

## INDEX

	PAGE
Statement of Caveats .....	1
Order Granting Probate .....	1
Will of Thomas W. Oram.....	2
Statement .....	4
Notice of Appeal .....	5
Petition of Appeal .....	6
Answer to Petition of Appeal .....	8
Conclusions of Vice-Ordinary .....	10
Decree in Prerogative Court.....	16
TESTIMONY.	
Richard J. O'Connor,	
direct examination .....	18
cross " .....	21
Harry L. Abbott,	
direct examination .....	25
cross " .....	27
Laura T. Oram,	
direct examination .....	31
cross " .....	33
Dr. Peter S. Hann,	
direct examination .....	37
Theodore L. Young,	
direct examination .....	38
James Walters,	
direct examination .....	39

*Order Granting Probate.*

**STATEMENT OF CAVEATS.**

On May 28, 1926, Laura T. Oram filed a caveat with the Surrogate of the County of Morris protesting against the admission to probate of any paper purporting to be the last will and testament of Thomas W. Oram, deceased. 10

On August 13, 1926, a petition for the probate of the will of said Thomas W. Oram was filed with the Surrogate of Morris County.

On August 13, 1926, citation was duly issued by said Surrogate and was returned served on all parties in interest.

**ORDER GRANTING PROBATE.**

Filed as of September 17, 1926. 20

**MORRIS COUNTY ORPHANS' COURT.**

In the matter of an alleged paper writing purporting to be the Last Will and Testament of THOMAS W. ORAM, deceased. } *Order.*

30

This matter coming on to be heard before the Court in the presence of King & Vogt, proctors of the proponent, William Otto, and William Tyacke, proctor for the caveator, Laura T. Oram, and the Court having heard the proofs in the matter and the argument of counsel and no cause being shown or appearing to the contrary,

It is, on this 17th day of September, 1926, on motion of King & Vogt, proctors for the proponent, 40

*Will of Thomas W. Oram.*

ORDERED, ADJUDGED AND DECREED, that the paper writing purporting to be the last will and testament of Thomas W. Oram, deceased, bearing date March 20, 1926, be and the same is hereby admitted to probate as the last will and testament of said Thomas W. Oram, deceased, and that letters testamentary thereon be issued to the executor therein named.

C. F. WILSON,  
Judge, &c.

In the Name of God Amen.

I, Thomas W. Oram of the Town of Dover, in the County of Morris and State of New Jersey, being of Sound Mind, Memory and Understanding, do on this Twentieth day of March A. D. 1926, Make and publish this my last Will and Testament in manner following that is to say;

First: I do order and direct my Executor hereinafter named to pay all my just debts as soon as convenient after my decease. I further direct my said Executor to expend not more than Six Hundred Dollars for my funeral expenses.

Second: I direct my Executor to take charge of my remains immediately after my decease and remove my body to the Warwick cemetery at Warwick New York, there to be interred in burial plot #32 Section D. I order and direct my Executor to conduct my funeral strictly privately. It is my desire that no services be conducted over my remains other than prayers at my grave or at the chapel at the Warwick cemetery. I further order and direct that nothing other than a simple marker be placed on my grave.

*Will of Thomas W. Oram.*

Third: I give, devise and bequeath to Josephine King of the Town of Dover, the sum of Ten Thousand Dollars in recognition of and payment for her faithful services to me during the past twenty six years and to her heirs and assigns forever.

Fourth: I give, devise and bequeath to the Dover General Hospital of Dover New Jersey, the sum of Three Thousand Dollars in memory of my beloved Mother, Hanna Oram, and request that this bequest be acknowledged by the Dover General Hospital by some fitting memorial.

Fifth: All the rest, residue and remainder of my property whether real, personal or mixed I give, devise and bequeath to my niece Helen Oram Lyon, and my nephews Robert Maxwell Oram and Thomas O. Phillips in the following shares; one half to Helen Oram Lyon, one quarter each to Robert Maxwell Oram and Thomas O. Phillips and to their heirs and assigns forever.

Lastly I nominate, constitute and appoint my beloved friend William Otto of Dover New Jersey as Executor of this my last will and testament, to serve without bond and with full power to convey any real estate of which I may be seized at the time of my decease.

I hereby revoke any and all wills by me formerly made.

Thomas W. Oram.

Signed, Sealed, Published and declared by the said Thomas W. Oram and testator to be his last Will and Testament who in our presence

*Statement.*

and at his request and in the presence of each other have hereunto subscribed our names as witnesses in the day and year first above written.

10 Richard J. O'Connor   Dover N. J.  
Harry L. Abbot   Dover N. J.

**STATEMENT.**

20 On October 8, 1926, a notice of appeal from every part of the order of the Morris County Orphans' Court entered on September 17, 1926, which directed the admission to probate a certain paper writing as the last will and testament of Thomas W. Oram, deceased, to the New Jersey Prerogative Court was filed by Laura T. Oram and Marion Oram Tiffany, caveators, with the Morris County Surrogate.

30 On November 2, 1926, petition of appeal was duly filed in the Prerogative Court of the State of New Jersey by the above named appellants, and answer to said petition was thereupon duly filed on November 9, 1926.

30

40

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed June 30, 1927.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Morris, admitting to probate a certain paper writing as the Last Will and Testament of THOMAS W. ORAM, deceased. 10  
*On Appeal.*  
*Notice of Appeal.*

Laura T. Oram, widow of Thomas W. Oram, deceased, and Marion Oram Tiffany, daughter of Thomas W. Oram, deceased, hereby appeal to the Court of Errors and Appeals in the last resort in all causes, from the decree made in the above-entitled cause on June 27, 1927, affirming the decree of the Morris County Orphans' Court, dated September 17, 1927, admitting to probate a certain paper writing purporting to be the last will and testament of Thomas W. Oram, deceased, bearing date March 20, 1926.

Dated, June 27, 1927. 30

WILLIAM TYACKE,  
Proctor for and of Counsel with the Appellants.

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

WILLIAM TYACKE,  
Of Counsel with the Appellants.

Endorsed: Service of a copy of the within notice acknowledged this 28th day of June, 1927.

KING & VOGT, 40  
Proctors for Respondents.

*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed July 2, 1927.

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

10 In the matter of the appeal  
from a decree of the New  
Jersey Prerogative Court, af-  
firming an order of the Mor-  
ris County Orphans' Court  
admitting to probate a cer-  
tain paper writing as the  
Last Will and Testament of  
THOMAS W. ORAM, deceased. *On Appeal.  
Petition  
of Appeal.*

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

The petition of Laura T. Oram and Marion  
Oram Tiffany, the appellants in the above-en-  
titled matter, respectfully show that:

1. Petitioner Laura T. Oram as widow and  
Marion Oram Tiffany as daughter of Thomas  
W. Oram, deceased, find themselves aggrieved  
by a final decree made in the New Jersey Pre-  
rogative Court by his Honor Edwin Robert  
Walker, Ordinary of the State of New Jersey,  
bearing date June 27, 1927, in the matter of the  
appeal from an order of the Morris County  
Orphans' Court admitting to probate a certain  
paper writing purporting to be the last will and  
testament of Thomas W. Oram, deceased, in this  
respect, to wit: that the said decree of the New  
Jersey Prerogative Court adjudges and decrees  
as follows:

40

*Petition of Appeal.*

“It is, on this 27th day of June, 1927,  
ORDERED, ADJUDGED and DECREED that the  
decree of the Morris County Orphans' Court,  
date September 17th, 1926, admitting to pro-  
bate a paper writing purporting to be the  
last will and testament of Thomas W. Oram,  
deceased, bearing date March 20th, 1926, be  
and the same is hereby affirmed: 10

And it is further ORDERED, ADJUDGED and  
DECREED that the respondents, Josephine  
King, Helen Oram Lyon, Robert Maxwell  
Oram and Thomas O. Phillips be entitled to  
costs to be taxed, including a counsel fee of  
five hundred dollars, to be paid out of the  
estate of the decedent.”

2. Petitioners appeal from that part of the  
decree of the Ordinary which decrees as afore-  
said, upon the ground that the same is errone-  
ous, illegal and improper. 20

3. Petitioners therefore pray that the said  
decree of the Ordinary may be reversed, set  
aside and for nothing holden, and that peti-  
tioners may have such other relief in the prem-  
ises as to this Court shall seem proper.

Dated, June 29, 1927.

WILLIAM TYACKE, 30  
Proctor for and of Counsel with Appellants.

Endorsed: Service of a copy of the within  
petition of appeal acknowledged this 30th day of  
June, 1927.

KING & VOGT,  
Proctors for Respondents.

40

*Answer to Petition of Appeal.*

**ANSWER TO PETITION OF APPEAL.**

Filed July 1, 1927.

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

10 In the matter of the appeal  
from a decree of the New  
Jersey Prerogative Court af-  
firming an order of the Mor-  
ris County Orphans' Court  
admitting to probate a cer-  
tain paper writing as the  
Last Will and Testament of  
THOMAS W. ORAM, deceased.

