over to his father, and also profits on real estate, so that he owed his father nothing at the time of his death for personal loans, (S. C. p. 107, ll. 9-17).

But if aid from a father to his children in joint business ventures is to be considered as an advancement, then Dwight, Jr. should be charged with one-half of the $200,000 which testator put into the Hawthorne Silk Co.—$48,000 of which he lost in the efforts of his two older sons to save the concern from bankruptcy. And this after Dwight Jr. had accepted bonuses from the Hawthorne "under protest" (S. C. p. 235, ll. 25-40). But his "protest" did not take the form of action to see that testator and Irving, who each held as much stock as he did, received dividends, (S. C. p. 234, l. 23, to p. 235, l. 25).

But the best evidence of the importance of this subject in testator's mind is Exhibit V-3 (S. C. p. 137, ll. 7-13), in which testator stated clearly that none of his children could throw it up to the others that they had received moneys from testator, and that "it is a question of honor to the boys."

**10. The Beneficiary has in many respects disclosed a consciousness of guilt.**

In the first place, even before the reading of the will and codicil Dwight Jr. proceeded to Irving's house when the latter was absent and cleaned out his father's safe, taking letters which Irving had accumulated over a period of 10 years, (S. C. p. 106, l. 35 to p. 107, l. 8). Dwight Jr. admitted taking these papers (S. C. p. 223, ll. 10-31). But it is pertinent to ask by what right, for what purpose, and why in such a hurry before the reading of the will?

Secondly, why was he so afraid of his uncle's testimony that he made a special trip to Hackettstown to ask his uncle not to testify? William H. Ashley testified on this point as follows:

"Q. Did he ever object—Before the hearing of the will contest at the Orphan's Court, did not Mr. Dwight Ashley, Jr. come to see you? A. Yes, sir.

Q. What was his conversation with you on that occasion? A. He rather objected to my testifying in the Orphans' Court.

Q. Did he or didn't he ask you to get a physician's certificate, saying you were not competent to testify? A. In substance, yes.

Q. What was that conversation? A. He asked me not to testify, and I said I would have to if I was subpoenaed.

Q. Who was with him on the occasion of that visit? A. His wife." (S. C. p. 175, l. 35 to p. 176, l. 11).

On cross-examination by Dr. Gourley he said:

"Q. Did he say anything about disobeying the subpoena? A. No, sir, no more than to get a certificate from the doctor." (S. C. p. 181, ll. 32-37).

On redirect-examination he stated he was not ill at the time Dwight Jr. came to see him, (S. C. p. 182, ll. 18-19).

Thirdly, why did he, with a presumption of undue influence to overcome, fail to call his mother as a witness? She had lived at his home during the entire period of testator's illness, and she had before then corresponded with testator from Dwight Jr's home. The latter induced her to part with testator's letters concerning Charles and he himself identified his father's handwriting in order to have them admitted in evidence. But he feared that his mother might hurt his case as a witness, for she had stated that the codicil was absolutely unfair and that the stock should be divided equally (S. C. p. 408, ll. 21-30).

Fourthly, the beneficiary in the face of the presumption against him failed to call Dr. Gourley as a witness to testify concerning his telephone conversation with testator on January 9, 1925, prior to the drafting of the codicil. Testator had that morning given Dwight Jr. a written memorandum of a message to be telephoned to William



H. Ashley, concerning ducklings (Exhibit G-1). But the instructions concerning the codicil were given to Dwight Jr. verbally (S. C. p. 31, ll. 10-23). After Dwight gave these instructions to Dr. Gourley the latter is said to have called testator on the telephone.

But we do not know what their conversation was. Is this the type of full disclosure which a beneficiary under the burden of overcoming a presumption of undue influence is bound to make?

It is significant also that none of the members of the Ashley family who visited testator during his last illness were called as witnesses. The beneficiary with the help of his wife preferred to make charges and innuendoes against Irving and Charles to sustain the codicil rather than call witnesses cognizant of the facts. Apparently Dwight, Jr. feared the effect of the best evidence.

Fifthly, the beneficiary, apparently not content to rely on the validity of the codicil, attempted to set up a gift *inter vivos* to fortify himself, claiming that the stock certificate (Ex. G 12) was delivered to him by his father endorsed in blank. (S. C. p. 213, ll. 8-22) He even objected to the inclusion of this certificate in the inventory by his counsel, who had been appointed administrator *pendente lite* (S. C. p. 224, ll. 30-38). He admitted on cross-examination that he put the certificate in his pocket as his property, although his father had not filled in his name, and although his father had not said a single word to indicate what his intention was. (S. C. p. 345, l. 24 to p. 346, l. 34). If this was a valid gift *inter vivos,* it amounted to a revocation of the codicil by a common law method of revoking testamentary instruments which has been held to have survived the adoption of the modern wills statutes.

*Hattersley* v. *Bissett,* 51 N. J. Eq. 597, at 603.

*Langdon* v. *Astor,* 16 N. Y. 34.

*Phillippe* v. *Clevinger,* 239 Ill. 117; 16 Ann. Cas. 207.

**11. The Beneficiary has failed to overcome the presumption of undue influence. His testimony, far from being "impeccable and convincing", is evasive and incredible, and affirmatively confirms the presumption.**

To avoid unduly extending this brief, the court is referred to the cross-examination of Dwight Ashley, Jr. (beginning page 231) for a splendid example of the kind of testimony by a fiduciary or a person in a position of trust and confidence to a testator which our courts have severely condemned.

We have quoted under the other points of this argument some fair samples of his testimony. These examples might be multiplied endlessly. They are all as credible as his story that he accepted Hawthorne bonuses "under protest" or like his explanation of the unsigned trust agreement to to hold the stock for other members of the Ashley family "as a matter of record" "to be put with my will," when the obligations thereunder were limited to his life-time. Similarly, while Dr. Todd said testator was a very sick man, one would believe from Dwight's testimony concerning his father's normal condition (S. C. pp. 301-303) that the doctor was grossly in error.

The denial of the beneficiary is insufficient to overcome the presumption of undue influence where it appears to be untrustworthy and undependable from other testimony by the beneficiary which is improbable and incredible. In *re* Morrissey's Will, 91 N. J. Eq. at p. 487, an observation is made which is equally applicable to the testimony of Dwight Ashley, Jr.

> "I believe she (the witness-beneficiary) knew more than she was willing to tell on the witness-stand, and that she either had the money or knew what became of it. Her disingenuous disavowal of knowledge concerning its disappearance impeached 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."



By way of summarizing this point we refer to *In re Solomon,* 95 N. J. Eq. 706, (affirmed) in which Vice-Ordinary Fielder held (p. 711) that the presumption of undue influence which arose under similar circumstances controlled as a conclusion of fact unless rebutted by satisfactory evidence, and then said: (p. 712)

> "There is nothing in the evidence to convince me that the testator was not on terms of friendship with his other children, especially Mrs. Stein and Taylor Solomon, and such evidence as was offered to the contrary relates to conditions existing prior to August, 1921, when he executed a will under which all his children shared equally, and his son Taylor was made sole executor, and nothing appears in the evidence to show a change in such relationship which would explain why the testator should have disinherited them by the will in question."

In *Sickles' Case,* 63 N. J. Eq. 233 a decision of the Court of Chancery affirmed by the Court of Errors and Appeals in 64 N. J. Eq. 791, Vice-Ordinary Reed on page 238 made an observation peculiarly applicable to the case at bar. He 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; for such influences are usually covert and can only be proved by circumstances."

It is respectfully submitted that under the circumstances of this case the beneficiary not only failed to overcome the presumption of undue influence by impeccable and convincing evidence, but

that this presumption was amply confirmed by the testimony of the beneficiary himself as well as by the testimony of the other witnesses.

## POINT III.

### The Beneficiary was guilty of fraud and misrepresentation with respect to the value of the stock bequeathed to him by the codicil.

While fraud and misrepresentation are elements of undue influence, they may also constitute sufficient independent grounds for setting aside a testamentary instrument. The distinction is clearly drawn in *In re Stoddardt's Estate,* 174 Cal. 606; 163 Pac. 1010, at 1012, in connection with false representations by some children to the testatrix concerning the habits of other children and the amounts already inherited by the latter.

A case in this jurisdiction, *Executors of Moore* v. *Blauvelt,* 15 N. J. Eq. 367, has also stressed the legal effect of false representations to a testator. Ordinary Green stated at p. 379:

> "The fact, moreover, that the testatrix was induced by false representations to act at all in the premises is a proper element in the consideration of the question of undue influence."

The principal beneficiary, Dwight, Jr., is chargeable with fraud and false representations in several material respects. The principal one relates to representations which he made to the testator concerning the condition of the Savoy Realty Co., and the value of the very stock which he obtained by virtue of the codicil. The testimony shows that testator frequently asked Dwight, Jr. for a financial statement of the Savoy, which testator never was given.

Testator was, in 1916, eliminated from the office of Treasurer of the Savoy Realty Co. (Ex. V. B.,



minutes of meeting of April 3, 1916, S. C. p. 428). Dwight Jr. was instrumental in this ousting of his father (S. C. pp. 256-257), just as he had been in the forced resignation of testator from his office of Vice-President of the Hawthorne Silk Co. which was subsequently filled by Dwight Jr. (S. C. p. 239, l. 39 to p. 240, l. 20). From 1916 to the time of his death testator had no connection with the management of the affairs of the Savoy, (S. C. p. 256, ll. 14-20).

Dwight, Jr. admitted he ran the company:

> "Q. And you were the person actively managing the corporation? A. I handled its affairs, yes.
>
> Q. And you called meetings? A. When necessary.
>
> Q. How often did you call meetings? A. About once a year.
>
> Q. And who was present at these meetings? A. The records will show.
>
> Q. Who was present at these meetings? A. I don't remember.
>
> Q. Was your father ever present? A. I would not say. (S. C. p. 261, ll. 25-37).

The minutes of the meetings of the Savoy, held once a year, disclose that the business transacted was generally the election of officers and directors, (Ex. V. B. 4, S. C. pp. 427-431). The active management of the affairs of the company was in the hands of the President. Dwight Jr.

Not only was testator not consulted concerning Savoy matters after 1916, but he was not even kept informed. He resented this treatment in a letter to his youngest son Irving, reading as follows: (S. C. p. 138).

> "Now the Savoy is to pay 90%, but here is the situation: I put in every dollar the Savoy has; not one cent was contributed by any of you, but I was one of its officers and in cold blood at a meeting I was thrown out of office by D. A., Jr.; C. A. and your mother. I tell you it was a bitter pill after my calamity of the wreck of Ashley and Bai-

ley; and now I am to get 90%. I am glad to get it, and so will you be; but I did not know, and I was not to know, if they ever had in cash $40,000 or 40 cents in the treasury; and here is the great wrong to me and I hope others will learn by my experience, never to part with what is yours until you are in the six foot box. I done right to divide, so my family could use while I lived the earnings of my life, as I feel it was theirs; I wanted them to use it and not wish for a funeral; but the great wrong was to kick me around after I done my part in good faith, and to show me that I was no use in the Savoy or in the H. S. Co., or in any capacity where they were connected, but with the funds of Savoy I would have made in a year more than three to three and a half per cent; but now I have one course, and that is 'play the man' and protect so far as I can the few years I have left; and not one dollar will I neglect to hold for my children and grandchildren. I will not take the advice of friends, 'Take your cash and see the country.' I will make more if I can, as it keeps my mind in action—Pop."

Irving Ashley testified his father towards the end of 1924, complained to him because he could not obtain a statement of the Savoy from Dwight Jr.

> "Q. Did he make any comment at that time regarding the Savoy? A. He was very much put out. The words he used were practically in effect the same he always used. That it was a shame to see a concern mismanaged the same as it was and that they had taken up practically all the funds which were in the family.
>
> Q. Did you talk to him anything further about the funds of the Savoy? A. I told him as far as I was concerned there would be nothing more, not another dollar drawn out as far as my interests were concerned.
>
> Q. Did he say anything further about the funds of the Savoy? A. He thought it was cleaned out.
>
> Q. Did he say anything about making any requests to Dwight concerning the affair?



> A. He did. I know it was on the sixteenth or about that time I had him sign my notes and both were in ignorance regarding the Savoy, regarding its wealth or as far as what it was worth. I said, Pop, can't you get a statement. He said I have asked for one and Dwight promised to give it to me.
>
> Q. Did he get it? A. Not that I know of. (S. C. p. 77, l. 35 to p. 78, l. 22).

Carrie Clark, testator's housekeeper at the farm, said that in her conversations with testator he frequently commented on his inability to obtain financial statements:

> "Q. Did he say anything to you in the fall of 1924 about trying to get a financial statement of the Savoy or the Hawthorne? A. He did not get a ready reply, and he did not know what was the matter with the boys, he said." (S. C. p. 386, ll. 21-25).

Again in his last illness testator discussed with Irving the condition of the Savoy (S. C. p. 154, ll. 17-21).

> "Q. Proceed. A. He thought there was very little, and so expressed himself; he thought there was very little left; he often asked; and even in my presence I have heard him ask Dwight for a statement of the Savoy Company. He never received it, and when he died, he did not know what the wealth was or what the company was worth. (S. C. p. 154, ll. 30-37).

Dwight Jr. admitted he never submitted to his father a written statement of the condition of the Savoy (S. C. p. 262, ll. 21-23). He claims, however, to have discussed the subject with his father orally and when asked on cross-examination whether he had told the testator what the worth of the company was, he answered (S. C. p. 263, ll. 23-27):

> "A. Yes, sir, $200 to $250 per share.
> Q. When did you tell him that?
> A. As late as December, 1924."

He admitted that he gave the appraisers the valuation of $28,000 for the 140 shares of stock ($200 a share), which the appraisers incorporated in the inventory (S. C. p. 316, l. 30 to p. 317, l. 8).