*On Appeal,  
&c.  
Answer to  
Petition  
of Appeal.*

20 The answer of Josephine King, of Dover, New  
Jersey; Helen Oram Lyon, of Great Neck, Long  
Island; Robert Maxwell Oram, of Bayside, Long  
Island, and Thomas O. Phillips, of Cambridge,  
Massachusetts, to the petition of appeal filed in  
the above-stated matter.

These defendants answering the petition of  
appeal, respectfully show that:

30 1. These answering respondents admit that a  
final decree was made in the New Jersey Pre-  
rogative Court June 27, 1927, by the Ordinary  
of the State of New Jersey, and that the two  
quoted paragraphs in Section 1 of the petition  
of appeal are a part of said decree, but these  
respondents deny that the petitioners are ag-  
grieved thereby.

2. These respondents deny paragraph 2 of  
the petition of appeal.

40

*Answer to Petition of Appeal.*

3. These respondents pray that the decree of  
the Ordinary may be affirmed by this Honorable  
Court, and that the petition of appeal may be  
dismissed, with costs.

Dated, June 30, 1927.

KING & VOGT, 10  
Proctors for and of Counsel  
with Respondents.

20

30

40

*Conclusions of Vice-Ordinary.*

**CONCLUSIONS OF VICE-ORDINARY.**

Filed June 9, 1927.

NEW JERSEY PREROGATIVE COURT.

10 In the matter of the appeal  
from the decree of the Or-  
phans' Court of the County  
of Morris admitting to pro-  
bate a certain paper writing  
as the Last Will and Testa-  
ment of THOMAS W. ORAM,  
deceased.

*Conclusions.*

20 Mr. William Tyacke for appellants.  
Messrs. King & Vogt for respondents.

FIELDER, V.-O.

30 Petition for the probate of the will of Thomas  
W. Oram was filed with the Surrogate of Morris  
County by the executor named in the will, who  
is not a beneficiary thereunder. A caveat having  
been lodged by Laura Oram, widow of the testa-  
tor, the matter came on for hearing before the  
Morris County Orphans' Court, which Court, by  
its order dated September 17, 1926, admitted the  
will to probate and granted letters testamentary  
thereon. The widow and only child thereupon  
appealed and the appeal came on for hearing on  
the record, including the testimony taken before  
the Orphans' Court. The will is dated March 20,  
1926, and the testator died May 26, 1926.

40 By his will the testator directed his executor  
to take charge of his remains and specified the  
place of interment. He bequeathed \$10,000 to  
Josephine King, and \$3,000 to the Dover General

*Conclusions of Vice-Ordinary.*

Hospital and gave and devised all the residue of  
his estate to a niece and two nephews. His  
widow and daughter (the appellants) are not  
mentioned in the will. No testimony was offered  
to show the amount of the testator's estate. The  
sole reason urged before this Court for reversing  
the decree of the Orphans' Court is that undue  
influence was exercised by Mrs. King to induce  
the testator to execute said will. 10

The circumstances surrounding the prepara-  
tion and execution of the will are established be-  
yond question. The testator had an attorney  
who had attended to his legal affairs since 1922  
and who was a frequent visitor at the testator's  
home. During a period of six months prior to  
his death he had spoken to his attorney at least  
half a dozen times of his intention to make a will. 20  
At but one of the attorney's visits to the testator  
was the making of a will mentioned in Mrs.  
King's presence and then the testator did not  
speak of the manner in which he proposed to  
dispose of his estate and at no time did Mrs.  
King discuss the subject with the attorney.  
Three or four days before the date of the will the  
testator again discussed the subject of a will with  
his attorney and then told the attorney how he  
wanted his will drawn, giving the names of his  
legatees and devisees and stating the proportion 30  
of his estate each was to receive and the attorney  
took down a memorandum of the testator's direc-  
tions. The attorney subsequently prepared the  
will and took it to the testator's home for execu-  
tion. While the testator was reading the pre-  
pared will the attorney telephoned to a man who  
was a friend of the testator and the attorney to  
come to act as a witness and when this friend ar-  
rived the testator was still reading the will. After  
completing his reading the testator pronounced 40

*Conclusions of Vice-Ordinary.*

the draft correct and then executed it in the presence of the two men, who signed as witnesses, no one else being present. After execution of the will it was handed to the testator and the witnesses left.

10 From the testimony of Mrs. Oram and the reported case of *Oram v. Oram*, 77 N. J. Equity 1, the following facts showing the relation between the testator and his wife and child, appear: Mrs. Oram claimed marriage to the testator in December, 1895. They never lived under the same roof, but he supported her and their child until September, 1899. In or about the year 1910 Mrs. Oram filed a bill against him for maintenance and support and upon her motion for alimony *pendente lite* and counsel fee, he filed an affidavit 20 denying the marriage and, inferentially, that the child was born in wedlock and denying that he had ever acknowledged or recognized Mrs. Oram as his wife. The Vice-Chancellor who heard the motion, allowed a counsel fee but denied alimony. Whether that suit went to final hearing and decree does not appear, but the testimony herein shows that the parties never lived together thereafter; that he made payments for the maintenance of the child until she reached the age of 30 twenty-one and for Mrs. Oram up to his death; that Mrs. Oram and he have not spoken to, communicated with or recognized each other, except to bow when passing on the street, since the maintenance suit was instituted; that she commenced another suit against the testator shortly prior to 1925, which concerned a claim for her dower in lands whereof his father died seized, which he contested and which is reported in 132 Atl. 485 and that the only time she called at his home was about four days before he died, she having 40 learned that he was ill.

*Conclusions of Vice-Ordinary.*

The testimony does not disclose what the relation was between Mrs. King and the testator. It merely shows that she had resided in the testator's home since 1922, but the will states that the bequest to her is "in recognition and payment for her faithful services to me during the 10 past twenty-six years." The appellants do not contend that the testimony produced before the Orphans' Court shows that Mrs. King actually exercised any influence over the testator. Their contention is that because she lived in the same home with him; because she was present on one occasion when the testator spoke of his intention to make a will; because when Mrs. Oram called at the testator's home just prior to his death, Mrs. King came to the door and refused her admittance; because testator was buried in a plot 20 which appears to be the King family cemetery plot and Mrs. King told the undertaker where to locate his grave, a confidential relation must be assumed to have existed between her and the testator and that the burden of proof was on her, or on the proponent of the will, to show that she exercised no undue influence over the testator. Mrs. King was not a witness before the Orphans' Court and the proponent called no witnesses, other than the attorney who drew the will 30 and the other witness to its execution, to show that the will was the testator's free act.

There is no evidence that Mrs. King occupied a confidential relation toward the testator, neither is there any evidence that she is the chief beneficiary under the will. The residuary estate given to a niece and nephews may greatly exceed in amount the bequest to her. On the occasion Mrs. Oram visited the testator's home and Mrs. 40

*Conclusions of Vice-Ordinary.*

King refused to admit her, the latter may have been acting under the testator's direct orders, but if she was not, she did no more than the testator had done for years. The information Mrs. King gave the undertaker as to the location of the testator's grave was given after the testator's death and was for the purpose of aiding the undertaker and the executor named in the will, to carry out the testator's testamentary direction as to his burial. Even if a confidential relation did exist between Mrs. King and the testator and she had the opportunity to exert influence over him and assuming that she was made the chief beneficiary of his bounty, there is not the slightest evidence which casts doubt upon the will as the free expression of the testator's wishes as to the disposition of his estate. It is not shown that Mrs. King exercised any sort of dominion over the testator at any time, or that she talked with him or with anyone else on the subject of the will, or that she even suggested to the testator that he make a will, or that he was not fully competent to think and decide for himself. On the other hand, it does appear that the testator had the advice and assistance of an attorney who was his friend and with whom he had transacted his legal business for four years and whose good repute is unquestioned. This attorney was a disinterested person and after the testator had confided his testamentary wishes to him privately, he drafted what the testator said into the form of a will, which was later executed in private, in the presence of two disinterested persons who heard him say, after he had read it, that it was the will he wanted to make. Before the caveator could call on Mrs. King or the proponent to prove that no undue influence

10

20

30

40

*Conclusions of Vice-Ordinary.*

was exercised over the testator, there must be some evidence before the Court that Mrs. King actively exerted influence of an undue character which might have had some effect on the mind of the testator, or some evidence from which the possibility of existence of such influence might be inferred and failing in this the burden of proof was not shifted to Mrs. King or the proponent (Bennett v. Bennett, 50 N. J. Equity, 439; in re Cooper, 75 N. J. Equity, 177; affirmed 76 N. J. Equity, 614; in re Eatley, 82 N. J. Equity, 591; in re Tunison, 83 N. J. Equity, 278; in re Young, 90 N. J. Equity, 236; Ward v. Harrison, 97 N. J. Equity, 310; Loveridge v. Brown, 98 N. J. Equity, 381.)