There is ample testimony that testator believed the Savoy was worth little, and this belief was confirmed by the beneficiary's representation that the Savoy stock was, after 14 years of corporate business, worth only $200 to $250 a share.

Only a month or two after testator's death, Dwight Jr. gave Mr. Charles Atkind, an accountant, a statement of the financial condition of the Savoy, showing total assets of $221,958.19. The only liability was a note due the First National Bank for $2,632. On the basis of Dwight's own statement, therefore, the stock was worth more than $400.00 a share. This statement, prepared by Dwight Jr. is as follows: (S. C. p. 60, ll. 12-30)

| | | |
|---|---|---|
| Real Estate—Haledon | $1400. | |
| Prospect Park | 6800. | |
| Hawthorne | 26975. | |
| Fayetteville, N. C. | 92725. | |
| Total Real Estate | | $127900.00 |
| Notes Receivable of Hawthorne Silk Co | | 38680.00 |
| Liberty Bonds | | 10000.00 |
| Certificate of Deposit | | 17900.00 |
| Equity Mortgages | | 26047.26 |
| Cash—First National Bank | | 211.73 |
| Cash—Second National Bank | | 220.29 |
| Cash—Fayetteville, N. C. | | 998.91 |
| Total Assets | | $221958.19 |

The only liability is notes due the First National Bank $2632.00.

At the hearing Dwight Jr. was examined regarding the values of the various properties and other assets of the Savoy. He was in Fayetteville, North Carolina, in December, 1924, and ascertained the value of the company's property there from the list-



ing prices and by "agents" methods (S. C. p. 316, l. 9 to p. 317, l. 4). He admitted also that he received an offer shortly after his father's death of $100,000 for only a part of the Fayetteville property, and that the remainder of the southern property was worth from the listing in the south, $60,000.

> "Shortly after that you received an offer for $100,000 for a tract? A. Yes, sir.
>
> Q. How large a tract was that? A. There is more than one deed to that; there are at least three or four tracts making up this one tract of the $100,000 offer.
>
> Q. What was there left if you sold this $100,000 tract? A. From memory, I would say there would be about 1300 or 1400 acres.
>
> Q. There were some houses? A. On the remaining tract there were—
>
> Q. What would you say would have been the value from your investigation of the remaining property, except the property offered to Mr. Brower?
>
> The Court: You are trying to show that he practiced a fraud on his father?
>
> Q. (Question read). A. It was not offered to Mr. Brower in December, 1924; the Brower offer was not made until after father died. The value of the property, no, only from the listing.
>
> Q. What would it be from the listing? A. $60,000 outside of the thousand acre tract, and one or two small tracts surrounding it.
>
> Q. So the approximate value would be about $150,000? A. I would say roughly that is true. (S. C. p. 317, ll. 4-30).

On the basis of this listing alone, conservative as such listing is, he should, on his return from the south in December, 1924, have told his father, (if he had a desire to tell the truth and not to misrepresent), that the 500 shares of Savoy stock were worth $300 a share, exclusive of the value of the property in the vicinity of Paterson, and exclusive also of the other assets of the company.

With respect to the property in the vicinity of Paterson, a list giving lot numbers and prices in

the handwriting of Dwight Jr., dated 5/26/20 was introduced in evidence. (Ex. V. B. 9, p. 450.) He testified that of the prices given for several hundred lots all but eight were written by him (S. C. p. 318, ll. 20-40). A typewritten list dated June 19, 1924, corresponding in almost all respects with the written list, also giving the same lot numbers and also prices, was introduced in evidence as Exhibit V. B. 6 (p. 441). Charles Ashley, then Secretary of the company, testified that Dwight Jr. as President of the company alone fixed the prices of all property (S. C. p. 391, l. 28 to p. 392, l. 15), and that the typwritten sheets constituting Exhibit V. B. 6 was a price list prepared by Dwight Jr., and given by the latter to him. (S. C. p. 392, ll. 18-30).

These lists, made up by the beneficiary under his authority as President of the company, show a total value for the property in the Paterson district of $109,805.

Mr. Soren P. Hansen, a real estate dealer of many years experience, testified that he had examined the Savoy holdings in Haledon, Prospect Park and Hawthorne, (S. C. p. 380, ll. 30-40); that he used the lot numbers as indicated on the list prepared by Dwight Ashley, Jr. and a map of the Savoy property in making his examination and appraisal; (S. C. p. 389, ll. 15-20); and that the total value of the property in question belonging to the Savoy was $126,500, and in answer to a question by the court he stated he would give that price for the property (S. C. p. 382, ll. 22-26). This figure is only $17,000 higher than the value of the same property as derived from the lists prepared by the beneficiary himself.

An attempt was made by Dwight, Jr. himself and by Mr. John E. Glasser, a witness for the proponents, to overcome the effect of the valuations contained in the lists in Dwight Jr.'s own handwriting. Mr. Glasser admitted that Dwight Jr. gave him a list of lots with prices, which he used



in making his examination, and stated that the list given to him by Dwight Jr. was not the same as Exhibit V. B. 6, which had been prepared by Dwight Jr. some months before the litigation was begun (S. C. p. 410, l. 32 to p. 411, l. 5). Thus the ridiculously low total valuation of $58,000 by Mr. Glasser is explainable.

Dwight, Jr. also testified that the Savoy, at the time he held his conversation with testator, concerning the value of the stock, had certificates of deposit aggregating $48,000 in the First National Bank (S. C. p. 321, ll. 8-10); that $6,000 was due on property sold (S. C. p. 321, ll. 10-20); that the company owned a mortgage of $13,000 on Fayetteville property (S. C. p. 321, ll. 24-28). He had previously testified that the Hawthorne Silk Co. owed the Savoy about $40,000 towards the end of 1924. In the statement he furnished the accountant this item is given as $38,680, (S. C. p. 60, l. 19). But even if this item and the small bank balances are entirely disregarded, other assets of $67,000 are disclosed accordingly, the assets of the company according to the beneficiary's own admissions were:

| | |
|---|---|
| Southern realty | $150,000 |
| Northern realty (Exhibits VB 6 and VB 9) | 109,805 |
| Other assets | 67,000 |
| Total | $326,805 |

Thus the stock was worth, not $200 to $250 a share, as he had represented to testator, but in excess of $650 a share. The testator was, therefore, led to believe by the beneficiary standing in a fiduciary relationship, and the only one who knew the true situation, that the stock was worth about one-third of its true value.

It is respectfully submitted that so material a misrepresentation relating to the very property which was the subject of the bequest constitutes a fraud which, according to the authorities referred

to, is sufficient to invalidate the codicil.

Such fraud has also been held to amount to the exertion of an influence that is undue, the will of testator being deemed to be dominated by the fraud. Zelozoski v. Mason, 64 N. J. Eq. 327.

Assuming testator intended to bequeath to the beneficiary the 140 shares on the representation of the beneficiary that they were worth $200-250 a share, it cannot be said that he would have disposed of all the stock in the same manner had he known that the value was $650 a share and it has been held that where a testamentary instrument is tainted by fraud or undue influence, it cannot be held valid in part, but is entirely void. In re Cooper's Will, 75 N. J. Eq. 177, 188.

**Concerning the Vice-Chancellor's opinion on several points involved herein.**

With respect to testator's physical and mental condition, the Vice Ordinary seems to stress in his opinion (p. 458, l. 25 to p. 459 l. 12) the testimony of witnesses that testator was in fair shape in February, 1925. But the codicil was executed the 9th of January preceding, within five days after his arrival at the beneficiary's home in a condition which caused Dr. Todd to fear he might die in twenty-four hours. (S. C. p. 123, ll. 3-6) Moreover, Dr. Todd's testimony that testator suffered transitory mental confusions for about a month or six weeks before he died is significant. (p. 120, ll. 29-34).

In the opinion is also found the statement that "Two sons, Charles and Irving, have been, and are arrayed, against their brother, Dwight Ashley" (p. 459, ll. 17-19). Since testator's death and the reading of the will and codicil this is true, but not prior thereto, for, as the uncontradicted evidence already adverted to shows, Charles and Irving were then not even on speaking terms because of business differences between the former as President of the Hawthorne Silk Company and the lat-



ter as President of the Gary Silk Company which was heavily indebted to the Hawthorne. And this disposes also of the idea that the testator, who was fully aware of the situation, bequeathed the stock to Dwight because he feared a combination of the other two against Dwight in the management of the Savoy Realty Company.

The learned Vice Ordinary says also "It is true that the letters and diary, which the testator left, contained reflections upon the son Dwight as well as the other sons" (p. 459, l. 39 to 460, l. 6). We are unaware of a single substantial reflection on Irving in any of the letters, diaries or other written statements which are in evidence. On the contrary, while they show bitterness against Dwight for his treatment of the testator, they disclose affection for Irving and solicitude for his welfare.

Nor did testator regard Dwight's home as a "haven of rest." Judging from his letters and actions, his farm at Stillwater was the place of abode he preferred. Prior to his illness he divided his visits between Irving's home and Dwight's, and it was to be near Dr. Todd, Dwight's family physician, that he thereafter stayed at the latter's home.

The Vice Ordinary also says in his opinion that testator had plenty of opportunity while at Dwight's home for independent advice (p. 461, ll. 19-21). But the record does not disclose that he had the benefit of any advice relating to his testamentary dispositions except that which his illuminating conversations with the beneficiary and the latter's wife concerning his other sons gave him.

The opinion also contains this statement as justification for testator's sudden partiality towards Dwight:

> "Here his wife, with whom he had not lived as man and wife for many years, dwelt, his son Dwight having provided a home for her. May not the fact that the son, Dwight, was providing this home for his mother have

convinced his father that he was the proper one to take charge of the Savoy Company's affairs which is alleged to be one of the principal assets of his estate?" (p. 460, ll. 14-22).

With all deference, it is not clear why a man who had not lived with his wife for years, and who severely condemned her statement that she would have nothing to do with him dead or alive, should reward a son with $90,000 and control of a business corporation simply because the son had allowed his own mother to live with him for some six months prior to the execution of the codicil.

## CONCLUSION.

**For the reasons urged in this brief, it is respectfully submitted that the decree of the Prerogative Court admitting the codicil to probate should be set aside, with costs to the appellants.**

Respectfully submitted,

ARTHUR T. VANDERBILT,
Counsel for Appellants.

# New Jersey Court of Errors and Appeals

| | |
|---|---|
| In the matter of The probate of the will and codicil of Dwight Ashley, Sr., deceased. | On Appeal from Prerogative Court |

## BRIEF FOR THE RESPONDENT

## STATEMENT

This is an appeal from a decree of the Prerogative Court affirming a decree of the Passaic Orphans' Court admitting the will and codicil of Dwight Ashley, Sr., to probate.

The will was executed April 28, 1924. The codicil was executed January 9, 1925. The testator died February 21st, 1925, at the age of 77.

By his will he bequeathed all his property save a small annuity to his wife, to his three sons, Dwight Ashley, Jr., Charles E. Ashley and Irving D. Ashley share and share alike.

By his codicil he bequeathed 140 shares of stock in The Savoy Realty Company to his eldest son, Dwight Ashley, Jr.

In the Orphans' Court both will and codicil were attacked. In the Prerogative Court the attack on the will was withdrawn. The question before the court therefore is whether the codicil was properly executed by a competent testator of his own free will. If the codicil is invalid then the will governs the distribution of this stock. The beneficiary under the codicil therefore would in any case take one-third of these 140 shares or 46⅔

shares under the will if the codicil is not a lawful instrument. The question at issue is whether the remaining 93⅓ shares of stock shall go to Dwight Ashley, Jr., the respondent, or whether Charles E. Ashley, one of the appellants, shall take 46⅔ of these shares and Irving D. Ashley, the other appellant, shall take 46⅔ shares.

The will was offered for probate before the Surrogate of Passaic County on February 28th, 1925. The appellant, Irving D. Ashley, filed a caveat against such probate, p. 6. The other appellant, Charles E. Ashley filed no caveat nor did he appear as a witness in the Orphans' Court. He appeared for a few minutes in rebuttal before the Vice Ordinary.

After the caveator had presented his testimony before the Orphans' Court and while the proponents were engaged in the presentation of their case they were advised by the Judge that he was not disposed to continue the matter; that there was no duty resting on the proponents to produce more proof and he accordingly ordered that the will and codicil be admitted to probate, p. 132. A decree was signed April 23, 1925, for this purpose, p. 8.

An appeal was taken by the caveator Irving D. Ashley, p. 9, to the Prerogative Court. As all the testimony for the proponents was not presented before the Orphans' Court they produced additional proofs before the Prerogative Court. The appellants did the same. The caveator in the Orphans' Court was permitted over the objection of proponent's counsel to travel far afield in his testimony and thus widened the scope of the inquiry far beyond what was deemed by counsel essential



for the adjudication of the question at issue. The proponents became in the Prerogative Court bound to answer these allegations.

It was urged on behalf of the proponent that as the testator had by his will in 1924 bequeathed his property equally to his three sons whatever differences may have for a time existed ten years ago between him and his sons or between him and any of them, then, could not affect the questions at issue. These questions were the validity of the codicil and the reason, if any, were needed, why it was executed. The time between the will and codicil was important. What occurred ten years ago was too remote. Thus the door was opened to much of the family history including an effort to show that the testator could not have been dissatisfied with the way the two appellants were conducting their married lives as he had similar experiences himself. p. 178. Thus the degradation of the caveator in attacking the virtue of his own father to promote his own financial fortune is manifest. It is a pleasure to know that he failed.