10

20

30

No inference of influence exercised on the testator as against the appellants can be drawn from the fact that the will contains no provision for the appellants. It can not, under the circumstances, be said to be an unnatural or inofficious will. The testator had ignored his wife and child since 1899 and thereafter had refused to give them any part of his estate voluntarily, even resisting Court proceedings initiated by his wife to obtain what were her bare legal rights. For his wife and child he had no generous thoughts or consideration and having persistently refused to recognize them in his lifetime, can it be believed that it required influence to induce him to deprive them of his estate after his death? Even should the testator's disposition of his estate seem unreasonable, unnatural or unjust to the Court, probate can not be denied for that reason.

No suggestion is made that the Dover hospital, or the testator's niece and nephews attempted to or could exercise any influence over the testator,

40

*Decree in Prerogative Court.*

but to deny probate of this will, would deprive these beneficiaries in whom he was particularly interested, of the shares of his estate which he intended them to have and give the whole estate to the appellants under the statutes of descent and distribution, a result which could not possibly be further from the testator's intention.

The appeal will be dismissed.

**DECREE IN PREROGATIVE COURT.**

Filed June 27, 1927.

NEW JERSEY PREROGATIVE COURT.

In the matter of the appeal from the decree of the Orphans' Court of the County of Morris admitting to probate a certain paper writing as the Last Will and Testament of THOMAS W. ORAM, deceased.

*Decree.*

This cause coming on to be heard before the Ordinary on appeal from the Orphans' Court of the County of Morris, and the Court having read the proofs in the matter and heard the argument of counsel, and briefs having been submitted by William Tyacke, Proctor for the appellants, Laura T. Oram and Marion O. Tiffany, and by King & Vogt, Esquires, Proctors for respondents, and the Court having duly considered the same and being of the opinion that the decree of the Orphans' Court of the County of Morris, admitting to probate the last will and testament of Thomas W. Oram, deceased, should be affirmed;

*Decree in Prerogative Court.*

It is, on this 27th day of June, 1927, ORDERED, ADJUDGED AND DECREED that the decree of the Morris County Orphans' Court, dated September 17, 1926, admitting to probate a paper writing purporting to be the last will and testament of Thomas W. Oram, deceased, bearing date March 20, 1926, be and the same is hereby affirmed;

And it is further ORDERED, ADJUDGED AND DECREED that the respondents, Josephine King, Helen Oram Lyon, Robert Maxwell Oram and Thomas O. Phillips be entitled to costs to be taxed, including a counsel fee of five hundred dollars, to be paid out of the estate of said decedent.

Respectfully advised,  
JAMES F. FIELDER,  
V.-O.

10

20

30

40

Richard J. O'Connor, direct.

TESTIMONY.

MORRIS ORPHANS' COURT.

10	In the matter of the application for probate of a certain paper writing purporting to be the Last Will and Testament of THOMAS W. ORAM, deceased.	}	<i>On Caveat.</i>  <i>Testimony.</i>
----	---	---	--

Testimony taken in the above-stated matter at the Court House in Morristown, New Jersey, on September 17, 1926, before Honorable C. Franklin Wilson, Judge, in the presence of Elmer King, Esq., proctor of the proponents, and of William Tyacke, proctor for the caveator.

RICHARD J. O'CONNOR, being duly sworn according to law, on his oath testifies as follows:

*By Mr. King.*

Q Mr. O'Connor, your age is what? A Thirty-one.

Q And are you a practicing attorney of this State? A I am.

30 Q And have been for how many years? A Since February, 1919.

Q Were you acquainted with Thomas W. Oram, deceased, in his lifetime? A I was.

Q Where did he live? A At the time of his death?

Q Yes. A I believe at 132 East Blackwell street.

Q And before the time of his death had he lived somewhere else? A He had lived at the Oram homestead on the Morristown Road.

Richard J. O'Connor, direct.

Q And these places are contiguous to Dover?  
 A They are all in Dover.

Q Did you draw this paper which I show you purporting to be his last will and testament dated March 20, 1926? A I did.

Q When did you draw that paper in reference to the date it bears on the instrument itself?  
 A It was on as I figure it March 17th.

Q Prior to drawing this paper what information had you from Oram as to the contents to be put in the paper? A I had discussed with Mr. Oram, at least I would say half a dozen times within six months prior to his death, the drawing of a new will, owing to his infirmity I delayed until I thought that he was in proper physical condition to give me the draft of the will. It was on March 17th that I went down there in the afternoon and discussed the provisions of the will he was about to make.

Q And what memorandum did you make of the provisions he desired inserted in the will?  
 A I had a piece of yellow paper similar to what the stenographer is writing on and I just took down the date of bequests and devises he wished to make, and of course the drawing of the will was left to me, that is as to its legal form.

Q Afterwards it was drawn by you? A It was drawn by me personally on the 19th of March, 1926.

Q Whose signature appears to the right of what we commonly call the attestation clause? A Thomas W. Oram's.

Q Did you see him write his name to that paper? A I did.

Q Who was present when he wrote it? A Mr. Harry S. Abbott, Mr. Oram and myself.

Q Where? A In the living room of his house, it is a sort of a double parlor; and there is what we might call a partition, and it extends

*Richard J. O'Connor, direct.*

out about that far, about three feet from its walls, one part is a living room, and has a fireplace, and the other part is the same as a sitting room and a desk. He was at his desk.

Q Where was the house? A 132 East Blackwell street.

10 Q Dover? A Yes, Dover.

Q Prior to the time he wrote his name, what did he say, if anything as to what the paper was? A He read it over while Mr. Abbott was on his way down from the office of S. C. Hume, and when Mr. Abbott got there he said "I want you to be a witness to my will."

Q Was that prior to or after he had signed it? A No, he had not signed it. He waited until Mr. Abbott got there and signed it.

20 Q When Mr. Thomas W. Oram signed both of you were there? A We were both present.

Q In the same room? A Right close to me, within two feet of me.

Q After he had signed his name then who signed next? A I signed; I then signed it under the attestation clause.

Q In whose presence? A In the presence of Mr. Oram and Mr. Abbott.

Q Then who signed? A Mr. Abbott.

30 Q In whose presence? A In the presence of Mr. Oram and myself.

Q After the will was signed as you have described what became of the paper? A I left it in Mr. Oram's possession.

Mr. King: I don't suppose it is necessary to have this paper identified because it is the only paper in the case and there will be but one. I offer this paper.

*Richard J. O'Connor, cross.*

*Cross examination.*

Q You say that a number of times he discussed the matter of a new will? A Yes.

Q Then did he tell you he had made another will, a former will? A He did not tell me, but I presume he assumed that. 10

Q He said he was going to make another will? A Yes.

Q Did he tell you anything about the contents of the other will? A No.

Q Did you know what the contents of the other will was? A No, I do not.

Q You say that he gave you the draft of the will these various times? A He did not give me the draft, he made suggestions of the gifts and of the bequests and devises he wanted to make, and I made a memoranda. 20

Q Then your call was at the place where he lived? A Yes, where he lived.

Q Did he call at your office prior to that? A Well, the first day I opened my office I saw him.

Q Alone? A Yes, when he walked uptown to get a shave he usually walked in to see me.

Q Was he always alone? A No, he came on one or two occasions with Mrs. King.

Q During the last two years how many times would you say he had been in your office accompanied by Mrs. King? A At least half a dozen. 30

Q How long have you been Mr. Oram's attorney? A Since 1922 when I started to practice in Dover.

Q Had you known him before that? A I had known him casually not intimately.

Q Do you know how he came to select you as his attorney? A No, I cannot say, I never asked for any reasons. 40

*Richard J. O'Connor, cross.*

Q You say he came to you as his attorney?

A I don't know, except when I began the general practice of law, and he used to come in my office as any other client.

Q Did he come in before he had you as his attorney? A Yes, at the time when I first  
10 started to practice law my office was with S. C. Hume, real estate and insurance office. Mr. Hume looked after his real estate affairs.

Q When he came in was he alone these times?

A I cannot recall just how often he was alone, he was alone most of the time he came in.

Q Did any one else give you any suggestions about the will? A No one.

Q Did Mrs. King tell you about the will? A  
20 Mrs. King; the matter of drawing the will was never discussed in Mrs. King's presence.

Q And Mrs. King never told you that Mr. Oram was going to have a new will drawn? A  
No, she did not have to tell me, he told me himself.

Q Didn't Mrs. King tell you in your office that he was going to have a new will drawn? A Absolutely not.

Q Mrs. King did not tell you that? A Absolutely not.

30 Q Where was that will executed? A At his home.

Q Who were present? A Mr. Abbott, Mr. Oram and myself. No one else.

Q When was that? A That will was executed March 20th.

Q I thought you said you had drawn it on the 16th of March? A I did; I dated it on the day it was to be executed.

40 Q So you dated it before it was executed? A I dated it the day it was to be executed.

*Richard J. O'Connor, cross.*

Q You dated it before the day it was to be executed? A Certainly.

Q You say that you selected Mr. Abbott as the other witness, who suggested that? A I suggested that.

Q Any particular reasons? A No, none  
10 other than Mr. Abbott and I were very friendly, and I knew he was handy.