Testimony concerning two companies organized by the testator, the Hawthorne Silk Company and the Savoy Realty Company appears extensively in the record. Inasmuch as these matters arose in 1915, p. 248, as to the Hawthorne Silk Company and in 1916, p. 428, as to the Savoy Realty Company, they were deemed by counsel as too remote. They were nine and ten years respectively before the execution of his will in April, 1924, wherein he left his property to his three sons equally. It was pointed out that these differences had faded from the testator's mind and their discussion in view of the terms of his will ten years afterwards served no useful purpose.

The whole superstructure erected by the appellants is based on these two companies and these remote allegations. Our objection was entered against such admission. It will be seen later when the affairs of these companies are considered in some detail that even if such testimony was admissible which is denied, that it is fully and satisfactorily answered.

## THE EXECUTION OF THE CODICIL

It is charged by the appellants that the execution of the codicil was irregular and was induced by the beneficiary. The facts are these:

The beneficiary, Dwight Ashley, Jr., was instructed by his father to bring his will which was in the safe at the beneficiary's house where the father, the testator, kept some securities, to the testator's attorney, p. 197. It is admitted by the appellants that this attorney did not represent any of the sons, p. 116. When he reached the office of the attorney he communicated verbally the instructions. The attorney declined to receive such instructions from him and requested that the father be called upon the telephone so that he could converse with him. The beneficiary called up his house on the telephone and asked his wife who responded to have his father come to the telephone, p.198. The father came to the telephone, p. 375. After his father was on the other end of the telephone, the beneficiary went out of the room of the attorney's office having been told to leave by the attorney. The door was closed, p. 198. The next connection is that Mr. Gold, an attorney at law and associated with the office of



Mr. Gourley, the father's attorney, left the office with the codicil drawn. The beneficiary met the witness, Edwin E. Dudley, on the steps of the bank building wherein the office of the attorney was and requested him to stop at the house before he went home, p. 198. Dwight Ashley, Jr., went upstairs when he reached the house and introduced Mr. Gold to his father and left the room.

Mr. Gold states that after arrival he talked for a time with Mr. Ashley, the testator, whom he had not previously met. They discussed some local topics for a time which he mentions, p. 356.

After this conversation Mr. Gold said:

> "I told him, (the testator,) that my purpose in coming was to have a certain codicil executed and I took it out and read it to him and explained to him the purpose of the codicil as it appeared to be and asked him if that expressed his intention, and he said it did. I read it to him, it was typewritten. I then went out in the hall where I found Dwight Ashley, Jr., in an adjoining room and asked him if he would call some witnesses. A Mr. Dudley and Miss Uhlig came into the room where testator was and I then told them that this was a codicil which Mr. Ashley, Sr., wished to execute and I read the attestation clause to them. Mr. Ashley, Sr., then signed the codicil and Mr. Dudley and Miss Uhlig signed as witnesses. Mr. Ashley signed first. All the signatures were made while he was "present at the same time, all of us together." p. 357.

Upon cross examination he says that after a chat he brought the codicil to his attention.

> "I read it to him and asked him if that expressed his intention, if it was what he wished and he said it did. He said that was his intention and it expressed his wish." p. 362.

He did not recall whether he or Dwight Ashley, Jr., called Mr. Dudley. He repeated anew in answer to further questioning:

> "then I told them (the witnesses) that this paper which I had was a codicil which Mr. Ashley, Sr., wished to have executed and I read the attestation clause to the witnesses and then Mr. Ashley signed the codicil and then the witnesses signed."

He was asked:

> "Q. Did you ask him while the two witnesses were in the room if he published it or declared it to be a codicil to his will? A. I did that with the attestation clause."

This was read before Mr. Ashley, Sr., signed, p. 364-365. The testimony of Mr. Dudley, p. 16, was that he saw the testator sign and that he saw the other witness sign; that the testator wrote his signature in the presence of both and it was all done together, and in the presence of Mr. Gold. Miss Uhlig saw the testator and the witness sign and the testator saw both sign. The testator said it was a codicil to his will, p. 18. This statement was made on January 9, 1925, before he signed it. The first time he heard anything about the will was when Mr. Gold read it.



"Mr. Gold read the subscription clause." p. 29. When Mr. Gold read the attestation clause Mr. Ashley signed the paper just the same as I had seen him sign a number of other papers, p. 30, with the same degree of ease. Mr. Gold said this is a codicil to the will and he wishes you to witness it. He directed this remark to Miss Uhlig and myself. p. 30. Then after that he read the attestation clause, then Mr. Ashley signed, then Miss Uhlig signed it first after the testator, then he, Mr. Dudley signed. This is the narrative of the second witness.

MARIE UHLIG, a housemaid, was called as a witness. It is quite clear that this young girl was much confused in her testimony as will be pointed out.

She was asked this question:

> "Q. Did Mr. Gold read the paper?"

Her answer was A. Yes, sir.

She said on cross examination:

> "Q. Mr. Gold just read this part where your signature was? A. Yes, sir.
>
> Q. That is all? A. Yes, sir." p. 42.

In other words the codicil was not read in full but the attestation clause was.

With all this she says that she did not know what the paper was. In view of the whole transaction this is unbelievable. It is evident that the girl was confused in the statements she made in court, embarrassed probably in the witness chair, yet she says enough to make it plain that an occasional answer of this kind is but a temporary lapse. An analysis of her testimony shows this.

She could not remember at first the order of the signatures, but she did say that she signed after the testator and that all three were together at the time. p. 33. She waited in the hall "until the will was ready." On cross examination she surmised a will was being prepared. This was her surmise she said **before** she entered the room. This surmise could no longer exist when both Mr. Dudley and Mr. Gold say that he, Mr. Gold, told them —the two witnesses—that this was a codicil to Mr. Ashley's will and read after such a statement the attestation clause. The surmise became a fact. She described in some detail upon cross examination the testator's clothing, the kind of table at which he sat, where the table was, and his chair. Mr. Dudley shook hands with the testator she says. She adds

> "I seen the will lying on the table." p. 39. Mr. Ashley "Just said he wanted me to sign my name." p. 41.

This conforms to what the witness, Dudley, said except that Mr. Dudley said the testator said that it was a codicil to his will. p. 18. It was signed afterwards. He signed it easy, p. 39. Then she adds:

> "I guess he was that sick he couldn't sign easy." p. 39. He wasn't a good writer.

Mr. Dudley was there when she signed. She was asked whether anyone said anything in the room and she said no. She had previously stated that Mr. Gold stated it was a codicil to the will and read the attestation clause. She had waited in the hall a few minutes before entering, p. 36.

> "Q. What were you waiting for? A. Until they got it ready.



> Q. What ready? A. The will ready for Mr. Ashley, Senior, in the other room."

So that her testimony has to be read with great care in order to understand what she really means. She did not mention the fact at first that Mr. Gold was in the room. She mentioned the other names. Her attention had to be drawn to this. She does not recollect the circumstances as accurately as Mr. Gold and Mr. Dudley. She is perfectly honest of course but seems unable to recall particulars which the others noted. Her most noticeable omission is concerning the presence of Dwight Ashley, Jr., in the room. p. 38. The name of Dwight Ashley was used. Some confusion may have occurred in consequence of the similarity of the names of father and son. She seems to say that the son was in the room at the time of the execution of the codicil. This is declared to be a mistake by Mr. Ashley, Jr., who says that when he introduced Mr. Gold to his father he went into a room across the hall from the testator's room. He did not return into that room when the witnesses were called. This is supported by the testimony of Edwin E. Dudley and also by the attorney, Mr. George Gold, who says that Mr. Dwight Ashley, Jr., was not in the room at the time. The probability would reasonably be that he would not be in the room but we have three statements under oath in support of the fact. With this vital variance, unintentional of course, on the part of Miss Uhlig, it leaves her testimony without the support that attaches to the testimony of Mr. Dudley and Mr. Gold. With this somewhat minute detail of the ceremony how can the statement be supported that she did not know the paper was a will

or testamentary declaration? She was as fully apprised of the facts as Mr. Dudley. He did not know the purpose for which he was called until he learned it in the very room. He acquired his knowledge as she undoubtedly acquired her knowledge from what he saw and heard there. There was no confusion in his mind. Why, if these facts are true and they are of course uncontradicted, should there be any confusion in her own mind? There could not from all these facts, have been any misunderstanding at the time. If a solemn instrument like a will, indeed our most solemn document, can be overthrown because some witness says "I didn't know", when all the surrounding circumstances declare its truth, the very foundation of our property and fortunes would be shaken. This would be to invite attack and to promote perjury.

## THE LAW AS TO EXECUTION OF A WILL

The codicil has been executed in accordance with the statutory requirements. Our statute 4 Comp. St., 5867, declares that all

> "wills and testaments shall be in writing and shall be signed by the testator, which signature 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 the testator."



It was stated in this court in Booren v. Nesler, 77 Eq., 560, by Justice Trenchard speaking for the court, that the formalities described by the act upon which valid wills must rest are:

> "**First**, that the will shall be in writing.
>
> **Second**, that it shall be signed by the testator
>
> **Third**, that the signature of the testator shall either be made or acknowledged by him in the presence of two witnesses who shall be present at the same time;
>
> **Fourth**, that the writing shall be declared by the testator to be his last will, in the presence of those witnesses, present at the same time as aforesaid, and
>
> **Fifth**, that the two witnesses shall subscribe their names thereto in the presence of the testator."

It was further said in this case that

> "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."

I purpose to show that the codicil in question has been executed with the proper observance of these formalities:

(1). It is in writing.

(2) It was signed by the testator.

(3) The signature of the testator was made in the presence of three witnesses who were present at the same time.

(4) The writing was declared by the testator to be his last will in the presence of those witnesses who were present at the same time.

(5) Two of the three witnesses subscribed their names thereto in the presence of the testator.

There is a regluar attestation clause appended to the codicil in question. It was not essential of course to have such a clause. It is sufficient that the testator sign and the witnesses sign without any formal record of the facts, provided, of course that the formalities have been observed.

This court in the case cited above has declared what the effect of the attestation clause is. The language is as follows:

> "An attestation clause is made for the purpose of preserving in permanent form a record of the facts attending the execution of the will, so that, in case of the failure of the memory of the subscribing witnesses, or other casualty, they may still be proved; and the courts have accordingly held that, on proof of the authenticity of the signatures of the subscribing witnesses, the facts in the attestation clause must be accepted as true until it is shown that they are not."
>
> Cases cited p. 562.

~~Vice~~ Chancellor Williamson said in Mundy v. Mundy, 2 McCart., 290-293

> "There seems to be sufficient proof of all the requirements except as to his declaring it his will. 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. But this need not be done by word—any act or sign by which that communication can be made is enough. The scrivener, in the presence of the testator, says, this is the will of A. B. and he desires you to witness it—the testator standing by—is a sufficient publication or declaration. The form is immaterial. But the witness must know it is the will of the testator they are witnessing, and they must witness it at his request."



This language has been affirmed many times by our courts. Vice Ordinary Van Fleet said in Robbins v. Robbins, 50 N. J. Eq., 742:

> "To comply with the statute a testator must declare the writing which he executes as his will, 'to be his will, in the presence of two witnesses, present at the same time, who shall subscribe their names thereto as witnesses.' Rev. p. 1247 §22. He may do so, however, by act or sign as well as by words, if the act he does or the sign he makes clearly indicates the character of the instrument. The statute does not require that publication shall be made by words alone; any act or sign by which the testator makes known to the subscribing witnesses that he executes the paper as his will is enough. Chancellor Williamson, as surrogate-general, said in Mundy v. Mundy,

2 McCart. 290, 293: 'The scrivener in the presence of the testator, says this is the will of A. B. and he desires you to witness it—the testator standing by—is a sufficient publication or declaration. The form is immaterial. But the witnesses must know it is the will of the testator they are witnessing and they must witness it at his request.' The present surrogate-general gave a like exposition of this requirement of the statute in Elkinton v. Brick, 17 Stew. Eq. 154, 167, where he said a sufficient publication is made to comply with the statute 'when enough is said or done, in the presence and with the knowledge of the testator, to give the witnesses to understand distinctly that the testator desires them to know that the paper is his will and that they are to attest it.' Mr. Justice Scudder, speaking for the court of errors and appeals, in Ludlow v. Ludlow, 9 Stew. Eq. 597, 601, said in substance, that it was not necessary that a testator should, by his own word, declare the writing to be his will, but that if by sign, or act he clearly manifests to the attesting witnesses that he desires them to attest the paper as his will, such sign or act will constitute a publication. Mere form in such transactions is a thing of very slight importance; the substance is the thing which must be regarded, and that consists in the testator's making known, clearly and distinctly, in any way by which one mind can communicate with another that



the paper which he desires the subscribing witnesses to attest is his will.

To illustrate by example: Suppose A gives his counsel instructions in the morning to draw his will and bring it to his house at five o'clock in the afternoon for execution, and then goes to his neighbor and says: "I am going to execute my will at five o'clock this afternoon; my lawyer will be there at that time with the will; I want you and he to sign it as witnesses." The neighbor appears at A's house at the time appointed; be finds the lawyer there, and A, soon after his neighbor's appearance, produces a paper which he signs in the presnce of both witnesses, and then, on rising from his chair, hands the paper to his neighbor, saying, "Sit here while you sign," and after his neighbor has signed the paper, A says to the lawyer, "Now you sign," and the lawyer does so, and this embraces all that is said and done while the three are together, could there be a doubt, looking at the transaction in its entirety, that the witnesses clearly and distinctly understood and were bound to understand from A's acts, considered in connection with what had previously occurred that he executed that paper as his will? All that the statute requires, in respect to publication, is that the testator shall make known to the subscribing witnesses, at the time of execution, that he executes the paper as his will. It is true that a will cannot be

published before it is written, nor in the absence of the writing itself, but the previous knowledge of the subscribing witnesses, communicated by the testator himself, may impart to an act done or a sign made by him when he comes to execute his will a meaning as clear, certain and definite as the most lucid words would express, but which, to a person without such previous knowledge, would be unmeaning or at best ambiguous. In the case supposed the knowledge of the subscribing witnesses, respecting the purpose for which A wanted them to come to his house, made his acts, in producing the will, signing it and then handing it to one of them to sign, so unmistakable in their significance, that his meaning was made as plain and as certain to them as he could have made it by any oral declaration."

In Darnell v. Buzby, 50 N. J. Eq., 725, aff'd 52 N. J. Eq., 337, opinion by Ordinary Alexander T. McGill the syllabus declares

> "When enough is said or done, in the presence and with the knowledge of the testator, to give the witnesses to understand distinctly that the testator desires them to know that the paper produced is his will, which they are to attest as such, the statutory requirement that a testator shall declare his will in the presence of witnesses, is sufficiently complied with and that which is said or done must plainly



> lead to the single necessary inference that the document executed is the testator's will."

In the above case no part of the will or of the attestation clause was read in the presence of the witnesses.

It was said in Whitenack v. Stryker, et al., 2 N. J. Eq., p. 8, as early as 1838:

> "It is not necessary that the testator should openly make the request. His acquiescence when the witnesses are called in for the purpose by another, is sufficient."

In Lacey v. Dobbs, 63 N. J. Eq., p. 325, the specific rule was laid down in this court that

> "It is essential to validity that everything required to be done by the testator shall precede in point of time the subscription of the witnesses."

It is clear in the case now before the court that all these requirements preceded in point of time the subscription of the witnesses. The attestation clause in the present case is perfect on its face and certifies the facts which demonstrate a legal execution and publication of a will. It corresponds minutely to the statement of one of the witnesses, Mr. Edwin E. Dudley and to that of Mr. Gold and upon analysis to the statement of the witness Marie Uhlig. Under such circumstances how can the probative force of the attestation clause be overcome?

The rule was referred to In re: Sutterlin 99 N. J. Eq. 363, 368 wherein Justice Parker speaking for this court said

> "Later in the Prerogative Court, the rule was strengthened to the extent of saying that the presumption arising from the clause was impregnable unless overcome by strong and convincing evidence."

To the same effect is Berdan's case, 65 Eq., 681.

In the Sutterlin case both witnesses flatly contradicted the attestation clause.

Vice Ordinary Backes In re: Gahegen, 82 N. J. Eq., 601, said

> "It is said that the witnesses did not understand that the document which they attested was of a testamential nature, and it is claimed that their testimony in this respect overcomes the presumption of publication which arises from the attestation clause, and also preponderates as against the weight to be given to the positive evidence of Dr. Probasco. The substance, extent and effect of their testimony, as I read and consider it, is, that they did not remember the act of publication, and did not remember whether they knew, at the time of the transaction, from the act of publication, that the instrument which they subscribed as witnesses was a codicil to the testator's will. This evidence is not inconsistent with nor does it militate against, the legal presumption."



Judge Joline in the Camden Orphans' Court in Veazey's Case in 80 N. J. Eq., 466, said upon the authority of McCurdy v. Neall, 42 N. J. Eq., 334:

> "It was held that where the attestation clause is perfect the court must have clear proof to warrant the conclusion that the will was not duly executed."

The Ordinary affirmed the decree upon the opinion of Judge Joline. This court speaking through Justice Swayze said

> "We concur in the opinion."

The Judge of the Essex Orphans' Court In re Will of Pierson, 40 N. J. L. J. 137 after reviewing the cases said:

> "It appears to be settled that the witnesses must know the instrument to be the will of the testator by virtue of some declaration made by the testator, or in his presence, or some conduct or circumstances or acquiescence at the time, indicating that the testator was executing a will and so understood it, and that the testator requested the witnesses to sign as such." (Quoting Kocher's P. L. & P. 130.

The Judge said that Mrs. Pierson did not announce that the instrument she signed was her will nor was that fact announced in her presence by which her act of signing it could be a ratification of such a statement.

In the case in hand in addition to other testimony the fact was announced in the presence of the testator.

The facts in Hildreth v. Marshall, 51 N. J. Eq., 241, are: Mrs. Marshall instructed J. to prepare her will. After its preparation he entered the room where Mrs. Marshall was with two persons whom he had asked to be witnesses to the execution of the will and in their presence announced to Mrs. Marshall that he brought those persons to witness the will and thereupon Mrs. Marshall understanding the character and contents of the document signed it in the presence of the persons so brought in. It was held:

> "that the requirement of the statute that the will should be declared by the testatrix was sufficiently complied with."

In Kocher Probate Law and Practice, it is said that 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 for that purpose is sufficient. So a request may be implied by the reading of the attestation clause

The authority in support of the first part of this ~~in the presence of the testator and the witnesses~~' statement are:

Whitenack v. Stryker
Mundy v. Mundy
Darnell v. Buzby, supra.

Also

Ayres v. Ayres, 43 N. J. Eq., 565-572
Elkinton v. Brick, 44 N. J. Eq., 154.

Appellants allege further the incapacity of the



testator, undue influence of the beneficiary and certain misrepresentation.

## PHYSICAL AND MENTAL CONDITION OF TESTATOR

The testator, a retired silk manufacturer, went to live at his farm in Warren County about 1918. He came to Paterson occasionally from time to time thereafter. He came to Paterson in April, 1924, for about two weeks. During this time he made the will which is before the court. In August, 1924, he had a slight stroke at the farm which affected his speech, p. 125-126. His son Dwight Ashley, the respondent, went to the farm in his car and brought his father to his home where he was treated by Dr. Francis H. Todd. He remained at the home of this son for about six weeks, p. 192. He then returned to the farm apparently restored to health. He returned to Paterson in November and remained at the house of Dwight Ashley, Jr., about one week, p. 193. Dr. Evan Evans, a noted specialist of the heart, was engaged as consulting physician with Dr. Todd, the family physician. Dr. Evans and Dr. Todd came to the house and made an examination at this time, p. 193. A short time after he went back to the farm. p 193. He returned to Paterson about December 17th, to the house of Dwight Ashley, Jr., and remained until after Christmas, and then returned to the farm. p. 193. He came back to Paterson Sunday night, January 4th, p. 193. The codicil was signed January 9th. He remained at the house of this son, p. 193, until his death, February 21st, 1925. These

are the visits of the testator back and forwards between Warren County and Paterson during the last year of his life. The family physician, Dr. Francis Todd, testified that he saw him

> "Almost daily. Practically every day except a period when I was away on a vacation, a short time before he died. I noticed that as long as he would take it easy and not walk fast he would be alright, but if he would overdo himself physically, if he ever did it, after a week or so he would land down to Dwight's house." p. 119-120.
>
> "Q. Did you notice any decrease in his physical power or energy? A. His physical powers gradually decreased. He would have good periods and then he would overdo it and naturally he gradually wore himself down until he became incapacitated and died." p. 120.

Dr. Todd when questioned about his condition said:

> "Mr. Ashley, Sr., to my knowledge showed no evidence of any mental disturbance or anything affecting his reason until possibly a month or six weeks before he died and then that was transitory. He would be clear at times and other times he would be confused. Possibly at the time he had the stroke or partial stroke there was a short period of time when he had confusions but as to just the date of that I don't know, but it was only for just a day or so and then he was alright. He was very keen and enjoyed apparently aside from any professional advice he got from me, he enjoyed discussing anything he read in the paper and went into it in great detail. He always discussed everything every time I went there. There might be a few days he wouldn't but as a rule I used to look on my visits as slightly professional and partly social as he would discuss various things. He was greatly interested in foreign affairs, governmental affairs and was greatly interested in his farm and appeared greatly interested in affairs in general." p. 121.
>
> "Q. Were these discussions intelligent? A. Yes, sir. Q. How long did that continue? Was there any cessation of these qualities up to his death? A. He died about the twenty-first of February. Q. I am concerned about the period of January ninth, nineteen hundred and twenty-five? A. I don't know the exact dates. Q. I don't mean the exact dates, but that would be some weeks before he died. A. I went away about the first of February or the first week in February. I can't answer. I don't recall, sir." p. 121.

Dr. Todd further testified:

> "I should set his first mental confusion down probably a week or so before I went away, perhaps ten days, in fact I think that was the real beginning of his mental disturbance." p. 122.

He said he went away the first week of February. This fixes the period of his first mental con-

fusion to the end of January, 1925, or three weeks after making his codicil.

Dr. Todd says this last time

"He cleared up over night practically." p. 124.

The stroke in August "didn't affect his mind." p. 125.

"The stroke had no effect on his physical parts." p. 126.

"When he came down the last time he cleared up after twenty-four hours and then a week or ten days before I went away he then had some mental confusion." p. 126.

"He was confused and the family was in fear of death and so was I but he cleared up and made a very marked improvement in twenty-four hours and the next morning he was much improved and his confusion cleared up." p. 127.

The quantity of digitalis administered was agreed upon with Dr. Evans. p. 127.

"He was mentally a very keen man." p. 129. "You would expect his physical condition would naturally affect his mental condition but it apparently did not. He would discuss all sorts of things with me."

DR. DAVID S. HAMILTON, an Episcopal minister, visited him about the middle of February, about five weeks after the execution of the codicil.

Dr. Hamilton says:

"I had a very nice, fine talk with him on many interesting things of one sort and another. Just as fine and reasonable as any



man. You wouldn't know there was anything wrong with his mentality as far as I could see." p. 131.

On cross examination he was asked:

"Q. You didn't pay any great attention to what Dwight Ashley said? A. No, except to know that he was perfectly normal like any other member of the group.

Q. What particular statement did he make during the time you were there that made you think he was normal? A. His answers to questions about things in general." p. 132.

DR. WILLIAM FLITCROFT, who testified for the caveators, said: Dr. Todd went away on his vacation which was as he stated the first week in February, and asked him to attend to Mr. Ashley. Dr. Flitcroft had met Mr. Ashley with Dr. Todd on February 1st. p. 44.

"Q. Could you observe from the history of the case whether he suffered from a stroke of paralysis at any time? A. I had no evidence of it. I understood he had a slight stroke. I did not observe anything." p. 45.

Dr. Flitcroft saw him on February 1st, 12th, 15th and 20th.

"I found he was taking digitalis by orders of Dr. Todd and I approved of it. The quantity was all right."

It is noticeable that not a single question concerning the mental condition of Mr. Ashley was asked this witness by counsel for the caveator. The

testator as stated was at the home of his son Dwight Ashley, Jr.

MRS. DWIGHT ASHLEY, Jr., said that the testator from January 4th which was the day of his arrival for the last visit until he died February 21st, was able to go up and down stairs for his meals.

> "You could not keep him upstairs: I tried my best to do so." p. 372.

The luncheon and dinner were generally taken in the dining room on the first floor. p. 368. This continued until Thursday before he died. He died on Saturday morning, p. 368.

> "Several times he went out with Mr. Ashley on the back porch and on the front porch." p. 369.

There was no change in his mental attitude, p. 369. He dressed every day. Nearly every day he had his street clothes on. His main pleasure was to read the papers; he read them every day and all the time. There was no change in his mental attitude during those days in the month of January, p. 369. He waited on himself always, p. 373.

> "Q. Did he have to sleep in a chair at night? A. Maybe once on account of his breathing." p. 373.

The brief of appellants' counsel speaks on page 29 that during and after meals he vomited at times. This is not the language of the witness and besides no date is given for the alleged occurrence. Mrs. Dwight Ashley, Jr., could not recall any such occurrence, from the 4th to the 9th of January, p. 373. She said he was able to take care of his personal needs, p. 374. He always went to the bathroom; that was one thing he always did. There may have been a day or two that we helped him a little but that is all, p. 374. She remembered the testator coming down to dinner on January 9th, p. 379. This was the day the codicil was executed.



MR. EDWIN E. DUDLEY, a subscribing witness to the codicil, said that on the day the codicil was signed that the testator was not any different than he had been for some time. He was asked on cross examination:

> "Q. He was in poor health? A. No, I wouldn't say that.
>
> Q. Was he in good health? A. No, not especially good, but not any different than he had been for some time. p. 26.
>
> Q. He was in a very weakened condition? A. I wouldn't say so, no." p. 28.

He was asked whether the testator signed the paper with much ease and grace. He answered:

> "A. Just the same as I had seen him sign a number of other papers."

MARIE UHLIG, the maid, a witness to the codicil, said that he signed it easy, p. 39.

MR. GEORGE GOLD, the attorney who was present at the execution of the codicil, said that he conversed with the testator for some time and narrates his conversation with the testator about several topics and among them about Ex.-Mayor Nathan Barnert for his good deeds. p. 356.

The testator said he felt weak and debilitated.

Mr. Gold remembered him using this word, "debilitated," p. 357.

He made responsive answers to various questions asked him. p. 361.

DWIGHT ASHLEY, Jr., the respondent, said his father was 77 years of age and had been a healthy robust man during his lifetime up to the Spring of 1923, p. 193, that he had been down to dinner at 6 o'clock on the Thursday preceding the Saturday he died. He required no aid in going up and down stairs. On these occasions he was dressed. He didn't exhibit any change of demeanor from his usual habit nor did he notice any difference in his talk or ability to remember things, but that he was a little weak on account of breathing. There was nothing noticeable about his mind. He read the papers every day and commented on them with witness and others. He was rather a silent man not given to conversation. He came to the point very rapidly, p. 194. There was no decay of his mental faculties up to the night before he died. On that night Dr. Todd came in about six o'clock when he was having his dinner in his room which was upstairs and conversed with him and said he would see him the next morning, p. 218. He said that his physical condition in December 1924 was quite well, p. 299. He ate his evening meals downstairs between January 4th and 9th, p. 308 and 309.