Q He was handy; I thought you said you had to wait for him to come? A Yes, that is true, his address was 152 East Blackwell street.

Q East Blackwell street? A Mr. Oram's, yes.

Q There was no other witness who would do? A The only other tenant in the building is Dr. Sandles and I did not know Dr. Sandles very  
20 personally, and I did not know as Mr. Oram did.

Q Would it make any difference in the will? A Not as far as I was concerned.

Q I want to know your reason for wanting Mr. Abbott? A I had no particular reason other than I needed another witness.

Q You wanted someone that was friendly to you? A I did not call him for that reason, I would not call a stranger. It is always customary when I execute a will to call in some one I know.  
30 It is my customary practice.

Q Who told you about the names for the bequests? A Mr. Thomas W. Oram.

Q He tell you how to spell the names? A He told me how to spell the name of Pierce.

Q The name of Pierce, is Pierce a beneficiary? A I think it was Josephine Pierce, his niece, probably I am wrong in the name.

Q So he told you to spell Pierce, any other name? A No.  
40

*Richard J. O'Connor, cross.*

Q Did he tell you how to spell Phillips? A No, I know how to spell Phillips.

Q He told you his correct name? A He gave me all the names in the will, I cannot recall it now unless I examine the body of the will.

10 Q Do you know his mother's name? A Yes, if I am not mistaken it is Hannah W. Oram.

Q Did he give you that name? A He did.

Q He told you it was Hannah Williams Oram?

A That is my recollection.

Q Did he tell you how to spell Hannah? A No.

Q He told you what Mr. Phillips' correct name was? A I took the name he gave me.

Q After you had drawn the will you submitted it to him? A I did.

Q He said it was O. K.? A He did.

20 Q Then what? A He executed it.

Q Did you have any conversation over it? A At the time of the execution?

Q Yes. A None other than a little banter; I just bantered with him and said I hoped we did not have to probate it for awhile.

Q What did he say to that? A I cannot recall, we were joking about it.

Q What other jokes did you make there? A I cannot recall any other.

30 Q What was his physical condition? A Physically he seemed to be recuperating; he had suffered an attack of some kind as I recall it, he said it was a rupture of his.

Q What is that? A I think that is all I want to say, I am not a doctor.

Q How long before that since he had been in your office? A Mr. Oram had not been in my office for six months prior to his decease, I would say. He was confined to the house most of that

40 time.

*Harry L. Abbott, direct.*

Q Where did he live during that six months?

A At 132 East Blackwell street.

Q Were you a frequent visitor there? A I was.

Q Who was living there? A Mr. Oram and Mrs. King.

Q While Mrs. King was present was anything 10 ever said about a will? A I believe if I am not mistaken, she was in there one day, and he suggested it to me, I asked him when he wanted to draw the will; but nothing was ever said as to the purposes of the will in her presence while I was there.

HARRY L. ABBOTT, being duly sworn accord- 20  
ing to law, on his oath testifies as follows:

*By Mr. King.*

Q Mr. Abbott, your age is— A 35.

Q Where do you live? A 34 West Blackwell street, Dover.

Q How long have you lived in Dover? A August 19, 1923.

Q Did you know Thomas W. Oram, in his 30 lifetime? A Yes.

Q How long had you known him? A I will say it was probably shortly after the time I came to Dover.

Q How long have you known Richard O'Connor? A About the same time.

Q What is your business or occupation? A In the office with Mr. S. C. Hume.

Q Is that the Mr. S. C. Hume of whom Mr. O'Connor spoke? A Yes. 40

*Harry L. Abbott, direct.*

Q I show you a paper writing purporting to be the last will and testament of Thomas W. Oram, dated March 20, 1926, and ask you if that is your signature on that paper? A Yes.

Q I notice another signature, I am referring to the second one below the attestation clause? A  
10 Yes.

Q I show you a signature of Thomas W. Oram, did you see that signature written? A Yes.

Q By whom? A By Mr. Oram.

Q Where was he when he wrote it? A Sitting at a desk in the living room of his apartment at 132 East Blackwell street.

Q What did he state if anything, prior to that time, as to what this paper was? A When I  
20 arrived there at his house he was still reading; Mr. O'Connor I saw standing on the right side of him, I joshed him about something, and he turned to me and said "stop your kidding for awhile, now, I am going to sign my last will and testament now. You watch me."

Q In asking you to watch him particularly, was that the time he wrote his name? A Yes.

Q Where were you and Mr. O'Connor when he wrote his name? A As I remember it, he  
30 was sitting at a small desk, I was at his left and I was looking right down over his shoulder.

Q Did he sign his name in the presence of both you gentlemen? A Yes.

Q When he made his declaration as to what this paper was where was Mr. O'Connor? A He was on my left.

Q The declaration was made in the presence of both of you? A Yes.

Q After Mr. Oram had signed it, then what happened? A Then Mr. O'Connor signed it.  
40

*Harry L. Abbott, cross.*

Q Where did Mr. O'Connor sign it? A He signed below his name.

Q No, where? A At his desk.

Q Where did Mr. Oram go? A He stayed right there, he merely got out of his seat, giving it to me and Mr. O'Connor.

Q In whose presence did Mr. Richard O'Connor sign? A Mr. Oram's and myself. 10

Q You were there? A Yes.

Q After Richard O'Connor had signed then who signed it? A I did.

Q Where was Mr. Oram? A Right in the same place.

Q Where was Mr. O'Connor? A He was—I may be mistaken about that, he was right at the desk anyway.

Q You were all three there? A Yes, it was  
20 a small writing desk.

Q After you had signed your name what became of the paper? A I think Mr. Oram took it, I cannot say as to that, I left immediately after I signed it.

*Cross examination by Mr. Tyacke.*

Q How was it you came to be a witness to this will? A As I recall it, Mr. O'Connor sent  
30 me a telephone asking me to come to Mr. Oram's house, on the day that I signed it shortly before I signed; he asked me that I come right down. I believe that was the conversation.

Q Had he said anything about it before? A No, I think not, I had been waiting to come down before.

Q When was this? A Same day I signed, probably the middle.

Q Middle of the afternoon? A Something  
40 like that.

*Harry L. Abbott, cross.*

Q You don't know closer than that? A No, sir.

Q You are sure about the position of the people when they signed it? A That is as I recall it, it is practically so, we were all within two feet of each other.

10 Q Who else was present? A Just Mr. O'Connor, Mr. Oram and myself.

Q Just the three? A Yes.

Q Did you know the contents of the will? A No.

Q What did Mr. Oram say to you? A Nothing except the conversation I have just repeated, it was more of a little joshing.

Q What do you mean by joshing? A As I said before Mr. O'Connor and I were talking while he was looking it over and when he got through he said "never mind" he was sitting at a little desk, "never mind the kidding now, this is my last will and I want you to see me sign it."

20 Q What kind of kidding was it? A I don't remember, it had nothing to do with the matter at hand; just something light, I don't know.

Q Who started it? A I cannot say who.

Q Did you stop your joshing or kidding? A Naturally.

30 Q Did you take it up later? A No, sir, I left practically right away, after I signed it. I left.

Q Did Mr. O'Connor stay there then or did he leave with you? A I cannot say, I don't believe he did, I think I left alone, I would not say positively.

Q You did not do any more joking? A No, I was rather busy at the time.

40 Q You are pretty friendly with Mr. O'Connor? A Surely.

*Harry L. Abbott, cross.*

Q As far as you know that was the reason he had you as a witness? A Yes.

Q Did he tell you that was his reason? A Not as I remember of now.

Q Nothing was said about it? A He said he knew he could get me, I was right there, so he could get me right away. I would not say he said that, but that is my impression. 10

Q After the will was executed, you left? A Yes.

Q That is the last you know about it? A Yes.

Q You have gone over the situation since that time? A What do you mean?

Q You have talked with Mr. O'Connor of the signing, you have discussed it? A No, I don't know that I have. 20

Q You have not discussed it with any one? A No, I don't believe I have; I think about the first time is when we was on the way down in the automobile today; I recalled the circumstances to Mr. Otto as we were coming down.

Q Who besides Mr. Otto was there? A Mr. Young. I told Mr. Otto I recalled it because of that remark he made.

Q Nobody since then has discussed it with you? A No. 30

Q Didn't any one from Mr. King's office ever talk it over with you? A No, sir.

Q Mr. O'Connor did not talk it over with you? A No, sir.

Q Nor ever any reference to it? A No, sir.

Q Have not discussed it with any one? A I did not know it was coming up until I got the summons day before yesterday; I have not seen Mr. O'Connor since then. 40

*Harry L. Abbott, cross.*

Q When you got the summons what did you do? A I didn't do anything.

Q Did not speak to anybody? A I spoke to Mr. Hume about it, and I made arrangements with Mr. Otto to come down.

Q Didn't talk it over with Mr. O'Connor? A  
10 No, sir.

Q I thought you were good friends? A Well, that don't mean we are living together.

Q When out of a clear sky you got a subpoena to appear in court would it not be natural to talk it over? A I suppose it would if I had seen him.