Perhaps the most important item to show the mental condition of the testator on the very day of the execution of the codicil is the memorandum written in pencil by him and given to his son, Dwight Ashley, Jr., (Exhibit G-1) to telephone the



substance thereof to his brother, William H. Ashley, at Hackettstown, p. 281. Full corroboration of the date is had by the telephone bill for service rendered for Hackettstown, p. 201. The counsel for the appellants on p. 411 reserved the right with consent of the court to introduce the record of the telephone call on January 9th, 1925. The right was never exercised. Further confirmation is had also from the fact that the uncle, William H. Ashley, when called anew as a witness by the caveators, admitted having talked with his nephew over the wire about the subject contained in the written memorandum. This memorandum was read on the stand by the witness, Dwight Ashley, Jr. It is found on page 337 and 338 of the state of the case. Notwithstanding the fact that this memorandum is printed as exhibit G-1, counsel for the appellants in their brief printed this memorandum, not as the Exhibit is but as it was read on the stand. This Exhibit will be left of course with the Sergeant-at-Arms for the inspection of the court. There was at the bottom of the page on the left hand corner, the figure 6 in a circle (6). When the witness read the paper he added, six in a circle. These words have been added to the memorandum in the state of the case with quotation marks following the word circle as if the words were part of the memorandum. Counsel reasonably anticipated that much stress would be laid on this memorandum by the respondents and accordingly have attempted to argue that it is confused. When it is considered that the writer was a man of 77 years of age and wrote this paper concerning affairs at the farm, information of which had reached him about

42 days before his death, when suffering from an incurable disease, it is found to be a remarkable paper. It at once puts to rest all question about his mental condition.

A correct copy of the exhibit is as follows:

"EXHIBIT G-1

Bro. Will—You may have time to go to livery stable hire a good sleigh & Horse & When there I want you to get 6 Ducklings & bring home—now the man on place has whiskey & I will mail his chk to farm tomorrow tell the boys—then can get without today of course stay if you have all night —now tell this man I need men of no whiskey on the place and this may break it up but he must go tell Clark to get some on there only ½ day and they can the soom determine if I am to sell out the stock as if I am not to get any better I am to quit farming—Now the expenses of Horse & sleigh I will remit soon as I get word from you—there is now one man he can get, Crater on ½ time—attend to this & have no accident.—if he cares not for discharge tell him I will soon find reasons to send him away—I will not be able to get there until 3 or 4 days—so I want to get rid of whiskey & man—tell them to pick out the big Hens from (6) July—they are to be broilers. Bro D."

The testator had left the farm as stated on January 4th and this memorandum was written on January 9th, five days after his arrival at Paterson. It shows his mental condition in a clearer light than any witness whether physician or layman can describe. He directs his brother to go to a livery stable and hire a sleigh and horse. He



states that the man on the place was drinking. He had heard in his absence that the man was drinking. He desired to have him discharged and stated he would forward his pay by check; that the boys employed could do without a man for a day. Then he adds, stay if you have to all night. The Clark in the letter is Miss Clark who was the housekeeper at the farm and who testified for the caveators in the cause. She was to get a man to work half days.

The difficulty with the memorandum is not being able to read the instructions without filling in a few words that at first seemed from the lead pencil used, to be not easily deciphered. A comparison with the original and the copy set out above shows that the testator was desirous of correcting the condition of things by this telephone message, that he could have readily done in person if at the farm. He apprehends that he may not get better. He has necessarily to quit the farm. He even provides for the expenses of the horse and sleigh which he said he would remit as soon as he got word from his brother.

The part that counsel thinks not clear seems to us to be very clear. The writer says, there is now one man he can get—Crater on ½ time. The man Crater lives in the neighborhood. The intelligent words, "Attend to this and have no accident," counsel interprets as "I have no accident." The character & is taken for the letter I. He speaks of the discharge and says I will soon find reasons to send him away. The thought occurs in closing about the 6 broilers. He tells him to pick out big hens from July—they are to be broilers. These things of which the testator writes are not illusions but

facts. No one suggests there is any illusion about this part of the letter. It was offered by the proponents as showing unmistakable significance of his mentality and written on the very day of the execution of the codicil. The message was telephoned as stated and the uncle who appeared for the caveators confirmed the reception of the message. This witness, WILLIAM H. ASHLEY, when asked what his nephew the respondent said over the telephone said:

> "A. He asked me to go to the farm and put a man off the place, the farm, that the man was drinking."

Thus the whole story of this important communication is supported.

## THE HAWTHORNE SILK COMPANY and SAVOY REALTY COMPANY

A great part of the case over the objection of counsel for the proponents related to two companies in which all the Ashleys were interested. These matters were nine years before the codicil and in view of the will of 1924, wholly irrelevant. What was very relevant was the period between the will and codicil. However this testimony was admitted and therefore requires an answer.

In order to understand the situation in relation to these companies it is necessary to give a short statement of their history:

The testator was a prominent silk manufacturer of Paterson. He began the manufacture of silk about 1875. He organized a company known as the Ashley & Bailey Company which was one of



the very conspicuous silk manufacturing companies in Paterson. He devoted the greater part of his life to this company. The capital stock was $800,000. which was divided between the two incorporators, Mr. Dwight Ashley and Mr. Peter Bailey, who held, save a few qualifying shares $400,000. each. The testator gave $100,000. of this stock to each of his three sons, Dwight Ashley, Jr., Irving D. Ashley and Charles E. Ashley and retained $100,000. for himself. This was about 1903, p. 349. This concern liquidated its business in 1912. They were able to pay their debts and had some surplus. The Ashley & Bailey Company had erected a silk mill at Hawthorne, adjoining the City of Paterson and had also erected two mills at Fayetteville, North Carolina. These three mills were taken over by the Ashley interests in the dissolution of the Ashley & Bailey Company as part of their division of its assets, p. 349. The result of this was that the father and three sons had thereafter a quarter interest in the Hawthorne Silk Company which included as stated the Fayetteville mills. Charles E. Ashley, the appellant, was the President of the company from the separation of the property from the Ashley & Bailey company until it went into bankruptcy, p. 187, on December 3, 1924. Dwight Ashley, Jr., the respondent, was the representative of the company in New York for the selling of the product of the company and purchasing raw materials. The testator was Vice President until 1916 when he was suceeded by his son Dwight Ashley, Jr., the respondent. Irving D. Ashley the appellant was not in the employ of this company but was a director. All four

of the Ashleys were directors until the testator resigned as a director in 1916. This resignation was not accepted until 1917, p. 248. There were some shares of stock held by four other persons who were employed in the mill. Their holdings were small. A difference arose between the testator and the two sons Dwight and Charles one of whom was operating the plant and the other taking care of the selling and purchasing, over the purchase of some batons which is that part of a loom required to make the proper width of the silk goods. All wanted a wider width of goods for the market but the testator wanted a narrower width. A difference also arose about the selling of the product through channels in New York. The testator left the meeting and did not return, p. 247.

This was a reasonable business difference between the directors. The testator's feelings were hurt however by the fact that his sons did not take his advice. This was the episode to which he refers in his letters which have been put in evidence by the caveators.

The Hawthorne Silk Company had its periods of great prosperity and great losses which seems to be very common in the silk industry. The years 1916, 1917, 1918 and 1919 p. 231 and the beginning of 1920 were very prosperous years. At the close of 1919 the statement showed a surplus of $375,000. p. 352 which was represented largely by goods on the shelves of the factors in New York. A tremendous drop in prices almost devastating in its effect, began about May, 1920. The income tax of the company filed 1920 for the return of the company for 1919 showed an extraordinary profit. p. 233.



When the company tried to sell its goods on the shelves of the factors in 1920 the entire profit had gone. The Government called upon them to pay the tax on the profit shown by the prices of 1919 approximately $51,000. p. 285 which had entirely faded away. The company was unable to do this. The firm of Perley, Morse & Co., was engaged to appeal the matter, p. 284. The Government threatened to sell the plant unless this sum of $51,000. was paid, p. 286. It was agreed that if the sum of $51,000. was deposited under an agreement with the First National Bank of Paterson, to await the result of the appeal, the Government would withhold its hand. It was agreed the stockholders of the Savoy Realty Company owned by the Ashleys also, would lend the money. The agreement relating to this government tax is set out in full on page 421 of the State of the Case, and explains the matter thoroughly. It was signed by the testator and the respondent, Dwight Ashley, Jr., and also the appellant, Charles E. Ashley. The appellant, Irving D. Ashley, to whom it was given to be signed, retained the copy which is printed. He had however signed the agreement to pay Perley, Morse & Company, the accountants, for their services in the matter.

The Hawthorne Silk Company had no securities or cash on hand. The Ashleys owned the Savoy Realty Company which had also been organized by the testator, p. 188, as a family corporation to hold certain lands and securities.

They agreed in writing as stockholders to loan $51,000.00 in cash and securities to the Hawthorne Silk Company to be deposited as security for the

appeal as aforesaid. Later the Hawthorne Silk Company went into bankruptcy. A compromise was affected by the Trustee, Mr. Henry H. Parmelee, of the Hamilton Trust Company of Paterson, by the payment of the sum of $20,000, to the Government for the income tax aforesaid of the Hawthorne Silk Company for the years 1918 and 1919. All this money came from the assets of the Hawthorne Silk Company. The moneys and securities deposited by the stockholders of the Savoy Realty Company were all returned to that company to the last penny so that the wild talk of these appellants particularly of Irving D. Ashley about the Savoy being "wiped out" and "cleaned out", p. 72 is, therefore just ridiculous. When these moneys were returned I may be permitted to say, a dividend of 75% was declared by the Savoy Realty Company so that this appellant, Charles E. Ashley, has his proportion of this money in his pocket now. The dividend upon the shares of Irving D. Ashley was witheld because his wife claims the ownership of his stock, p. 89, and served notice upon the company to this effect. Throughout the whole case they have rung the changes upon the loss of this Savoy money, and yet every dollar withdrawn from the Savoy has been thus returned to its treasury.

The difference between two of the sons, Charles E. Ashley the appellant and Dwight Ashley, Jr., the respondent, and the father concerning the Savoy Realty Company arose in this way. In 1916 the testator was Treasurer of the company. The son, Charles E. Ashley the secretary of the company and a director was not on speaking terms with his father. This caused confusion in the company, p. 190. It was thought better in consequence at the time to make Charles E. Ashley, the appellant, Treasurer. This was done. The testator remained as a director and attended the meetings of the board, p. 190. The testator was offended at this change as appears by his letters. There was nothing personal in the matter. It was thought to be better for the interest of the company. This is the only other point of difference between the respondent Dwight Ashley, Jr., and his father and as stated the differences between them lasted but a short time.



It is interesting to note the cross examination of Charles E. Ashley concerning the Savoy.

He admitted that he signed all checks:

"Q. You have never learned since that time until now that a single penny of the company was confiscated? A. I have not.

Q. Have you ever differed with your brother as to the value of lots to be sold? A. Whenever there were lots to be sold and there was any proposition that would not reach the figure that he put on the value of the lots, I submitted the proposition to him for final decision to take it or leave it.

Q. And you assented to that conclusion? A. I sold them at the figure. P. 399.

Q. And you signed the deeds? A. Yes, sir.

Q. Every deed given by the Savoy Company at the price named was signed by you as secretary? A. Yes, sir.

Q. Did you ever utter any protest that the proper values were not obtained? A. I don't recollect any. p. 400."

Irving D. Ashley, the appellant, was director of the Savoy and Hawthorne Silk Company but paid not the slightest attention to either company nor attempted in any way to aid the company. No officer of the company was paid any salary.

The appellant, Charles E. Ashley, stated that the main difference with his father started in the matter of manufacturing; later on it was a question of the selling policy. p. 399.

"Q. And that is why your father resigned from the company? A. One of the reasons.

Q. He walked out—nobody expelled him —he walked out and did not come back. A. Yes, sir.

Q. After you agreed not to sell through the Forrest Company your father walked out of the Board? A. He walked out.

Q. And he did not come back since that time? is not that so? A. He did not come back." p. 399.

Here is the confirmation by one of the appellants of just what happened. It is this withdrawal that is referred to by some witnesses as being "kicked out" and "ousted" and such like terms, and also by the testator himself, p. 64. It was quite natural of course that the father should feel some unpleasantness in the discovery of the fact that his children were now grown up and in their chosen business were exercising their judgment concerning what was best for the financial welfare of the respective companies. It was an honest difference of opinion and any feeling in consequence between the testator and his eldest son was as stated of very short duration.



## HAWTHORNE SILK COMPANY BONUS

As stated some of the years of the Hawthorne Silk Company were very prosperous. The profit in 1919 was very large. There was no indebtedness except current debts of the company. In accordance with the practice of manufacturing companies at the time a bonus was declared. The salaries of the officers were, for the volume and magnitude of the business very low, p. 397. The salary of the respondent was as follows:

| | | |
|---|---|---|
| 1914 | $ 3,266.62 | |
| 1915 | 2,309.97 | |
| 1916 | 3,601.88 | |
| 1917 | 4,192.85 | |
| 1918 | 12,384.10 | |
| 1919 | 16,692.94 | |
| 1920 | 30,756.25 | from 1919 profits. |
| 1921 | 8,531.25 | |
| 1922 | 6,825.00 | |
| 1923 | 6,824.48 | p. 244. |

Of the money shown in 1920 payment, $17,500. was bonus, p. 243-244.

At the time this bonus was paid in 1920, there was no indebtedness to testator, p. 245. This indebtedness arose in 1923, p. 245. The variations in the salary as indicated depended upon whether the season was good, bad or fair. The salaries and bonus were of course settled by the directors. The

appellant, Charles E. Ashley, who was President of the Company and the respondent, Dwight Ashley, Jr., each received $17,500. William W. Cook, Treasurer; W. Pross, Superintendant and George Purdy, designer, who were also directors each received $5,000. On cross examination Charles E. Ashley admits that he had voted for and took the bonus as did Mr. Cook, Mr. Purdy, and Mr. Pross, p. 397, 398. There was a surplus of $375,000. at the time. He also wanted to pay a bonus. The bonus was taken because we had small salaries prior to that time. The other persons were employees of the company and engaged daily in their services, p. 397. The appellant, Irving D. Ashley, was not employed by the company. He was with the Gary Silk Company.

## CONDUCT OF DWIGHT ASHLEY, JR.,

### the Respondent.

If the conduct of these sons be considered it will be found that the conduct of Dwight Ashley, Jr., conforms to what would be expected from a dutiful son.

If the series of letters of the testator be examined it will be found that there is not a single expression adverse to the respondent, Dwight Ashley, Jr., except the displeasure shown at the incident of the Hawthorne Silk Company and Savoy Realty Company as stated above in this brief. There is no indication of personal disparagement against Dwight, Jr. There is not a word about his conduct, at home or abroad, that is not praiseworthy. There is nothing in the remotest degree that indicates a conclusion in the testator's mind



against him. There is a marked contrast to this in what he has written against these appellants to which reference will be made later. It was to Dwight's house that he came when he came to stay. There is no evidence to show that he slept at Irving's house more than on an occasional visit of one night p. 145. In his last illness he was at the house of his son Dwight; here he found his own wife, also the wife of Dwight, Jr., and the wife of Charles A. Ashley who had left her husband's home with her son. It was to the house of Dwight that the mother came when the mother was asked to leave the house of Charles, p. 217. It is usually a fair conclusion as to the comparative conduct of children that the conduct of that child with whom a mother prefers to live is to be preferred. It certainly does not indicate the opposite of this. The experience of life confirms this. Here the father found a happy family and a home His last days were darkened by the conduct of the other two sons. It was in the safe of the son Dwight that he left his will, sealed, and to him that he looked to preserve the unity of the family. It will be seen later in the statements concerning the conduct of the other two sons that he was anxious for the preservation of the Savoy Company, p. 212. Dwight who was the eldest son seemed to be the only one of the three children who had a sound business head upon his shoulders. Upon this fact it is apparent that the father relied greatly. It is a very significant fact that while the mother was staying at the home of Charles where she paid her board, p. 401, that it was to Dwight she gave her proxy in the Savoy Realty Company, p. 390. The continued confidence

in Dwight, Jr., is seen in many significant acts. It was he who was selected to be executor of his will in April 1924. On September 29th, 1918, the testator made the following memorandum in writing in which he stated

> "I here attach this to my last will and testament that the executors of my will shall be Dwight Ashley, Jr., and William B. Gourley; * * * in event of either of the above executors will not qualify, I will then have them name of more executor as they choose." p. 279.

Here is convincing evidence that any differences during the years 1916 and 1917 between the testator and Dwight concerning the Hawthorne Silk Company and Savoy Realty Company had been forgotten by the testator. This is but one year later. It changed the selection of the three sons as executors in the will of 1910, p. 412. This written statement of the testator contradicts the statement of the appellannt, Charles E. Ashley, that Dwight Ashley, Jr., and his father were estranged four years, p. 396.

He fixes the period of estrangement close to 1920. Here we have unimpeached evidence that this favorite son was selected in September, 1918, as executor and the two appellants removed. This selection of Dwight, Jr., was more than six years before the execution of this codicil. Another indication of his affection and confidence for his son Dwight is the fact that notwithstanding the execution of the codicil which only relates to the Savoy stock he handed the very certificate of stock for these 140 shares to Dwight a few days after the execution of the codicil, p. 212. This delivery



constitutes a perfect gift **inter vivos.** The warrant on the back of the certificate was signed in blank by the testator. This certificate will be left with the Sergeant at Arms for inspection by the court. Dwight Ashley, Jr., said the certificate of stock when last seen by him before this presentation had no endorsement thereon, p. 304.

> Under the Uniform Stock Transfer Act, title to a certificate of the shares represented thereby can be transferred by the delivery of the certificate endorsed either in blank or to a specified person by the person appearing on the certificate to be the owner of the shares represented thereby.

While the administrator pendente lite of the estate placed this stock in the Inventory it was only delivered to him under protest by the respondent, p. 224. There seems to be a little doubt therefore that this was a valid gift. If it be so there is no occasion for the present controversy.

Here is a series of acts indicating continued confidence and affection. This situation is all the more marked when it is contracted with the conduct of the other two sons.

## CONDUCT OF CHARLES E. ASHLEY and IRVING D. ASHLEY

It will be seen by an examination of the record that notwithstanding the act of oblivion so to speak shown by the will of April, 1924, for the past conduct of the other two sons that they continued in their course of drink and family irregularities so that if a reason were required for the change it is fully shown. Charles E. Ashley lived at the home

of his father for many years at 469 River Street in the City of Paterson. It is somewhat shocking to learn from the testimony that he was not on speaking terms with his father for some years although living at the same house and dining at the same table, p. 257.

His own counsel asked him in rebuttal:

"Q. What were the relations between you and your father during this period? A. We talked when we met." p. 394.

The Vice Ordinary asked:

"Q. Did you go to see him? A. No, sir.

Q. Did you write to him? A. I did not.

Q. Did you remember him at Christmas time by sending him a gift or remembrance? A. No, sir.

Q. Did you remember him on his birthdays? A. No, sir." p. 394-395.

His mother left his house. His wife and son left his house. All this the father knew. At the time the testimony was taken before the Vice Ordinary he admitted there was an action pending by his wife before V. C. Lewis against him, p. 406. This was the culmination of the unfortunate circumstances known to the testator. He admits that his father knew the difference between him and his wife. His answer to the question was,

"Yes, I have been told so," p. 401.

"I think they both left about the same time," p. 402.

Dwight Ashley, Jr., said his father told him that his mother was asked to leave Charles home. She came to my house, p. 217.

Charles says on inquiry by his own counsel

"Q. Why did your mother leave your



home? A. Because, I presume, of my family troubles." p. 405.

IRVING D. ASHLEY, as a witness before the Orphans' Court on April 8, 1925, admitted he had not been home since the funeral which was on February 23, 1925.

"Q. How long before the funeral? A. Two days.

Q. And how long beyond that, how long? A. Seven weeks."

He said his father understood the relationship, p. 92.

An impressive piece of testimony perhaps as anything in the case to indicate the testator's opinion of the habits of his two sons, Charles and Irving was given by Miss Clark, the housekeeper at the farm and who appeared as a witness for the caveator in the Orphans' Court. She said on cross examination:

"Q. You spoke of some conduct he didn't like? What conduct, whose conduct did he speak of? A. The two boys.

Q. Which two? A. Charles and Irving.

Q. What did he say Charles and Irving had done? A. He didn't like their drinking.

Q. Did he say anything about what the result would be if they kept on drinking? A. He said the boys would go to Hell if they don't stop." P. 64.

This was from the mouth of their own witness.

The testator had financially advanced Irving D. Ashley far beyond any of his sons. Our statute

of distribution provides that if any child is advanced by the intestate in his lifetime by a portion greater than that of the other children the surplusage shall be distributed as if such advance had not been made so as to make the shares equal. The father had strong grounds to share this view. He seemed to be continually importuning his father for money and must have been a source of great annoyance to him during his period of impaired health. Neither Charles the appellant, nor Dwight the respondent, ever asked or had a note signed by the testator. About the time of the liquidation of the Ashley & Bailey Company the testator was endorser on $840,000 of its paper, p. 225. He gave to his sons the following sums (approximately) to Dwight Ashley, Jr., $14,000, to Charles E. Ashley, $17,000 and to Irving D. Ashley $12,000. He took demand notes for this, p. 225. None of this money was returned notwithstanding the notes. It seemed to be regarded by everyone as a gift. The administrator pendente lite has made no claim for such moneys. There was, however, a series of transactions long after this period which of itself is convincing evidence that Irving had received large sums from his father. The record shows this situation, p. 111. There were three notes of Irving D. Ashley of $1000, $2000 and $4500 amounting to $7500, p. 159, for money loaned by the testator. These notes were placed in the inventory and are admitted. There were also three notes discounted at the First National Bank made by Irving D. Ashley and endorsed by his father amounting to $5482.66, p. 158. Notwithstanding the present charge of the appellant, Irving D. Ashley, that his father was incompetent it appears that on Febru-



ary 17th, 1925, he went to his father and had him endorse one of these very notes for $1565. This was only four days before his death, p. 83.

There were fifteen checks from August 2, 1920 to December 8, 1923, representing $18,800 made by the father to Irving Ashley, p. 111, 112, 113, 160.

There were certain cancelled notes by the father in favor of Irving D. Ashley and the Gary Silk Company which was Irving Ashley's Company amounting to $23,661.64, p. 224. Of this sum $14,102.98 represents loans to the Gary Silk Company and $9558.66 represents loans to Irving D. Ashley.

This indebtedness was represented by notes to the testator. They were paid by testator. It is admitted they were not paid by Irving D. Ashley, p. 160. These sums make $55,444.30. He also gave to Irving a note of $10,000 made by Hawthorne Silk Company to the testator to cancel a debt that Irving D. Ashley's Company, the Gary Silk Comopany, owed the Hawthorne Silk Company, p. 288. This appellant says "it was to protect him from the boys." The Gary Silk Company had some silk thrown by the Hawthorne Company the labor of which cost about $10,000. The father held a note of the Hawthorne for this sum. He gave it to the appellant. This is the "protection" from paying his debts. This makes the sum of $65,444.30 exclusive of the 1910 notes which are not included as the other two sons at that time received sums of about equal amounts. There were 6 payments making $800 from July 24th, to December 8th, 1924. Thus it appears that this huge sum of money was paid to one of these three young men and that neither of the other two received a

dollar from their father except Dwight during the last year. Like Irving he received 10 payments from June 5, 1924 to February 3, 1925 aggregating $1800.

If the 46⅓ shares are worth $300 a share, it will only make $13,900. No accurate statement of course can be made concerning the value of the Savoy stock for the reasons hereinafter stated but if we assume for the purpose of argument that it is worth $300 a share the 46⅓ shares which would go to him if the codicil is set aside would only represent $13,900 or much less than one quarter of the amount he has received from his father. Although suit was begun against him for part of this sum he claims that they were all gifts, from his father and that he does not owe the estate one penny, p. 108. So far as any equal distribution of his father's estate is concerned this son has no equitable claim.

His father speaks of his irregular life in his letters including his habits of drink. A very noticeable example of this drinking life was shown on the very day of his father's death. His home had been notified by Mrs. Ashley, Jr., that his father had died at six o'clock in that morning. He came to the house of death at ten a. m., with a bottle of whiskey in his pocket. Later his breath was tainted. He was put to bed and some hours afterwards got up and went out and was unable to walk straight, p. 216. His excuse on the witness stand was that it was for his father. This is unbelievable when the testimony shows that he was notified of his father's death, p. 215.



The conduct of both Charles E. Ashley and Irving D. Ashley continued after the execution of the will. It is very evident that notwithstanding the testator concluded to forgive the past in his own mind on the day of the will, April 28th, 1924, that the two sons, Charles and Irving went further to the bad. There was not a line of testimony in this cause that the eldest son, Dwight, has any communication with the father about these subjects. The information was obtained from what he observed, from his wife, from Charles's wife and Irving's wife.

In a letter from the testator bearing date May 10, 1924, p. 204-205, he writes to his wife:

> "As Charles is trying to break up his home we must not let him do anything to make matters worse. * * * The boy is out of his mind * * * I look upon Charles' acts as a great offense * * * but I do pray he will recover and try and pull together, build himself up in business as well as not desert his family and stop his drink; it means suicide in the end; it put Irve (Irving) on his back for six weeks, and it was fortunate he was insured so he got paid to be sick." p. 205-206.

In this letter he is still desirous of reclaiming the sons.

In a letter of the testator dated May 24th, 1924, he writes to his wife:

> "So long as the boy does not abuse Vi she should not drive him out of her room I think. My, what a terrible life it would be if he got rid of Vi and got that hell cat on his hands; it would be a lasting sore for him

and his life would be thrown away—same with Irve, the whiskey got him in shape so he did not want the woman that done all she could to nurse him back to health—and now he seems a changed man—that was all the rum he got into him, and its the same with Charley. Let us hope and pray he may soon see daylight and come to his senses again." (Vi—Charles' wife) p. 206.

In a letter dated May 28th, 1924, he writes:

"I shall help Dwight to pay his expenses until there is some change." p. 207.

And again in the letter of June 5th, 1924, he writes to his wife:

"It is a good thing Vi (Viola, Charles' wife) is not to come home at present, as Vi is the kind of woman Charlie will need before long." p. 207.

In another letter of June 16th, 1924, he writes to his wife,

"Charles will injure himself and in time this woman will turn him down, and then he will think of Ma and Vi. Now I told Vi what I thought of divorce, and let me say I never heard of a case so ridiculous as what Charles is putting up to his wife. Now, Vi is a good wife and would stick to him in times of distress and this woman will not when his cash is low." p. 209.

In a letter to Charles' wife dated June 16, 1924, the testator said:

"Dear Viola: Yours received. Now, if you should give Charles a divorce it would look as though you consented on account of him having some evidence against you. Again,



the boy would get someone not of the kind that would stick to him in times of adversity. I regret that he has gone mad and lost his best judgment and has caused anxiety for us all, as he is our son and we only want to rescue him from future perils." p. 209.

In a letter dated July 6, 1924, to his wife the testator writes:

"I hope you will get some encouragement from 25th Street and Charlie will make up with Vi as his future is ruined if he will pursue in the present course. We should do our part to change it if we can." p. 210.