Q You have not said anything to anybody but Mr. Hume? A Maybe I told my wife, and maybe the stenographer in the office, but that would have  
20 no bearing.

Q You simply told them you were going down? A Yes, that is about the thing.

Q You had no curiosity? A If I did, I did not know anything to tell them. I told my wife, in fact I showed my wife the summons.

Q Did you know the contents of the will? A  
No, sir.

Q Mr. O'Connor show you? A No, sir.

Q Mr. Oram didn't tell you? A No, sir.

Q Did you hear any reports about it afterwards? A No, sir.  
30

Q Nobody from that day to this said anything about you being a witness to the will? A I don't know that, I don't recall anybody saying anything.

Mr. King: We offer the will for probate.

Mr. Tyacke: I am opposing the probate of the will on two grounds, one that it is not  
40 testamentarily correct, the other for undue

*Laura T. Oram, direct.*

influence. The paper revokes former wills and according to the statute there must be three subscribing witnesses to such a paper.

Therefore on that ground I am opposing it.

Mr. King: I have been practicing in the court a great many years, and I have had  
10 some experience, if that is the law I would like to see it.

The Court: If you are going to take some other testimony, I will hold this question open.

---

LAURA T. ORAM, being duly sworn in her own behalf as caveator, testifies as follows: 20

*By Mr. Tyacke.*

Q Where do you live? A Wharton.

Q You are the widow of Thomas W. Oram?

A I am.

Q You know when he died? A Yes.

Q When? A Last May.

Q Were you informed of his sickness prior to his death? A Yes.

Q How many days prior to it? A Just  
30 when I first heard of it I cannot say, how many days.

Q What did you do when you heard of it? A I went down to see him.

Q Tell us what happened, where did you go? A I went to the apartment of the house—I know there is a garage near there, it is near Payne's florist shop, I don't know the number.

Q Did you go in the house? A I went up the first stairs, but not his apartment.  
40

*Laura T. Oram, direct.*

Q Why didn't you? A I was refused admittance.

Q In what way? A When the door was open I said, "Is this Mrs. King?" she said, "Yes," I said, "Well, this is Mr. Oram's apartment?" She said, "Yes." I said, "I would like to see  
10 him." She said, "Who are you?" I said, "His wife." She positively said that I could not see him, it would disturb him, and annoy him, and against the doctor's orders.

Q Who said that? A Mrs. King, I said, "Who is the doctor?" She said "Dr. Hann."

Q Then what did you do then? A I came away and went up to see Dr. Hann. I wanted to get a statement from him, but he was not at home.

20 Q Did you ever have any (trouble) talk with Dr. Hann after that? A I asked him if he would not let me know how he was getting along.

Q Was anything said about his giving orders that you were not to see him? A He did not say that he had directly to me, not at least to me then.

30 Q Never mind what somebody else said, did you afterwards hear whether he died or not? A Pardon me?

Q How many days before his death? A I think, he died on Wednesday and I was there the Saturday afternoon previous to his death.

Q Then did you hear of his death afterwards? A Yes.

Q Who told you that? A Dr. Hann.

Q Did any one else? A Yes, Alfred Mills.

Q Who? A Mr. Mills.

Q What did he say?

40

*Laura T. Oram, cross.*

Mr. King: No, I do not want repetition, I don't think that is admissible.

Q Was anything said about Mr. Oram's body?  
A Yes.

Q What did you do? A I asked Mr. Gillen to prepare the body for burial, and brought to  
10 our home at Wharton.

Q What then? He told me that the body had been bequeathed to Mr. Otto, and of course I would not have anything to do. I would not interfere at that time.

Q Do you know the names of Mr. Oram's family? A I believe I do.

Q Do you know the name of his mother? A Yes.

Q What is it? A Hannah Williams Oram. 20

Q How do you spell Hannah? A H-a-n-n-a-h.

Q Do you know Thomas Phillips? A Yes.

Q What is his full name? A Thomas Phillips.

Q Is there any middle initial? A No.

Q Do you know where Mr. Oram is buried?  
A Well, not from actually seeing the place, only from—

Q All right.

30

*Cross examination by Mr. King.*

Q When were you married to Mr. Oram? A I think February, 1895.

Q How long did you live with him? A I was at home part of the time, we were never actually keeping house.

Q As a matter of fact did you ever actually live with him after your marriage? A I was with him and he was at the house, in a way.

40

*Laura T. Oram, cross.*

Q Did you live with him as his wife after your marriage? A You mean in keeping house, or do you mean by acknowledging me as his wife?

Q No, I mean by that, did you ever have a house at which you and he lived? A No, not a separate house, no, sir.

10 Q Did he ever board with you at Sammis Place? A He did not board there, he came there.

Q Did he ever live there? A No, he claimed it as his residence.

Q You and he had been separated for quite a number of years? A Yes.

Q During that time you made application through the courts for support and maintenance? A Yes, Mr. King.

20 Q And I think a long time since made application through me for support and maintenance of the daughter (Mary) Marion? A That was at the same time.

Q Then as the original order was made, was it ever increased? A Yes.

Q Who made that application for the increase, you or your daughter? A Pardon me.

Q You or your daughter made the application? A I made the application.

30 Q And it was granted? A Yes.

Q He continued paying you separate maintenance up to the time of his death? A Yes.

Q How long did he continue making payments for the daughter Mary? A Till she was twenty-one, I think, not after twenty-one but I am not positive of the exact age.

Q She has gotten married? A Yes.

40 Q Another suit or proceeding was instituted by you against your husband in his lifetime concerning the election by you that you were en-

*Laura T. Oram, cross.*

titled to certain dower rights in lands of his father's estate? A Yes.

Q That was tried before Vice-Chancellor Backes, or argued before him? A I believe that is the name.

Q How long ago did you bring that proceeding? A I have not the exact dates. 10

Q Within a couple of years do you think? A It was before Mr. Robert F. Oram died, it was begun.

Q When did you speak to your husband the last time, or when did he speak to you the last time? A Of that I am not sure.

Q It has been a great many years ago? A Yes, I have just barely seen him, we have recognized each other, just to bow, but I cannot say whether we had any conversation. 20

Q As a matter of fact hadn't he often bowed to you when he met you on the street? A Yes.

Q He never refused to recognize you? A I don't recollect that, it was just merely recognition.

Q As a matter of fact he denied legal marriage to you shortly after the birth of Marion, and had required you in a proper proceeding in court to establish the fact of marriage, is that not so? A Yes, Mr. King. 30

Q When did you see your husband the last time before his death? A I can not say.

Q Can not you give me an idea about it? A I think at the time of Mr. Oram's funeral, I don't remember whether it was Mr. Robert Oram's funeral, and I don't remember any particular date since when.

Q Just one more question. Can you give me the last time that you ever spoke to your husband, how many years since has it been, can you 40

*Laura T. Oram, cross.*

date it about the birth of Marion or the Chancery proceeding to establish your marriage? A No, I cannot recollect.

Q As a matter of fact he had not spoken to you since the establishing of this first proceeding to establish your marriage? A I think not.

10 Q Has he communicated with you by letter or any other way since that time? A I don't think so, I cannot recollect that he has.

The Court: What was the date of Robert Oram's death?

Mr. King: What was the date of Robert's death?

The Witness: April 8, 1925, I saw him there at the house.

20 Mr. King: Mr. Vogt reminds me that there was two Robert F. Orams, one having died in 1899 and this was Robert F. Oram, Jr., who died in April, 1925. Mr. Thomas Oram was at the house.

*By Mr. Tyacke.*

Q On that Chancery action to establish your marriage, whom was your attorney? A Mr. King.

30 Q Who now represents the other side? A This Mr. King, yes.

*By Mr. King.*

Q You got pretty good service, didn't you; I ought to throw that in for myself.

Mr. Tyacke: We will admit it.

*Dr. Peter S. Hann, direct.*

DR. PETER S. HANN, being duly sworn according to law, on his oath on the part of the caveator, testifies as follows:

Mr. King: Counsel for proponents admits of Dr. Hann as a physician, residing in the Town of Dover and has qualifications as such. 10

*By Mr. Tyacke.*

Q Did you know Thomas W. Oram, of Dover? A Yes.

Q How long have you known him? A Going on forty years.

Q Did you treat him professionally during the last year of his life? A Yes.

Q What was the matter with him? A I diagnosed it as carcinoma of his stomach. 20

Q Just what would that be? A Malignant cancer, malignant growth, the X-ray showed that.

Q Is that long drawn out? A About a year as a general thing, sometimes longer, generally about a year in a case of that kind.

Q Is there much pain and suffering? A Yes, generally quite a little pain.

Q Towards the last how would that be? A What is that? 30

Q Would that pain be intensified? A I don't hear you.

The Court: Was the pain increased toward the end?

The Witness: Yes, it did.

*Theodore L. Young, direct.*

Q Did you give orders to Mrs. King, or any one else that no one was to be allowed to see Mr. Oram? A I did not.

No cross examination.

10

THEODORE L. YOUNG, being duly sworn according to law, on his oath testifies as follows:

*By Mr. Tyacke.*

Q Mr. Young, what is your business? A Funeral director.

Q Where? A Dover.

Q Did you have an interment of the body of Thomas W. Oram? A I did.

20 Q Where was that? A Warwick.

Q Where? A Warkick, New York State.

Q How did you come to take the body there?

A We were instructed that the burial was to be made there.

Q By whom? A I believe by Mr. Otto.

Q Did anyone else say anything about it? A The only thing that was said to us further than that was as to the location of the grave on the lot.

30 Q Who spoke about the lot? A I believe Mrs. King gave us some instructions as to the location of the grave.

Q What did she say about it? A Nothing further than it was on the front side of the lot. There is a monument in the center of the lot with "King" on one side and that was the side that the grave was on.

Q You say Mrs. King told you that? A Yes.

Mr. King: No cross examination.

40

*James Walters, direct.*

JAMES WALTERS, being duly sworn according to law, on the part of the caveator, testifies as follows:

*By Mr. Tyacke.*

Q Where do you live? A Wharton.

Q Did you know Thomas W. Oram in his lifetime? A Yes. 10

Q How long have you known him? A Ever since I can recollect knowing any one.

Q Did you see him anytime during the last year of his life? A Maybe half a dozen or ten times.

Q What was his physical condition? A He was pretty shaky, real shaky.

Q Did you notice any difference in each time you saw him? A I did. 20

Q What was the difference? A He seemed to be growing weaker.

Q When was the last time you saw him? A I think it was in April a year ago—this year.

Mr. King: No questions.

Mr. Tyacke: We rest.

The Court: You may take an order for probate.

Mr. Tyacke: May I ask you not to give that order for five or six days? 30

The Court: If you are not prepared this morning, I will have to admit it.

40

## New Jersey Court of Errors and Appeals

In the matter of a certain paper  
writing purporting to be the  
Last Will and Testament of  
THOMAS W. ORAM, deceased.

### BRIEF OF APPELLANTS.

This is an appeal from the Prerogative Court of the State of New Jersey, affirming an order of the Morris County Orphans' Court, admitting to probate a paper writing purporting to be the last will and testament of Thomas W. Oram, deceased, bearing date March 20, 1926. Testimony was taken before the Orphans' Court. No opinion was delivered. The statement of caveats is found on page one, of State of Case. The Vice Ordinary heard the case on the transcript and concluded that the order of the Orphans' Court should be affirmed. His conclusions are found on pages 10 to 16, in the State of Case, and an order was entered to that effect. An appeal was taken from this decree; petition of appeal filed, page 6, State of Case, and answer to the petition of appeal filed, page 8, State of Case.

The testator, Thomas W. Oram, died May 26, 1926, leaving a paper writing, in which he named Josephine King the chief beneficiary, "in recognition of and payment for her faithful services to me during the past twenty-six years." No mention is made in the will of his wife and daughter. A caveat was filed, and testimony taken before the Orphans' Court. The Judge of said court, after hearing witnesses to show undue influence, and without hearing any testimony to overcome

their evidence, announced that the proponent could take an order for probate.

The evidence showed that the will was NOT free from circumstances showing undue influence and this placed the burden of proof upon the proponent to show there was none. Mr. Oram stated that he made the bequest to Mrs. King in recognition of and payment for her faithful services during twenty-six years. In his conclusions, the Vice Ordinary (p. 13, l. 1) stated, "The testimony does not disclose what the relationship was between Mrs. King and the deceased. It merely showed that she has resided in the testator's home since 1922, etc." This of itself, I think is clear enough to show what the relationship was, and if the chief beneficiary wished to show that the relationship was merely of a platonic nature she should have gone upon the stand and testified to that effect, but she did not. The influence of Mrs. King upon the testator is clearly shown during this period that she lived with him, for shortly after she came, trouble began between Mr. Oram and his wife, and as her influence grew the breach between Mr. Oram and his family widened.

When we come to the making of the will we find from the testimony of Mr. O'Connor that he was a frequent visitor at the house where Mr. Oram and Mrs. King lived, and that Mrs. King was present one day when Mr. Oram suggested the will (p. 25, l. 12). This was evidently the first time it was mentioned and would imply that Mrs. King had a hand in it. Although Mr. O'Connor stated that nothing was said as to the purposes of the will in her presence, and although Mr. O'Connor stated that Mr. Oram told him about the names for the bequests, yet he

spelled them wrong and is evasive in his answers (p. 22, l. 18).

Q Did Mrs. King tell you about the will? A Mrs. King; the matter of drawing the will was never discussed in Mrs. King's presence.

It will be noticed that he did not deny that Mrs. King told him about the will, and his answer is also contradicted when he later testified that Mrs. King was present when it was suggested (p. 25, l. 10).

Again Mr. O'Connor testified that Mr. Oram gave him the names in the will including Thomas Phillips. In the will it mentions Thomas O. Phillips and the testimony of Mrs. Oram showed that it was simply Thomas Phillips. Again Mr. O'Connor testified that Mr. Oram told him his mother's name was Hannah Williams Oram, and yet he wrote it in the will as Hanna Oram. Therefore it is natural to infer that some one besides Mr. Oram gave him the names and directions for the will.

At the time of the execution of the will Mr. Oram, according to the testimony of both witnesses, was irritable and cross. This shows a state of mind inconsistent with one who was doing an act of his own free will, and was the act of a man who after months of importuning and suggesting and we might almost say commanding, was doing a wrong and injury to his wife and daughter, and making a mistress chief beneficiary. Is it any wonder that a man would be cross and irritable at such a time if he had any conscience at all?

Therefore we must conclude that this will was not the result of a free untrammelled mind, but one that was forced upon him and which he

resented, for the Court is asked to remember that this man was getting well along in years and for the past year had been a sufferer from cancer (p. 37, l. 25) and in such a physical condition that his will power would be swayed by one who had controlled him for so many years.

In selecting a witness, Mr. O'Connor telephoned to a friend to come down to the apartment, when he could have obtained a witness in the house (p. 23, l. 18). While this was perfectly legitimate, it raises the question of Why did he do it? Was he afraid to have Dr. Sandles testify? All of these little acts are important as tending to show a well arranged plan. The witness he did select was so devoid of curiosity that even when he was subpoenaed as a witness, did not even discuss the matter with Mr. O'Connor or the lawyer for the proponent (p. 29, l. 20).

Even the will itself shows that outside influence, "Directing the executor to take charge of the remains immediately after his decease and inter them in Plot #32 Section D in Warwick Cemetery at Warwick, New York" (p. 2, l. 30), not even allowing his relatives a chance to see the body or pay their respects or to be at the funeral. The directions to the undertaker being given by Mrs. King and Plot #32 Section D being her plot. Even in death Mrs. King wants to show her power and influence as being greater than that of his wife and daughter.

When his wife called to see him before he died, Mrs. King, the chief beneficiary, refused to allow her to come into the house and even lied about it, stating that the doctor gave orders that no one was to see him (p. 32, l. 3). Was Mrs. King afraid that Mr. Oram might realize that he had done wrong in his will and be strong enough to

change it? This action certainly called for an explanation and none was given. And the Court erred in not insisting that Mrs. King should by ample proof overcome the evidence submitted. And the learned Vice Ordinary erred in stating that the "latter may have been acting under the testator's direct orders" (p. 14, l. 1), for the evidence shows, as has been stated, that Mrs. King said it was the doctor's orders (p. 32, l. 13), and the doctor testified that he did not give such an order (p. 38, l. 3).

Mr. Oram had made a former will which was revoked (p. 3, l. 32). Mr. O'Connor testified that, "He had discussed with Mr. Oram at least, I would say, one-half dozen times within six months, prior to his death, the drawing of a new will" (p. 19, l. 14). Therefore there must have been some influence at work to make Mr. Oram change the will, and it will be noted that it took considerable time and importuning to make him do it. If it had been the free and uninfluenced act of Mr. Oram, he would not have put it off when he was so near the end of his life. So we have the situation of an aged man, the last year of his life suffering with malignant cancer, the pain increasing towards the end, and being importuned to make a new will, yet putting it off as long as he could, and then finally yielding, making the chief beneficiary one who has kept him from his wife and daughter. One who, when he was dying, refused to allow his wife to see him, and also lied about it. The one who had him buried in her burial plot in another State, so that even in death, she could triumph over his widow and daughter. Not content with depriving them, during his lifetime of his society, but at death taking the bulk of his estate.

So we have the situation of numerous circumstances, some slight, some strong and important showing that certain influence was at work whereby Mrs. King became the chief beneficiary, and the wife and daughter ignored, circumstances that put the burden of proof upon the beneficiary to show there was no undue influence, and yet the proponent did nothing, and the Judge of the Orphans' Court summarily and abruptly closed the case (p. 39, l. 30), and therefore the order admitting the paper writing as the Last Will and Testament of Thomas W. Oram should be reversed and probate denied.