He writes further in this letter

"I think Florence (Irving's wife) will do her part and I am glad Irv has such a wife—and hope he will try to appreciate her—Vi is a good wife but Chas. wants a fool and a butterfly." p. 424B.

In a letter dated the 13th day of November, 1924, he wrote again to his wife as follows:

"I think if the courts would open the house and if Viola went in and Bill (Charles' son) I would like to see if Charlie would recover and be a man. I think Vi is the one not to object to go back providing Charles will treat her right and keep the woman out of the house." p. 211.

These letters are all written after the will and before the codicil.

We know from the correspondence between the testator and his wife that most of the testator's letters were written to his wife in answer to letters of hers giving him presumably the things of

interest about the family. The father therefore had good ground to place the future of the Savoy Realty Company in more competent hands. It may be said here that there is a very interesting exhibit wherein the testator was found to have figured the division of the Savoy stock. The shares of the Savoy stock at the time of testator's death stood as follows:

Dwight Ashley, Jr., 90 shares.
Charles E. Ashley, 90 shares.
Elizabeth Ashley, 90 shares.
Irving D. Ashley, 90 shares.

The remaining 140 shares making the total of 500 shares was in the name of the testator. While Charles E. Ashley and Irving D. Ashley, the appellants, were temporarily estranged for a time both it was believed would unite against their brother Dwight. The father evidently so believed because he spoke of the control of the company. Secondly his figures are shown by this paper Exhibit G-3, p. 424 and p. 204. It will be seen that he counts his son Dwight's stock with his own; the two together make 230 shares. 251 shares are a majority. He had put Charles Ashley and Irving Ashley on the opposite side of the paper together with his wife, and these three together make 270 shares. I may be permitted to say that a suit is now pending in the Court of Chancery on behalf of Charles and Irving Ashley against their mother charging that their mother has only a life interest in the 90 shares in her name and that the remainder belongs to them. If this codicil be set aside they will control the company. That is the main object of this contest.



Reference is made in the brief of the appellants about the failure of the Hawthorne Silk Company. This seems unfortunately to be the fate of a great many silk enterprises. It was so in all the Ashley silk manufacturing concerns. The original Ashley & Bailey Company of which the father was half owner went into liquidation; the Hawthorne Silk Company went into bankruptcy. The Gary Silk Company organized and operated by the appellant, Irving D. Ashley, went out of business and settled with its creditors for 15c on the dollar, p. 163. The W. H. Ashley Silk Corporation organized and operated by the brother of the testator and a witness for the caveators also went out of business.

Two very noted instances occur in the testimony which show the mental attitude of the testator concerning the stock in question. On January 23, 1925 the respondent Dwight Ashley, Jr., made a statement to his father about what he purposed to do with the income of the 140 shares of Savoy stock. This proposal is marked Exhibit G-2 and the envelope marked G-4. This exhibit is printed both in the body of the testimony on page 202 and also on page 423. It is marked in the State of the Case as "Trust Proposal." No such words appear on the original. These words have been added by counsel. By this paper the respondent proposed to assign part of the income to the wife of Charles E. Ashley for her natural life; part of the income to their son, William N. Ashley in the testimony called "Billy"; part of the income to the wife of Irving D. Ashley for her natural life and also part of the income to their son Robert Brown Ashley. In other words one third of the income of the 140 shares was to be given to the wife and

son of Charles and one third of the income to the wife and son of Irving D. Ashley for their lives as received from the company. Nobody knew of this proposal but the father and son. This son, Dwight, Jr., told the story of this offer upon the stand, p. 202, and yet he is criticized for making it. He is first attacked for the codicil itself and then for this proposal. The paper was prepared in the office of the father's counsel, p. 162, and appears upon his letterhead. He says he submitted this proposal to his father, p. 202, that his father retained possession of the paper for over a week and returned it to him in the same envelope in which it was enclosed when handed to the testator. This envelope also bears the printed name and address of the father's counsel. There appears on it the word written in pencil "rejected." The respondent said that he saw his father write the word on the envelope. This paper was marked as an Exhibit on December 10th, 1925. The testimony was concluded on March 23, 1926, p. 334. Thus the appellants had more than three months to submit the word to the critical inspection of a handwriting expert. This is a most valuable document to determine the question whether or not the testator desired to give this stock to his son Dwight Ashley, Jr. The two interested parties, Charles and Irving, think it is not his handwriting but of what significance is that in view of the failure to satisfy the court by competent testimony of its want of genuiness. I need not dwell on the formation of the letters as compared with his handwriting; that will be done by the Court. It is quite apparent that the characteristics are the same; the formation and shape of the letters the same, if the



writing is compared with Exhibit G-1, p. 423. The word "better" in this last Exhibit about the middle of the manuscript shows two loops in the formation of the "t" as in Exhibit G-4. Other similarities are readily noted.

This proposal was handed to the testator, January 23, 1925, two weeks after the execution of the codicil and four weeks before his death.

Another significant act is that the testator offered one half of these 140 shares to the appellant Irving D. Ashley if he would join with Dwight and work and keep the Savoy as a going concern, p. 305-309-353. Irving D. Ashley did not deny this. The statement that such a proposition was made came from Dwight Ashley, Jr., in the Prerogative Court. The appellant Irving D. Ashley was a witness in the Orphans' Court (Dwight Ashley, Jr., was not) and did not disclose such an important fact. He has, therefore, nobody but himself to blame for not accepting the offer of his father. This offer was made before the codicil was signed. The father supposed that Irving would work with Dwight in the preservation of the Savoy and apparently had no reason to like the dominance of Charles for the reasons given. It appears that there was some difference at this time between Irving and Charles, the two appellants, but knowing the character of both sons he had good reason to believe that it was as usual of a temporary character. There is no special cause shown for such an estrangement. The very thing happened that he foretold. After his death the evidence shows that the two combined and assumed control of the company. Theretofore no payment had been made to any officer. They immediately engaged a

manager at a salary of $3000 a year to manage the affairs of the company. In the summer of 1925, Charles E. Ashley filed a bill in Chancery praying for the appointment of a receiver for the property of the Savoy Realty Company. The rule to show cause was discharged by Vice Chancellor Bentley. This confirms anew the expectation that the father had of these two sons. Every angle of the case shows the thought of the father about the future of the company.

## VALUE OF THE STOCK OF THE SAVOY REALTY COMPANY

It is suggested that the respondent, Dwight Ashley, Jr., deceived his father about the value of the Savoy stock. Counsel has set forth the essential rules of law that are requisite to set aside a will with great particularity but has failed to support them. The constant repetition of a statement adds nothing to its support. How plain the facts are. Every dollar of value of this company was made by the testator. Every acre of ground in North Carolina was purchased by him. He bought the land for the old Ashley & Bailey Company and erected two mills thereon. He made the contracts, purchased the land, purchased the machinery, purchased the equipment for the plant. When the Ashley & Bailey Company liquidated, this particular plant went to the Hawthorne Silk Company. He visited the property about every five weeks for nearly twenty years. His sons knew nothing of the value. It is doubtful if Irving Ashley ever saw the plant in his life. The respondent Dwight Ashley, Jr., the testimony shows



was there only three times, p. 352. Charles E. Ashley said he visited the property a number of times. The testimony does not disclose how many times. The father in addition to purchasing the property for the silk mills at Fayetteville purchased considerable tracts for himself which he later turned over to the Savoy Realty Company. These tracts as the testimony shows are largely sandy soil which is common in that part of North Carolina. There are a number of small unpainted shacks on the property without foundations, which were erected for the colored help in the mill. The photographs show the character of the property. How then could any son of his tell him what the value of this land was? They knew nothing; he knew all.

Everyone would be glad if the offer of $100,000 for a part of this property could be renewed. There is no such good luck in sight. There was no evidence of the value of the Fayetteville property put in evidence except that of Dwight Ashley, Jr. He said that the listings of the property was $150,000. This testimony appears on pages 316 and 317. These listings are the approximate value of the property. When can this property be sold? Who wants it? Who can say what the present value is of the tracts of land of this quality outside of a small town in North Carolina? These tracts may be there for 25 years before they can be sold. There is no indication of what they are worth in money today. No testimony was put in by the appellants to show the value of this property. Their estimate in consequence is not based on any fact. Irving Ashley spoke of $500 a share as the value of the Savoy stock. He had not the slightest knowledge of values.

The respondents had a real estate expert from Fayetteville, North Carolina, to testify concerning these values, p. 411. Counsel for the respondent said:

> "I have a real estate expert from Fayetteville in this case but as there is no evidence put in by the other side I will not call him. He is a Mr. Cooper."

The testator also gave other tracts of land in Passaic County to this company. He knew the value of every tract.

The appellants called a witness, Soren P. Hanson in what they called rebuttal testimony. Objection was made but the testimony was taken. The examination will show that the witness had sold no property in the neighborhood, p. 382, and was in doubt as to where some of the property was.

MR. JOHN E. GLASSER, for the respondents, testified, to the values of the Passaic County property. His qualifications as an expert were admitted by counsel. He testified that the aggregate value of the property was $58,050.00, p. 409-410.

It will be recalled that at the time of the statement that the approximate value of the shares were $250. that $51,000. of the company's money and securities were pledged by the Savoy to pay the Hawthorne income taxes as stated. Nobody knew whether this would be returned or not. The important point however is that this was known to the testator in the year 1922 when the cash and securities were pledged with the bank, p. 286, with his advice and consent.

The testator signed the written agreement in



1924 relating to this Government tax about this money, p. 421, Exhibit V-10.

On the books of the company its assets are set out at $221,958.19. The items are shown on page 60. From this sum of course the Liberty Bonds, Certificates, Cash and Mortgages were all assigned to the bank under the agreement aforesaid. From the statement of the total assets of $221,958.19 should be deducted the $51,000. deposited with the First National Bank. This would leave the value as shown by the books to be $170,858.19 or $341. a share for the stock if it was turned into present cash. To make such land available even if a market was had, a considerable amount of money would have to be spent in its development. Streets would have to be laid out, curbs and gutters set, sidewalks made, water and gas pipes laid and provision made for electricity. Carrying charges including taxes have to be met. Many years would undoubtedly pass before an adequate return would appear. A certificate of stock listed on the exchange can be readily sold. These shares outside the family would be most difficult to sell. The point however is that the man who knew more about it than all his sons together was the testator himself.

The testator was not immediately concerned with whether the stock in question was worth $250. or $300. or $400. a share. He knew all about the company. What he was concerned with and very deeply concerned with was the fact that it should be in the hands of his wife, and the son in whom he had, after years of association, unbounded confidence, the man who had been president of the company since 1910, the year of its incorporation.

The above is a history in this case. What transpired years before the execution of the will is of little purpose. It was introduced by the caveator below and had to be met by the respondent. What is of importance is the period of time between the will and the codicil. It has been shown by numerous letters of the testator how grieved he was at the condition of his two sons, the appellants, in the year 1924 after the execution of his will. He did what any business man would do to protect his interest which was in the sound progress of the company. The return by the appellants for his gift was to apply to the Court of Chancery for a receiver for the company which embraced all the family fortune.

It is said the beneficiary under the codicil occupied a fiduciary relationship to the testator. He was a son. It does not follow from this fact that there is any fiduciary relationship. His father kept some securities in his safe. This does not create such relationship.

The testator was not dependent on his son. This son's relation to the codicil is set forth above. It is subject to the closest scrutiny. Ample reason is given for a change in the will. Dwight Ashley, Jr., did not conceal the execution of the codicil. There was no duty resting on him to proclaim it. After 170 pages of testimony in the examination of Dwight Ashley, counsel has not shaken his statements.

It is respectfully submitted that the decree of the Prerogative Court should be affirmed.

WILLIAM B. GOURLEY,
Of Counsel with Respondent.

MAY.1.1928

*Filed after the Oral Argument by leave of Court.*

Case No. 9.—This reply memorandum is submitted pursuant to leave granted in open court.

# New Jersey
# Court of Errors and Appeals

| | |
|---|---|
| *In the matter of* The Probate of the Will and Alleged Codicil of DWIGHT ASHLEY, SR., deceased. | *On Appeal from Prerogative Court* |

## APPELLANTS' REPLY BRIEF.

### Concerning Execution of the Codicil.

The burden of respondent's argument on this point is that the testimony of Marie Uhlig, one of the witnesses to the codicil is not to be believed. This voluntary impeachment of his own witness is quite startling, but the method by which this result is sought to be obtained is even more interesting. Miss Uhlig is throughout referred to as a "young girl" whose "temporary lapses" as a witness should not be taken seriously. (Respondent's brief, bottom p.7) While the record does not disclose her exact age, it does show that she had been employed by respondent for 12 years (S.C. p33, 11. 26-27).

One of these "lapses", the respondent says, relates to her testimony that nothing was said concerning the character of the paper, and that she did not know it was a testamantary instrument. Counsel for respondent argues (p.8) that, because she suspected when called by the beneficiary and before entering testator's room, that a will was to be executed "because Father Ashley was sick" (S.C. p. 37, 11. 1-20), this surmise became a fact during the ceremony. But Miss Uhlig's testimony is free from doubt on this point. Although it was adverted to numerous times during her cross-examination and redirect examination, she was positive that no one said anything in her presence concerning the character of the instrument, and that she did not know when she subscribed it what it was. Despite the surmise she had formed before entering the room, nothing was said during the ceremony to lead her to *understand as a fact* that she was witnessing the execution of a testament. Accordingly, respondent's brief is grossly inaccurate in setting forth that "She had previously stated that Mr. Gold stated it was a codicil to the will" (bottom p.8).