The case of *In Re Conor*, 1 N. J. Misc. Rep. 43, is almost identical with this one. Even to the part played by Mrs. Conor in poisoning Mr. Conor's mind against his daughter. In the present case it will be observed that after testator got associated with and under the control of Mrs. King he ceased to contribute to the support of his wife.

Also see *In Re Gaddis*, 1 N. J. Misc. Rep. 202, And *In Re Barnett*, 2 N. J. Misc. Rep. 135.

In the *Barnett* case the Court gave six reasons for denying probate, among them being "The initiation of the proceedings for the preparation of the instrument and efforts to exclude the natural objects of testator's bounty from his society."

Mr. O'Connor testified that Mrs. King was present when it was first suggested about a will (p. 25, l. 10).

Mrs. Oram testified that Mrs. King refused to allow her to see her husband (p. 32, l. 10).

"Where a confidential relation exists between testator and the principal beneficiary, slight cir-

cumstances in addition will place on the beneficiary the burden of showing that testator's mind was not unduly influenced in order to justify probate of the will."

*In Re Gordon's Estate*, 89 Atl. 33;  
*In Re Cooper's Will*, 75 N. J. Eq. 177.

"The propounder of a will who occupied a position of trust and confidence towards the testatrix by reason of being her adviser and attorney, and who had opportunity to exert influence over testatrix, who lived in his house, had the burden of showing that he did not procure the making of the will under which he was the chief beneficiary by undue influence." *In Re Banvard's Estate*, 89 Atl. 1024.

"Against a beneficiary having a testator under his control, with power to make his will the will of the testator, especially in a case where the testator has made an unnatural disposition of his property, the law presumes undue influence, and puts upon the beneficiary the burden of showing affirmatively, that when the testator made his will he did not exercise his power over the testator to his own advantage and to the disadvantage of others having an equal or superior claim upon the bounty of the testator." *Carroll v. Hause*, 48 N. J. Eq. 269.

"Primarily, the burden of establishing a charge that a paper writing was procured from the person who executed it by undue influence rests upon the party who asserts it. But when a will confers a benefit upon one who occupied in respect to the deceased, a position of trust and confidence, and particularly when the deceased was of weak mind and subject to influence, and the beneficiary has the opportunity to exert such influence, the burden is cast upon him to show

there was, in fact, no undue influence." *Barkman v. Richards*, 63 N. J. Eq. 211.

"If the will objected to for undue influence benefited one who, at the time, occupied a confidential relation to testatrix, or stood in a position of trust and confidence to her, the burden was on the proponent to establish that the will was the uncoerced act of the testatrix." *In Re Anastasia Davis*, 73, 75 N. J. Eq. 617.

"When a gift by deed or otherwise than by a will is made to one who stands in a fiduciary relation to the donor, that gift is presumed to have been obtained by undue influence, and while the principle is not strictly applicable to wills, still the fact of a fiduciary relationship of trust and confidence, coupled with other circumstances, indicates a bias or feeling hostile to the natural object of one's bounty, usually more readily makes a case of undue influence than without the fiduciary or trust relation." *In Re Ulrich*, 98 N. J. Eq. 621.

*Lynch v. Clements*, 24 N. J. Eq. 431. The Court said on page 435:

"Where the party to be benefited by the will has a controlling agency in procuring its formal execution, it is universally regarded as a very suspicious circumstance, and one requiring the fullest explanation. So where a will is unreasonable in its provisions and inconsistent with the duties of the testator with reference to his property and family, this will of itself imposes upon those claiming under the instrument, the necessity of giving some reasonable explanation of the unnatural character of the will."

"No definition of what the law denominates undue influence can be given which will furnish

a safe and reliable test for every case. Each case must be decided on its own special facts. All that can be said, in the way of formulating a general rule on this subject, is, that whatever destroys free agency, and constrains the person whose act is brought in judgment, to do what is against his will, and what he would not have done if left to himself, is undue influence, whether the control be exercised by physical force, threats, importunity or any other species of mental or physical coercion. The extent or degree of the influence is quite immaterial, for the test always is, was the influence whether slight or powerful, sufficient to destroy free agency, so that the act put in judgment was the result of the domination of the mind of another rather than the expression of the will and mind of the actor." *Haydock v. Haydock*, 33 N. J. Eq. 494.

"Such influence need not be proved directly, it may be established by inference from circumstances attending the preparation and execution of the will." *Fritz v. Turner*, 46 N. J. Eq. 515.

"It is true that there is no direct testimony that any such threats of removal (which were held to be undue influence) were made at the time the will was established, but undue influence can seldom be proved by direct testimony, for such influences are usually covert and can be proved only by circumstances." *In Sickles case*, 63 N. J. Eq. 233.

"It is only in exceptional cases that direct proof of undue influence can be had. The proof of it is, generally, by presumptions raised by circumstances, or in case fraud is an element of the undue influence, by inference from circumstance, which produces satisfactory conviction." *In White v. Starr*, 47 N. J. Eq. 244 at p. 261.

“Where a mother mentally enfeebled by reason of disease, and in a position where one of her two sons could exercise an improper influence over her, made a will leaving nearly all her property to this son, and the burden is upon him to show that such instrument was executed without the exercise or undue influence by him.” *Dale v. Dale*, 38 N. J. Eq. 274.

In his conclusion (p 15, l. 40) the Vice Ordinary said: “No suggestion is made that the Dover Hospital, or the testator’s niece and nephews attempted to or could exercise any influence over the testator, but to deny probate of this will, would deprive these beneficiaries in whom he was particularly interested, of the shares of his estate which he intended them to have and give the whole estate to the appellants under the statutes of descent and distribution, a result which could not possibly be further from the testator’s intention.”

May I respectfully state that there is no evidence that he was interested in them, and if he were, surely it would be better for them to be deprived of the bequests than the wife and daughter. If the proponent wished to show that Mr. Oram desired these beneficiaries to have bequests he should have shown it at the hearing, but he did nothing.

It is respectfully submitted that the circumstances are such as to throw the burden of proof upon the proponent of the will to show there was no undue influence. The relationship of the chief beneficiary to the testator was of such a character as to raise a presumption of undue influence. The Orphans’ Court erred in closing the case summarily and abruptly. The proponent did not meet the burden of proof and failed to

show there was no undue influence, and the decree of the Prerogative Court should be reversed and probate denied.

WILLIAM TYACKE,  
Proctor for and of  
Counsel with Appellants.

67 83 OCT. 1. 1927

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

### New Jersey Court of Errors and Appeals.

IN THE MATTER OF A CERTAIN  
PAPER WRITING PURPORTING  
TO BE THE LAST WILL AND  
TESTAMENT OF THOMAS W.  
ORAM, DECEASED.

On Appeal from Pre-rogative Court.

#### BRIEF ON BEHALF OF RESPONDENTS.

##### Facts.

Thomas W. Oram died May 26th, 1926.

On May 28th, 1926, Laura T. Oram, one of the appellants, filed a caveat with the Surrogate of Morris County against the probate of any Will of Thomas W. Oram (Case, p. 1).

The matter came on for hearing before the Orphans' Court of Morris County on September 17th, 1926 (Case, p. 1), when an order was made admitting the Will to probate, and again before Vice Ordinary Fielder, who affirmed the order of the Orphans' Court (Case, p. 16).

The making and execution of the Will in due form according to the statute was clearly proven by the testimony of Richard J. O'Connor, the attorney who drew the Will (Case, pp. 18, 20), and of Harry L. Abbott, the second witness to the Will (Case, pp. 25, 26).

From this testimony it appears that Mr. Oram lived in Dover with a Mrs. King (Case, p. 25); that Mr. Oram consulted Mr. O'Connor about

drafting a new Will, gave him the information to go in the Will, Mr. O'Connor drew it, took it to Mr. Oram's house, called in a nearby witness and executed it properly. No one was present on any of these occasions, other than Mr. Oram, Mr. O'Connor and the witness, and no one, other than Mr. Oram, had ever spoken to O'Connor about the contents of the Will (Case, pp. 18-23).

The caveator is the widow of Thomas W. Oram (Case, p. 31). She attacks the legality of the Will on two grounds, first, that it is not testamentarily correct, because the statute requires three witnesses, and, second, because it was produced by undue influence (Case, p. 30).

It appears from the testimony of Mrs. Oram (Case, p. 31) and her witnesses (Case, pp. 37-39) that Mrs. Oram lived in Wharton, only a mile or two from Dover where her husband had lived; that she learned that her husband was sick and went down to see him (Case, p. 31), but was refused admittance to his apartment by Mrs. King, who said it would annoy Mr. Oram and was against the Doctor's orders (Case, p. 32). On cross-examination of Mrs. Oram (Case, p. 33) it appeared that she and Mr. Oram had been married in February, 1895 (Case, p. 33); that they had been separated for many years (Case, p. 34); that Mr. Oram had denied her as his wife (Case, p. 35), and she brought a suit in the Court of Chancery of New Jersey to establish the marriage and compel him to support her (Case, p. 35), *Oram vs. Oram*, 77 New Jersey Equity, 1; that he had strenuously contested that suit; that she had subsequently applied to the courts for support for her daughter (Case, p. 34); that Mr. Oram paid for support of the daughter until she was twenty-one (Case, p. 34); that Mrs. Oram had brought a suit against her husband to establish her dower rights, *Oram vs. Oram*,

132 Atl. 485 (Case, pp. 34-35); that she had not seen or spoken to her husband for many years, not since she brought the suit to establish her marriage; and that he had not communicated with her in any way since that time (Case, pp. 35-36).

Dr. Hann, Mr. Oram's physician for many years, testified (Case, p. 37) that Mr. Oram had cancer of the stomach; that he did not give orders to Mrs. King that no one was to be allowed to see Mr. Oram.

Theodore L. Young testified (Case, p. 38) that he was a funeral director and had charge of the burial of Mr. Oram's body. The burial was in Warwick, New York, in a lot with a monument marked "King" on it. The burial was strictly in accordance with the instructions contained in Mr. Oram's Will (Case, p. 2).

James Watkins testified that Mr. Oram appeared shaky (Case, p. 39).

This constitutes the entire testimony.

When the taking of testimony was closed, the Orphans' Court admitted the Will to probate, and properly so, for its legal execution had been clearly proven and there was no testimony to show that any undue influence had been used by any one (Case, p. 39; Case, p. 1).

Mrs. Oram and her daughter appealed from the order admitting the Will to probate to the Prerogative Court, which, on June 27th, 1927, affirmed the Orphans' Court (Case, p. 16). On June 30th, 1927, the appellants appealed to this Court (Case, p. 5).

Mr. Oram's Will is dated March 20th, 1926, and provides with particularity as to the burial of his body in Warwick, New York (Case, p. 2).

Mrs. King, with whom Mr. Oram had lived for many years, is given Ten Thousand Dollars

"in recognition and payment for her faithful services to me during the past twenty-six years \* \* \*" (Case, p. 3).

The Dover General Hospital is given Three Thousand Dollars in memory of his mother (Case, p. 3).

The rest of his property is given to his niece, Helen O. Lyon, and his nephews, Robert M. Oram and Thomas O. Phillips, Mr. Oram's only other relatives except his widow and child (Case, p. 3).

The last part of his Will revokes all former Wills.

The Will is a most natural one to make, considering all the circumstances (Case, p. 15). It clearly appears from the testimony, and from the prior litigation between Mrs. Oram and her husband, that Mr. Oram never recognized Mrs. Oram as his wife, and did not recognize their daughter as his child, and opposed all payment of support and maintenance; that he never lived with her and did not even talk to her or recognize her upon the street. Why, then, should he give her, by Will, any part of his estate, when he had always, during his lifetime, tried to keep it from her and out of which he only gave such part as the Court ordered him to give?

## THE LAW.

### POINT I.

#### **The Will is executed in the proper manner.**

The appellants claimed before the Orphans' Court that because the Will revokes prior Wills it should have been executed with three witnesses instead of two. In support of this contention, they refer to Section 2 of the Wills Act, 4 Compiled Statutes, page 5861.

A reading of this section shows the fallacy of this contention. A devise or bequest is revocable (1) by another Will (executed, of course, in compliance with Sec. 24 of the Act); (2) by some other writing, and (3) by burning, etc. When a devise or bequest is revoked by another writing, not in itself a Will, such writing must have three witnesses. This is a case of former Wills being revoked by a later Will, and consequently only two witnesses are required. The appellants abandoned this contention in the Prerogative Court.

In all respects the Will of Mr. Oram was executed with statutory formality; it was in writing; it was drawn in accordance with testator's instructions; it was first signed by testator in the presence of both witnesses, after having been declared to be his Will, and both witnesses signed in the testator's presence and in their own. In fact, the whole thing was all part of one transaction. As a matter of fact the appellants do not claim that the Will was executed without the statutory requirements; they base their whole attack on the ground of undue influence.

**POINT II.****There is no evidence before the Court that any undue influence was exerted.**

The proponents proved the due execution of the Will. It then became incumbent upon the caveators to show that undue influence had been exerted. As the Prerogative Court said (Case, pp. 14-15) :

“Before the caveator could call on Mrs. King or the proponent to prove that no undue influence was exercised over the testator, there must be some evidence before the Court that Mrs. King actively exerted influence of an undue character which might have had some effect on the mind of the testator, or some evidence from which the possibility of existence of such influence might be inferred and failing in this the burden of proof was not shifted to Mrs. King or the proponent,”

citing several cases.

The caveators did not produce any witness to show any undue influence. They relied entirely upon the fact that a Mrs. King, a beneficiary under the Will, lived with Mr. Oram. The testator himself said at his Will, Paragraph 3, that the bequest was to Mrs. King in recognition and payment for her faithful services to him during the past twenty-six years. Caveators did not produce testimony to show that such services had not been rendered. Nor was any evidence, direct or inferential, produced for the purpose of showing undue influence by the Dover Hospital, which received a bequest in memory of testator's mother, or by the testator's nephews and niece. There being absolutely no evidence of undue influence produced by caveators, the proponent did not have to produce any evidence to show that no undue influence existed.

The burden of showing undue influence is on the caveators and they did not succeed in making out even a *prima facie* case.

**POINT III.****There was no undue influence exercised in the drawing of the Will.**

It clearly appears from the testimony that the Will was the logical result of the testator's own wishes.

It will undoubtedly be argued that Mrs. King exercised such an undue influence over Mr. Oram in the making of his Will that it was not his Will, and consequently should not be admitted to probate.

There is not the slightest direct evidence that Mrs. King, or any one else, exercised undue influence.

Undue influence has been frequently defined by the Courts.

In *Loveridge vs. Brown*, 98 New Jersey Equity, 381, the Court said :

“The influence which the law denominates ‘undue’ must be such as to destroy the free agency of the testator and amount to moral or physical coercion. It must be proved moreover that the act done was the result of such coercion. There must be a control exercised over the mind of the testator or importunity practised which he could not resist.”

In *re Tunison's Will*, 83 New Jersey Equity, 277, the Court said :

“‘The undue influence’ which vitiates a Will is that which destroys free agency and constrains testator to do what is against his will and what he would not have done if left to himself and the degree of influence is immaterial provided it destroys free agency.”

There are numerous other cases of similar import which it is not necessary to cite.

Tested by this rule the present appeal fails.

There is no evidence that any one dominated the will of Mr. Oram, and thus produced a testamentary disposition which he would not otherwise have made; there is no evidence of coercion by influence; there is no evidence that the free agency of the testator was destroyed; there was no evidence that the Will as made was the result of such coercion; there is no evidence that the testator did what he did not intend to do.

On the contrary there is evidence that the testator did just exactly what he himself wanted to do, and exactly what he would have done if he had drawn the Will himself, without saying anything to anyone about it.

He was determined that his wife and daughter, under no circumstances, were to have any part of his estate, either while he was alive or after he was dead. This was not a hastily conceived notion, made at someone's suggestion when he was about to make his Will, but was a fixed determination made long ago in 1895, when he was married, and persisted in from that time to the time of his death. His wife and daughter meant nothing to him, and never had, and, in fact, were not ever recognized by him as belonging to him. It certainly took no influence by anyone to get him to cut them out of his Will. He as fully intended to ignore them after he was gone as when he was on this earth. There could hardly be a clearer case of where a testator left his property as he wanted it to go, without being in the slightest unduly influenced by anyone, than is the present case.

The beneficiaries under Mr. Oram's Will are Mrs. King, the hospital in memory of his mother, and his only niece and two nephews. There is not the slightest charge of undue influence by the Hospital, the niece or the nephews. These gifts were

natural and proper. All that can be said against Mrs. King is that she kept Mrs. Oram from the testator's room when he was sick. She was only doing what Mr. Oram himself had done for years. The case is devoid of any evidence justifying any court in saying that the Will offered for probate was not the result of the exercise of free agency by Mr. Oram, and, therefore, there was no error in the Orphans' Court in admitting the Will to probate, or in the Prerogative Court in affirming the Orphans' Court, and the order of the Orphans' Court should be affirmed.

Respectfully submitted,

KING & VOGT,

Proctors of Respondent.

*Solicitors and Counselors at Law*

INDEX

	Page
Writ of Appeal and Grounds	1
Assignment of Reversal	2
Enforcement	2
County Court Summons	4
Writ of Demand	4
Writ of Appeal	8
Grounds of Appeal	9
Writs Entries & Judgment	10
Witnesses	13
Writ for Nonsuit	34, 37
Writter's Certificate	38
Writ of Habeas	38
Writ of Error	40

Witnesses

Plaintiff's:	
Dr. Archibald Simson,	
Direct	13
Cross	15
Andrew M. Walker,	
Direct	17
Cross	20
Re-direct	22
Re-cross	23
Elizabeth Hallet,	
Direct	25
Harry Tunkel,	
Direct	27
Cross	28
Jesse Baird,	
Direct	29
Cross	31
Benjamin Cohen,	
Direct	33