Respondent urges that the testimony of the other witness, Mr. Dudley, shows a more accurate recollection of the circumstances. We are content to rely on a comparison by the Court of the testimony of these respective witnesses. It should be pointed out, however, that Mr. Dudley, aside from being a friend of the beneficiary for 17 years, was at the time of giving his testimony under financial obligation to the beneficiary. (S.C. p. 18, 11. 23-33). His testimony discloses a suspicious familiarity with the bare essentials of the execution of a testamentary instrument, even to point of correcting counsel as to the distinction between a will and a codicil (S.C. p. 23, 11. 30-34).



This may explain why he attributed to testator a statement that the paper was a codicil to his will. This statement was obtained from the witness only after two leading questions were ruled out (S.C. p. 17 l. 30 to p. 18 l. 10). Nevertheless, it appears in respondent's brief (bottom p. 6) as an unqualified fact in the case, although both Mr. Gold and Miss Uhlig are insistent that testator was altogether silent during the brief ceremonial.

The last sentence on page 6 of respondent's brief would lead one to believe that the codicil was read aloud in the presence of the witnesses. Dudley and Gold testified that only the attestation clause was read. This distinction is important where the question is whether the witnesses were made to undrstand what kind of paper they were being asked to attest.

Furthermore, Mr. Dudley expressly admitted twice that he did not have a clear recollection of what happened in connection with the execution of the codicil. (S.C. p. 24 11. 4-7; p. 25 11. 26-28). His testimony is characterized by an unusual number of answers like "I cannot say"; "I don't recall"; "I don't remember", (S.C. p. 24, 26, 27), although less than three months had elapsed between the execution of the codicil and the hearing in the Orphan's Court.

Compared to his testimony, Miss Uhlig's is more straightforward and discloses a closer attentiveness on her part to the ceremony itself. Mr. Dudley admitted he did not consider this ceremony of greater importance "than witnessing any other paper" (S. C. p. 27, 11. 10-12).

The crux of this entire question is whether the codicil was subscribed by *two witnesses who knew its* testamentary nature. One of the witnesses testified nothing was said concerning the character of the paper. That is one ground of attack. But even if something was said, it should have been of sufficient clarity and import to bring the

character of the instrument to the consciousness of *both* witnesses. Miss Uhlig says she did not *know* what kind of a paper she was subsribing. She certainly had no motive to tell an untruth with respect to a matter which was so important to her employer.

The authorities cited on pages 13 to 18 of respondent's brief uniformly declare that the testator must make known, "clearly and distinctly * * * that the paper which he desires the subscribing witnesses to attest is his will"; and that "the witnesses must know it is the will of the testator they are witnessing". None of the cases hold that it is sufficient if one witness testifies he knew he was attesting a testamentary instrument.

Respondent's brief on page 18 quotes from Justice Parker's opinion in the *Sutterlin case,* 99 *N. J .Eq.* 363, a statement of the former Prerogative Court rule concerning the nature of the presumption arising from an attestation clause, as if that rule had been adopted by the Court of Errors and Appeals and was now the law of this state. But in the same paragraph of the opinion, Justice Parker said (p. 368):

"So far as shown by the researches of counsel, the rule has not been so strongly stated in this court, though in *Veazey's case,* 80 *N. J. Eq.* 466, we adopted an opinion of Judge Joline in the Orhans' Court, quoting *McCurdy v Neall, supra.* But in *Bioren v Nesler, supra,* we definitely adopted the rule as laid down in *Mundy v Mundy,* 15 *N. J. Eq.* 290 (at pp. 562-563)"

Thus the governing principle now is that expressed in *Bioren v Nesler,* 77 *N. J. Eq. at* 562-563, that the attestation clause is only *prima facie* evidence of the facts in it, which may be overcome by affirmative contradictory evidence, such as that given by Miss Uhlig in this case. The safeguards prescribed by the statute would be rendered ineffective if the mere inclusion of an attestation clause, admittedly not read by the witnesses, were given the effect of conveying to a witness knowledge of the character of the instrument, when the witness testifies in the most positive terms that such knowledge was not in fact communicated to, and did not register in, her mind.



**Concerning the point of undue influence**

To avoid the presumption of undue influence, counsel for respondent seeks to minimize the confidential relationship existing between testator and Dwight Jr. But if he did not occupy a position of trust, how can the sudden bequest of the 140 shares of Savoy stock to him be explained?

The evidence concerning testator's experiences with his sons in the two family corporations, years prior to his death was not introduced to show that he harbored ill-feeling against the beneficiary to his dying day, but rather to establish that Irving had no part in those rifts (whether they occured because of business differences or other reasons), and that Irving did not even temporarily ever lose his father's affection.

We cannot deny that in the latter years of testator's life Dwight Jr., did get back into his father's good graces. During 1923 and 1924 testator delivered checks signed in blank to Dwight Jr., authorizing him to fill them out for such amounts as Dwight Jr., as Vice President, found the Hawthorne Silk Company needed from time to time. (S.C. p. 238 l. 25 to p. 239 l. 10). Towards the end of testator's life, Dwight Jr., took care of his finances, and kept his securities in his safe (S.C. p. 263, 11. 30-38). And after the stroke testator suffered in the summer of 1924, testator was more and more dependent on Dwight Jr.

On these facts, we contend that Dwight Jr., did, towards the end of testator's life, occupy a position of trust and confidence enabling him to exercise undue influence.

Vice-Ordinary Fielder found in *re Solomon's Will*, 95 *N. J. Eq.* 706, *at* 711, that Mrs. Milberg occupied such a position with respect to her father on facts no stronger than in the case at bar. Vice-Ordinary Lewis held *in re Ulrich's Will*, 98 *N. J. Eq.* 621, *affirmed* 5 *N. J. Adv. Rep.* 1492, that Burchill occupied a position of trust and confidence with respect to the testator in that case. The presumption of undue influence having been invoked in those cases, it is certainly applicable in the case at bar.

Respondent's brief (p. 26) misstates the testimony of Mrs. Dwight Ashley Jr., concerning testator's physical condition between January 4th and January 9th, when the codicil was executed. She "could not recollect" whether testator came downstairs for his meals between these dates (p. 373, 11. 16-18), and it was not until after January 9th that he went out on the porch (p. 372, 11. 33-40).

The interpretation of Ex G 1 on pages 30 and 31 of respondent's brief is ingenious, and the result is rational; but only after testator's mind is supplemented by the mental processes of counsel for respondent. The original exhibit having been left with the sergeant-at-arms, we are content to leave to the court its value as an index of testator's mental condition on the day the codicil was executed.

Counsel for respondent has, through the formula "I may be permitted to say" brought into his brief several matters entirely outside the record. Most of page 36 of respondent's brief deals with a tax compromise effected by the trustee in bankruptcy of the Hawthorne since the conclusion of hearings in this case, and approximately two and one-half years after testator's death. Obviously, if the government had not agreed to a compromise the Savoy as guarantor would have had to pay. Another matter not in the record is stressed at the bottom of page 52 of respondent's brief.



On page 41 respondent's brief states that testator's wife came to Dwight's home "when she was asked to leave the house of Charles". The testimony referred to is Dwight's that his father said his mother had said so. This was the clearest type of hearsay and was admitted over objection, counsel for respondent urging that there was trouble enough without bringing the mother, who was then at Dwight's home. (S.C. p. 217 11. 9-35). Charles flatly denies the truth of this testimony. (S.C. p. 388, 11. 22-34).

The respondent takes the position in his brief that inasmuch as the testator executed a will in April, 1924 which indicated a forgiveness of all prior offenses on the part of his children, it is the conduct of the sons between April, 1924 and the execution of the codicil which should determine whether or not this codicil was obtained by fraud and undue influence. It is argued that the two principal grounds for the discrimination against Irving and Charles were their drinking habits and their domestic troubles. Counsel for respondent on page 45 of his brief cites a page reference to Irving's testimony that his father was aware of his domestic difficulties, but fails to fix the time. Irving's domestic troubles began prior to the execution of the will in April, 1924 and since testator understood the nature of the difficulties he did not criticise Irving. (S.C. p. 105, l. 28 to 106, 113. If, as respondent argues, by the execution of the will of April, 1924, he forgave his sons for conduct of which he did not approve, why should this alleged ground for discrimination be urged to sustain the codicil? The respondent having advanced this explanation, it was incumbent upon the appellants to show that testator was not the type of man who, under normal circumstances, would have cast all blame on his own sons for family difficulties. And it is for this reason that evidence was introduced

to show that testator had not for many years prior to his death, lived with his own wife. The Vice-Ordinary saw fit to comment upon this fact in his opinion, and it is unfair for respondent to urge that appellants degraded themselves in undertaking to answer false charges.

As for Irving's and Charles' alleged drinking habits, some weight might be given to respondent's contention if he had been able to prove that the Ashley family had, prior to April, 1924, been composed of teetotalers and that after the execution of the will the brothers became drunkards. Reference has already been made in our brief to the Vice-Ordinary's statement that he was not convinced that Irving and Charles were drunkards and it also appears that testator and Dwight Jr., were not teetotalers. But, if, as respondent urges, the will of April, 1924, was intended to forgive conduct which testator did not approve, then why should this alleged ground be urged as a reason for the making of this codicil?

In his letter of May 10, 1924, (quoted at page 49 of respondent's brief) testator referred to drink having put Irving on his back for six weeks. This illness occurred in March, 1924 (S.C. p. 136, l. 33-40) and the extent to which testator was incensed over Irving's conduct in this respect is apparent from the fact that within thirty days he executed a will bequeathing his property to his three sons, share and share alike.

To sustain this drinking charge, counsel for respondent finds it necessary (p. 48) to make much of the fact that after Irving arrived at Dwight's home and found his father dead he had to resort to a stimulant. It is worth noting that Dwight admitted this was the only time in his life he had ever seen Irving under the influence of liquor. (S.C. p. 296. 11. 24-32).

Another reason alleged by respondent in justification of the codicil is that testator was afraid of



a combination between Irving and Charles to take the control of the Savoy out of the hands of Dwight Jr. Respondent states on page 55 of his brief that while Irving and Charles were at the time not on speaking terms, it was merely a temporary difference. But the fact is that they had not been on speaking terms for years, that testator was fully aware of this condition, and that at their mother's request they made up on the day of the funeral. (S.C. p. 98, ll.10-16).

Counsel for respondent then proceeds to show that "the very thing happened which he (testator) foretold". (Bottom page 55). Reference is made to certain differences which arose between the stockholders after the testator's death, because Irving and Charles were incensed over the unfairness of the codicil which their brother had obtained. The codicil was condemned as unfair by testator's wife (S.C. p. 408, ll 20-30) and the only member of testator's immediate family who regarded the codicil as fair was the beneficiary himself. Under these circumstances, Irving and Charles would not have been human if they had not in some manner indicated what they thought of their brother's obtaining the execution of the codicil while their father was at Dwight's home in his last illness. The only times the three brothers met were at the meetings of the Savoy, and the unpleasantness existing between them naturally cropped out at those meetings.

Respondent now seeks to use these occurrences after testator's death to prove that testator had in mind that his other two sons would attempt to oust the beneficiary from control of the corporation. This is one of the clearest illustrations of the lengths to which the beneficiary has gone to sustain the codicil. And it is an excellent example of a *post hoc ergo propter hoc* form of argument.

Another reason urged by respondent's brief (pp. 46-47) is that Irving received more than the other sons from testator by way of cash advances.

Counsel for respondent as administrator pendente lite brought into court every cancelled note and check stub from 1915 to 1925 found among testator's possessions with which he could connect Irving Ashley. These total $65,444.30, including a note of the Hawthorne for $10,000 from which Irving never received a penny. Almost all of these loans were made by testator to the Gary Silk Co., a venture in which he was jointly interested with Irving from the time the Hawthorne went entirely under the control of Dwight Jr. and Charles. These obligations were gradually reduced by the Gary, and notes were cancelled (S.C. p. 160 ll. 5-15) until at the end of 1924 the total Gary obligations endorsed by testator amounted to $5,482.66 (S.C. p. 158. These were renewal notes and not, as respondent intimates, new loans which Irving obtained towards the end of testator's life. (S.C. p. 172 l. 33 to p. 173 l. 10).

During this period Dwight obtained "gifts" for his own use exceeding the total advanced to Irving for business purposes (S.C. p. 265-269). In addition testator gave Dwight Jr., for the Hawthorne in 1923 and 1924 checks and endorsed notes for $88,000 which was entirely lost, together with his original investment of $150,000. (S.C. p. 179, l 25-35). How, then, can it be said that Irving obtained from testator more than the other sons? Moreover, if as respondent's brief urges on p. 46, testator desired by means of the codicil to equalize the amounts received from him by his children, and if Irving had received a "huge sum" in excess of the others, why did testator two days before the execution of the codicil offer Irving 70 shares of the Savoy stock? Even Dwight Jr., admitted his father had made this offer. (S.C. p. 352, l. 29 to p. 353 l. 20.

Nowhere does respondent explain what caused the testator to change his mind in so short a time, and execute the codicil giving all of the 140 shares to Dwight Jr. It was entirely unnecessary for testator to give all the 140 shares to Dwight Jr., to



insure the continuance of his control of the corporation. With the 180 shares which Dwight Jr., controlled in his own name and by proxy for his mother, who was living with him, it required an additional 71 shares to give him control.

On the point of Dwight's fraud and misrepresentation in stating to his father that the Savoy stock was worth $200-$250 a share, respondent's brief says in effect that testator knew more than his son did about the Savoy property, and could not, therefore, have believed him. This ignores the fact that for eight years prior to his death testator had no active connection with the Savoy and knew nothing of what property was sold, what was done with the money, etc. When he asked Dwight Jr., what the stock was worth, he showed his ignorance of the condition of the company, and was entitled to a truthful answer from his son, instead of which he received a valuation which the same son by his own figures later showed was approximately one-third of the true value.

Respectfully submitted,

ARTHUR T. VANDERBILT,

Counsel for Appelants.